Forensic Assessment of Juveniles

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Chapter 5: Forensic Assessment of Juveniles

Overview

Introduction

Forensic assessments, by definition, are psychological evaluations that assist a fact finder in answering a legal question (Otto & Heilbrun, 2002). The results of a forensic assessment may, for example, help the courts make a determination regarding a juvenile’s level of criminal responsibility, adjudicative competence, appropriateness for transfer to criminal court, level of risk, or classification as a sexually violent predator (each described in more detail later in this chapter). Forensic assessments of juveniles occur at various stages of the legal process, ranging from first contact with the legal system through to the end of a sentence. A forensic assessment therefore requires knowledge of the legal system as a whole, an understanding of the relevant legal standards in the evaluator’s jurisdiction of practice, familiarity with relevant ethical guidelines and recommendations, and an understanding of the recent psychological/scientific literature, as well as impartiality, honesty, and control over one’s personal biases (Heilbrun & Locklair, 2016). Juvenile forensic assessments often have far-reaching implications by influencing management dispositions and labels that can have profound impact on their long-term development. Forensic assessment results may also have onerous implications, such as detention in a secure facility or registration as a sex offender.

In this chapter, we will address a number of legal, ethical, and practice considerations related to the assessment of juveniles in various forensic contexts. Initially, we will provide a brief history of the juvenile court, and describe the nature of mental health evaluations in forensic contexts in greater detail. Next, we will discuss the psychosocial differences between juveniles and adults who undergo forensic assessments, as well as legal considerations unique to the juvenile population. We will also refer to ethical concerns that may arise in the course of a juvenile forensic assessment, as addressed in the Ethical Principles of Psychologists and Code of Conduct (EPPCC; American Psychological Association, 2010) and the Specialty Guidelines for Forensic Psychology (SGFP; American Psychological Association, 2013a). Finally, we will describe practice issues that arise in specific forensic contexts.

A Brief History of the Juvenile Court

Although we typically set the date of the beginning of the United States juvenile justice system at 1899, due consideration of the criminal culpability of children has extended back to the turn of the 19th century. As articulated by Chief Justice Kilpatrick in State v. Aaron (1818),
British Common Law doctrine “restated the settled common law doctrine, adapted from earlier Roman law, that since a child under seven ‘cannot have discretion to discern between good and evil’ he is incapable of committing crime” (cited in State v. Monahan [1954] and reported in Donnelly, Goldstein, & Schwartz, 1962, p. 855). Compared to contemporary standards, the age of seven as a benchmark for determining criminal responsibility is quite young, and no questions were raised at the time about mitigation of punishment or whether the State had any obligation to intervene. In State v. Aaron, Kilpatrick further noted that the presumption of incapacity was considered rebuttable for juveniles between the ages of seven and 14, and juveniles 14 years of age or older were presumptively capable of committing crimes. In other words, juveniles between seven and 14 that were charged, tried, and convicted were subjected to the full sanction of the law if they appeared to understand the difference between right and wrong. Further, children as young as seven could be sentenced to death for committing a crime. The doctrine articulated by Chief Justice Kilpatrick dated back to William Blackstone’s Commentaries on the Laws of England, first published in the late 1760’s (cf. Morrison, 2001); the Commentaries espoused the foundational doctrine for the founding fathers in America.

Ever so slowly, the nineteenth century brought about changes in the ways that juveniles were treated in the U.S. In 1825, the Society for the Prevention of Juvenile Delinquency opened the House of Refuge in New York City, whose mission was to address the underpinnings of juvenile delinquency, primarily through what was called moral education. By mid-century, houses of refuge could be found all over the country. With the onset of the second industrial revolution toward the latter part of the 19th century, social reformers and academics decried the need to protect children from exploitation. Age-related legal structures began to appear, the most notable of which was the first juvenile court in 1899. Within 25 years, most states had adopted juvenile courts with a mission to carry forth the parens patriae doctrine that provides the authority for states to intervene to protect children and adolescents, acting on their behalf, providing them with care and treatment so that they may become prosocial, contributing members of society. Judge Julian Mack quoted Judge Lindsey as saying, “[The judiciary’s] purpose is to help all it can, and to hurt as little as it can; it seeks to build character – to make good citizens rather than useless criminals. The state is thus helping itself as well as the child, for the good of the child is the good of the state,” (Mack, 1909, p. 121-122). Because these courts were not punitive, there was no need for procedural protections afforded adults in criminal court. There was nothing adversarial about the process in the juvenile court, as the State’s obligation
was to protect the youthful offender. Since the focus was on rehabilitation, and not punishment, the disposition was designed for the juvenile, and not for the offense.

Over the ensuing sixty years, the attitude toward juvenile offenders and the juvenile court shifted gradually towards skepticism and eventually deep cynicism. The competence and training of clinicians assigned to treat troubled youth, and the adequacy of science informing treatment of these youth were deemed woefully lacking, and the question of whether juveniles truly lacked criminal responsibility was re-visited. A series of cases brought before the Supreme Court of the United States (SCOTUS) during the 1960s and 1970s changed profoundly the complexion and mission of the juvenile court.

**Relevant Case Law**

**Focus on Rehabilitation.** In *Kent v. United States* (1966), 16 year-old Morris Kent was transferred from juvenile court into the adult criminal court system. SCOTUS held that the *parens patriae* power of the juvenile courts was not unlimited, and that the courts were not entitled to act with *procedural arbitrariness*. The *Kent* decision made clear that waiving a juvenile to adult court required that the juvenile be provided with basic *due process* rights afforded adults: a hearing, effective assistance of counsel, and a statement of reasons for the decision: “While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults,” (p. 556). As Justice Abe Fortas famously remarked, “There may be grounds for concern that the child [brought before the Juvenile Court] gets the worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children,” (p. 556).

*Kent* was soon followed one year later by the landmark case, *In re Gault* (1967). In *Gault*, SCOTUS upheld an appeal for a writ of habeas corpus, issued by the mother a 15 year-old boy. The juvenile court had adjudicated the boy delinquent for making lewd telephone calls, and placed him in an industrial school until he reached the age of 21, although the maximum penalty for an adult committing the same offense would have been a fine or a few months in jail. *Gault* had two major effects: (1) it triggered a floodgate of questions about the limits of constitutional rights for minors and the competence of minors to exercise those rights, and (2) it effectively legalized the juvenile court by requiring that juveniles be provided the same due process rights as adults, including the right to counsel, the right of written notice of charges, the privilege against
self-incrimination, right to confrontation and cross-examination, right to a transcript of the proceedings and right to appellate review. As Justice Fortas remarked, “Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone,” (p. 13). In effect, Gault converted rehabilitation-focused juvenile hearings into juvenile criminal proceedings. In the case of In re Winship (1970) SCOTUS further held that for adjudications of delinquency, the standard of proof required should be the same as for criminal cases (beyond a reasonable doubt). In a powerful dissent, Chief Justice Burger, joined by Justice Stewart, asserted, “Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we 'burn down the stable to get rid of the mice.' My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile-court era. I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing. We can only hope the legislative response will not reflect our own by having these courts abolished. [397 U.S. 358, 377]. In yet a further shift of the juvenile court system towards adult court, Breed v. Jones (1975) applied the Fifth Amendment ban on double jeopardy to convictions in juvenile court. In a noteworthy exception to this pattern, McKeiver v. Pennsylvania (1971) found that juveniles did not have a constitutional right to jury trial, thereby blocking full procedural parity with adult criminal trials.

A Shift Towards Punitiveness. A dramatic rise in juvenile violence in the 1990’s ushered in major changes in the juvenile justice system, including easier transfer from juvenile to adult court and longer, harsher sentences. In many jurisdictions, proceedings were no longer “protected” (confidential) and court records were not always expunged when the juvenile defendant turned 18. As result, the need for protections of juvenile defendants became apparent. In Thompson v. Oklahoma (1988), SCOTUS held that the Eighth and Fourteenth Amendments forbade the imposition of capital punishment on offenders who were under the age of 16 at the time of their offense. In Stanford v. Kentucky (1989), however, the Court upheld the imposition of capital punishment on individuals for crimes committed at 16 or 17 years of age, finding that this did not constitute cruel and unusual punishment under the Eighth Amendment. In Roper v. Simmons (2005), the Court abolished the death penalty for juveniles, holding that executing offenders who committed capital crimes before age 18 was unconstitutional, as cruel and
unusual punishment under the Eighth Amendment. The majority argued that “the differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability” (p. 7). Citing recent research (e.g., Scott & Grisso, 1997; Steinberg & Scott, 2003), Justice Kennedy noted three broad areas in which juveniles could be distinguished from adults: (1) juveniles lack maturity and have an underdeveloped sense of responsibility, resulting in impetuous and ill-considered actions and decisions, (2) juveniles are more susceptible to negative influences and outside pressures, including peer pressure, and (3) the character of a juvenile is not as well formed as that of an adult, and as a result, juveniles possess greater potential for rehabilitation.

In Graham v. Florida (2010), the Court further held that it was unconstitutional to impose the penalty of life imprisonment without the possibility of parole (LWOP) on juveniles who had not committed homicide. More recently, Miller v. Alabama (2012) found that juveniles also cannot be sentenced to LWOP for homicide where such a sentence is the only option; mitigating factors must be considered before a juvenile can be receive an LWOP sentence. Writing for the majority, Justice Kagan stated that mandatory LWOP excludes consideration of characteristics associated with the chronological age of the defendant. As Justice Kagan elaborated, it fails to take into account the family and home environment of the juvenile - an environment, Justice Kagan noted, that can be brutal and dysfunctional. The judicial reasoning in this series of cases relies on a recognition of fundamental differences between juveniles and adults that can be subsumed under the umbrella of immaturity (cf. Heilbrun & Locklair, 2016; Steinberg & Scott, 2003).

**Psycholegal Assessments in Forensic Contexts**

*Forensic contexts* include correctional settings, juvenile justice programs, and other settings in which services are provided to forensic populations (i.e., both offenders and survivors of crime; Otto & Heilbrun, 2002). It should be noted, however, that not all tasks performed by mental health professionals within forensic contexts are forensic assessments. For example, mental health professionals may be asked to perform clinical assessments in forensic settings for the purpose of gathering information for treatment planning and implementation (e.g., to answer clinical referral questions regarding diagnostic clarification, as opposed to answering a psycholegal question; Heilbrun & Locklair, 2016). The term *psycholegal* is used throughout this chapter to refer specifically to situations in which mental health and legal constructs (e.g.,
concepts and methods) interact (i.e., where the focus of the psychological assessment is on a legal issue).

There are as many important differences between clinical assessments and forensic assessments as there are distinctions between therapeutic and forensic dyadic relationships (Greenberg & Shuman, 1997). In clinical settings and therapeutic contexts, the clinician is expected to be supportive and empathic. Although we appreciate that this is often not the case, the forensic evaluator must remain neutral, objective (Greenberg and Shuman, 1997), and nonpartisan. Additionally, forensic evaluators often use collateral data as an additional source of information when forming a psycholegal opinion, while this is less common-practice in therapeutic contexts. Finally, in clinical settings, patients often seek an assessment voluntarily. In forensic contexts, however, examinees are often court ordered and/or are acutely aware that their participation (or lack thereof) may become known to the court; thus, examinees often cannot or will not refuse to participate (Zapf & Roesch, 2009).

In clinical settings, the client is the examinee, and clinician-patient privilege protects the information gathered during the assessment. In forensic settings, the client typically is either the examinee’s attorney or the court, and so there is no clinician-patient privilege. For evaluations performed in some forensic settings (e.g., juvenile detention centers, forensic hospitals), assessment results are commonly expected to be available to the courts. In spite of the potential risks to juveniles when they participate in forensic assessments (described in more detail below), examinees who are court ordered to undergo an evaluation are not required to be provided informed consent. However, best practice requires that informed assent from juveniles is obtained. Formal informed consent is also required from the juvenile’s parent, foster parent, or other designated legal guardian. Identifying the appropriate person to provide informed consent may be complicated, given factors such as non-traditional family structure, emancipation, adolescent marriage, and youth in residential and detention facilities.

Thus, the juvenile examinee should still have the evaluation process and limits of confidentiality explained to him/her in appropriate detail (Zapf & Roesch, 2009). The distinctions between clinical assessments and forensic assessments should be made explicit during the informed consent process. The evaluator should also clarify how information obtained during the assessment will be used, and should alert the examinee to the limits of confidentiality (Hoge & Andrews, 2010). For example, the mandated reporting of child or elder abuse (Zapf & Roesch, 2009), should be made explicit; as in clinical practice, an evaluator is required to report
any threats of imminent harm to appropriate authorities (Hoge & Andrews, 2010). Further, the examinee should be informed about who will have access to the report that results from the assessment (Zapf & Roesch, 2009), including both those individuals who will receive the report, and those who may in turn have access to the report.

**Research on Bio-physical & Cognitive Development in Adolescence**

Adolescence marks an extraordinary period of change across most, if not all, domains of human development, including physical, neurocognitive, social, sexual, and emotional development (e.g., Albert & Steinberg, 2011; Bonnie & Scott, 2013; Borum & Verhaagen, 2006; Casey, Getz, & Galvan, 2008; Cohen et al., 2016; Cohen & Casey, 2014; Luna & Wright, 2016; Modecki, 2008; Owen-Kostelnik, Reppucci, & Meyer, 2006; Reyna & Farley, 2006; Steinberg, 2007; Steinberg, 2009; van den Bos, van Dijk, Westenberg, Rombouts, & Crone, 2011). It is clear that even the adolescent central nervous system is developing (e.g., Giedd, 2004; Luna & Sweeney, 2004), and that structural development corresponds with psychological growth. For example, Cohen and her colleagues (2016) found “a developmental shift in cognitive control in negative emotional situations during young adulthood that is paralleled by dynamic developmental changes in prefrontal circuitry” (p. 11). Bostic, Thurau, Potter, and Drury (2014) similarly noted that adolescents tend to process information less through the prefrontal cortex than adults, and more through the amygdala, particularly during highly emotional situations, and that this can lead to more erratic behaviors.

In addition to structurally-based neurological developments, neurobehavioral changes in adolescence have been linked to puberty (Dahl, 2004). For example, marked changes have been observed in both the reproductive and stress hormones associated with maturational changes in several domains, including: sexual arousal, emotional intensity and lability, sleep, appetite, and risk taking behaviors. As Steinberg (2004) noted, “increased risk taking in adolescence is normative, biologically driven, and inevitable,” (p. 57). Steinberg (2007) subsequently remarked that adolescence is a period of increased vulnerability for high-risk behaviors and impulsivity, due in part to the difference in timing of puberty onset (i.e., which leads to sensation seeking) and the development of the cognitive-control system (i.e., which aids in impulse control). In the Brief submitted by the American Psychological Association and the Missouri Psychological Association (Brief, 2004) in *Roper v. Simmons* (2005), the authors remarked that juveniles are “moving targets” with regard to dangerousness risk and character assessment, as “the transitory nature of adolescence also means that an adolescent defendant is much more likely to change in
relevant respects between the time of the offense and the time of assessment by courts and experts” (p. 3). These problems are only magnified by the hormonal paroxysm brought on by puberty (Beaver & Wright, 2005).

Overall, adolescence is characterized, even under the best of conditions, by markedly impaired decision-making, as rational decisions give way to intense emotions and a notable incidence of risk-taking. In addition, however, there is a complex social chemistry in which peers become powerful influences on behavior, again hormonally augmented with the onset of puberty. In other words, adolescence is a developmental twilight zone between childhood and adulthood that is often characterized by radical emotional changes in response to hormonal shifts, high-intensity feelings, emotionally-charged, impulsive, risky behaviors, and poor decision-making (Kelley, Schochet & Landry, 2004).

**Impact of Childhood Maltreatment**

Based on the relationship between childhood abuse and developmental maturation, a comprehensive forensic assessment must include an assessment of child maltreatment. This was recently suggested by Salekin and colleagues (2016), who indicated that developmental maturity may be impaired by family dysfunction, as well as factors such as poverty, mental illness, and learning deficits (i.e., factors which are prevalent in juvenile offender populations). Of note, Conrad and colleagues (2014) found that juvenile females who reoffended over a 12-month period were more likely to have experienced childhood sexual abuse than females who did not reoffend. However, childhood sexual abuse does not appear to affect rates of male recidivism over a 12-month period. Baglivio and colleagues (2016) found that adverse childhood experiences, such as abuse, affect the likelihood of a child becoming involved in the child welfare system. However, Hispanic female and Caucasian male juveniles who had cases concurrently open in both the juvenile justice and child welfare systems were more likely to recidivate than their counterparts who were only involved in the juvenile justice system. In addition to the obvious emotional and psychological impact of maltreatment, there is a growing literature documenting neurological impairment associated with early and protracted maltreatment (e.g., Arnsten & Shansky, 2004; DeBellis, 2004; Perry, 2001; Teicher, 2002; Teicher, Andersen, Polcari, Anderson, & Navalta, 2002). Protracted abuse produces a cascade of stress-related hormones (e.g., cortisol and adrenalin) in the young, developing brain, permanently altering the development of certain structures (e.g., hippocampus, corpus callosum, and prefrontal cortex). Arnsten and Shansky (2004) stated that “exposure to even mild uncontrollable
stress impairs the cognitive functioning of the prefrontal cortex,” thereby undermining control capacity (p. 143). Hence, an evaluation of sophistication-maturity must take into consideration the inherently inconstant lifecourse of those children that are subjected to maltreatment. In sum, a developmentally-focused understanding of trauma can facilitate forensic assessments.

**Developmental Sophistication-Maturity**

The task of answering specific psycholegal questions in the juvenile offender population is highly complex and not to be equated with comparable evaluations of adults, and developmental sophistication-maturity is a prime consideration in assessments of children involved in the legal system. Thus, it has been argued that sophistication-maturity may in fact be the most helpful (Salekin, 2015), and most reliable, information that forensic examiners can provide as a product of their evaluations. The contribution of sophistication-maturity to answering specific psycholegal questions is described in greater detail later in this chapter.

Given the central importance of sophistication-maturity in the adjudication of adolescents, and most notably, decisions to transfer juveniles to criminal court, there has been much attention paid to the operationalization and measurement of sophistication-maturity (cf. Salekin et al., 2016). Cauffman and Steinberg (2000), for example, examined three hypothesized psychosocial factors associated with sophistication-maturity (i.e., responsibility, perspective, and temperance) in a sample of over 1,000 participants ranging in age from 12 to 48. Cauffman and Steinberg (2000) defined these three non-mutually exclusive psychosocial factors accordingly: “(1) responsibility, which encompasses such characteristics as self-reliance, clarity of identity, and independence; (2) perspective, which refers to one's likelihood of considering situations from different viewpoints and placing them in broader social and temporal contexts; and (3) temperance, which refers to tendencies to limit impulsivity and to evaluate situations before acting,” (p. 745). Adolescents were generally less responsible, more myopic, and less temperate than adults. The most dramatic changes in behavior were observed between the ages of 16 and 19, with respect to perspective and temperance. It was not until age 19 that responsible decision-making and maturity of judgment began to plateau and stabilize.

Salekin and colleagues (2016) illustrated that responsibility, perspective-taking, and temperance mapped onto three similar factors proposed by Salekin, Rogers, and Ustad (2001), with responsibility bearing similarity to autonomy (e.g., internal locus of control, high self-esteem, clarity of self-concept and ability to resist peer pressure), perspective resembling cognitive capacities (e.g., ability to think abstractly, goal-setting, ability to identify alternative
behaviors and consequences and ability to engage in cost-benefit analysis), and temperance having congruence with emotion regulation skills (e.g., insight, clarity about values and priorities, capacity to regulate emotions, open to change, and ability to delay gratification). Deficits in these core characteristics exacerbate responses to adverse life experiences that undermine normal development, and thus sophistication-maturity, in youth.

Level of maturity and intellectual sophistication speaks to the rationale behind the existence of a juvenile justice system: it has long been presumed that juveniles are not sufficiently cognitively and emotionally developed to fully appreciate the nature of their offenses, and should therefore not be held fully accountable for their crimes. Assessments of sophistication-maturity must take into consideration any developmental delays, long-term cognitive deficits, and failures to achieve developmental milestones, including delays or deficits that stem from maltreatment experiences. Ewing (1990) recommended that tests of personality, intelligence, and achievement be incorporated in the assessment of factors such as emotional functioning, reality testing, cognitive processing, perception, attention, and judgment, among other factors relevant to sophistication-maturity independent of the specific legal context. Within the forensic context, the assessment of psycholegal constructs, such as culpability, criminal sophistication, the understanding of normative behaviors, and the ability to consider alternative behaviors, are considered integral (Salekin, 2002). Broadly, consideration of moral development, planning/premeditation, consideration of long-term consequences, decision-making skills, and intelligence (i.e., cognitive and emotional) are considered central to evaluation of maturity and sophistication (Salekin, 2002).

**Psycholegal Contexts**

**Transfer of Juveniles to Adult Court**

The assessment of juvenile offenders for transfer or waiver to adult court is inherently unique to the juvenile population, unlike other categories of forensic assessment described in this chapter. Juveniles may be referred for transfer to adult court when the juvenile justice system is deemed ill-equipped to provide a penalty that fits the offense at hand, and in cases where the juvenile offender has demonstrated that he/she is unlikely to be responsive to juvenile justice interventions (e.g., demonstrated through repeated recidivism; Loughran et al., 2010). The requisite criteria for juvenile transfer to adult court varies by state, such as the minimum age of eligibility for transfer, and offenses that may warrant a transfer. The minimum age for transfer is as low as 10 in some jurisdictions, whereas other jurisdictions do not have an explicit minimum
age, and in some jurisdictions defendants facing particular charges can be transferred regardless of age (McKee, 1998; Wynkoop, 2003).

Although Nunez and her colleagues (2007) noted that the public may believe that juveniles today are more violent and less amenable to treatment than in previous years, contributing to changes in transfer policies (e.g., decreases in the minimum age for transfer) and increases in the number of transfers, a trend toward increased use of waivers can be traced back to the 1990s (Larson & Grisso, 2016; Tate, Reppucci, & Mulvey, 1995). Although only a small percentage of delinquency cases are transferred to adult court, the absolute number of cases climbed sharply during the 1990s (Feiler & Shelley, 1999). Thus, the need for competent transfer evaluations, correspondingly, began to rise. This dramatic rise in transfers during the 1980s and 1990s began to reverse around 1998, with states increasingly re-examining transfer procedures as juvenile justice reform was seen as advantageous and less “bipartisan.” The pendulum shifted again around 2010, with transfer rates returning to 1989-1990 levels. Griffin, Addie, Adams, and Firestine (2011), estimated that, in 2007, juvenile courts waived approximated 8,500 cases to criminal court. This was less than 1% of the total juvenile court caseload. The issue of transferring any juvenile to adult court remains controversial; as recently as February, 2016, an Op-Ed piece appeared in The New York Times entitled Stop Trying Children in Adult Court (Schiraldi, 2016).

All states retain some mechanism for transferring youth from juvenile court to adult court for criminal prosecution. Discretion typically resides with the juvenile court judge, the prosecutor, or, in some cases, state law making waiver for certain types of offenses mandatory. Forensic evaluators may be retained to evaluate youth for appropriateness of transfer, and in fact, the findings of psycholegal evaluations of the juvenile are often requested regardless of the transfer mechanism (Salekin, 2002). Evaluators who assess the appropriateness of transfer to adult court must therefore be attuned to the specific transfer mechanism, among other circumstances relevant to the offender, as context may impact the outcome of the evaluation. Judicial transfer, or judicial waiver, has traditionally been the favored mechanism for transfer in the United States (Brannen et al., 2006; Grisso, 1998; Kruh & Brodsky, 1997; Snyder & Sickmund, 2006). However, as youth crime increased in the 1980s and 1990s and became a matter of public concern, states began to shift discretion away from judges and place it in the hands of prosecutors and state legislatures. With judicial transfer, the ultimate decision regarding
each potential transfer case is in the hands of the juvenile court judge, often with consideration of the opinion of forensic evaluators.

Other transfer mechanisms exist that remove the authority to transfer cases from the judiciary. For example, some states provide a *statutory exclusion*, in which charges for serious offenses are automatically filed with the adult criminal court, without a formal evaluation or opinion from a juvenile court judge, and without the case ever entering the jurisdiction of the juvenile court. This may occur in cases where certain crimes are committed (e.g., rape), or when juveniles are repeat offenders (Kruh & Brodsky, 1997), although the exact requirements vary by jurisdiction. In states with *prosecutorial direct file* (Snyder & Sickmund, 2006), the prosecutors maintain the right to file charges in either the juvenile or adult court, for particular offenses. Larson and Grisso (2016) concluded that in today’s court system, judicial transfers “most closely approximate the transfer procedure as it existed at the inception of the juvenile courts, but the stated rationale has changed” (p. 449). The authors went on to note that the focus of transfer has moved away from protection of juveniles in the juvenile justice system, and towards public safety concerns. Additionally, some states have *once adult/always adult* laws. These laws require that any juvenile who has been previously criminally prosecuted (i.e., in adult court) be criminally prosecuted in adult court for any future charges. In these cases, the seriousness of the crime usually does not matter (Griffin et al., 2011). Lastly, blended sentencing laws allow juvenile courts to impose criminal sentences, or allow criminal courts to use juvenile dispositions (Griffin et al., 2011).

Variation in mechanisms introduced during the past two decades has contributed to notable heterogeneity in juvenile offenders transferred to adult court. Most opinion-based research appears to have found support for judicial transfer, as opposed to the other transfer mechanisms. For example, in a survey of juvenile court judges, Brannen and colleagues (2006) found that 72% of judges reported a preference for identifying transfer cases on an individual basis; other studies have similarly found that the public does not support blanket transfers to adult courts (e.g., due to charges for a particular severe offense; Nunez, Dahl, Tang, & Jensen, 2007). Across the board, states’ responses to a tough-on-crime political climate have made transfer somewhat easier (Brannen et al., 2006). As a protection against errors in decision-making and inappropriate transfer, in certain jurisdictions, the potential also exists for a *reverse transfer or decertification* from adult court back to juvenile court (Brannen et al., 2006; Griffin et
Transfer from juvenile court to adult court has notable implications for the juvenile offender, and is therefore considered one of the most serious acts performed by the juvenile court (Brannen et al., 2006; Woolard, Odgers, Lanza-Kaduce, & Daglis, 2005). The magnitude of a transfer decision is not limited to the offender’s adjudication and possible detention experience, but also includes stark differences in long-term consequences. For example, youths tried in adult court may face a lengthier maximum sentence, and the realities of life in adult prison (e.g., sexual abuse; Brannen et al., 2006). Additionally, juveniles tried in adult court face increased stigmatization and systematic identification as deviant, and may be deprived of normative developmental experiences with prosocial peers and family members (Tonry, 2007). In other words, the youthful offender risks possibly losing all protections and opportunities ostensibly afforded by the rehabilitation available within the juvenile justice system, while simultaneously being subjected to the adverse interpersonal consequences of detention in an adult facility (Brannen et al., 2006; Woolard, Odgers, Lanza-Kaduce, & Daglis, 2005).

Interestingly, some evidence suggests that juvenile offenders tried in adult court often are treated as first-time offenders, regardless of prior history of delinquency; in such cases, similar juvenile offenders tried in the juvenile court system may actually receive more severe sanctions than those tried in the criminal court system (Kruh & Brodsky, 1997). The outcomes within either court system, in turn, may impact an offender’s risk for recidivism. Although the majority of the research notes that adolescent offenders tried in adult court have higher rates of recidivism than juvenile offenders tried within the juvenile court system (Tonry, 2007), some researchers have not identified significant distinctions with regard to recidivism (Loughran et al., 2010). For example, Loughran and colleagues (2010) used propensity score matching, a statistical procedure for reducing selection bias and controlling for factors that could be confounding the effects of treatment. The researchers found that juveniles who committed person-related crimes were less likely to reoffend after being transferred to adult court. There was no such finding for juveniles who engaged in property crimes. The extent to which findings are due to the multitude of inherent differences between transferred and non-transferred offenders remains unclear. However, the possibility exists that juveniles transferred to adult court, and therefore subject to adult sanctions, may experience iatrogenic effects of transfer (Tonry, 2007). For example, a
juvenile incarcerated in a prison with adult felons will be exposed to more antisocial role models than in a juvenile justice facility.

Although transfers have been on the decline over the past decade and the present wave of public opinion appears to have shifted away from transferring youth to adult court, mental health professionals are still relied upon to provide evidence regarding the appropriateness of transfer when transfers are sought (Brannen et al., 2006). The criteria for transfer to adult court were established in Kent, wherein three broad domains were identified as principle foci of an evaluation for transfer: (1) potential risk to the community, (2) level of sophistication-maturity, and (3) amenability to treatment interventions. Ewing (1990) recommended that evaluators also attend to additional legal and extralegal factors. Evaluators should consider, for example, whether the possible juvenile court dispositions are likely to rehabilitate the offending juvenile before the jurisdiction of the court ends, and whether the services available in the adult criminal justice system are appropriate for meeting the juvenile’s treatment and risk management needs. Heilbrun, Leheny, Thomas, and Huneycutt (1997) reported five criteria governing transfer: (1) dangerousness, (2) treatment amenability, (3) sophistication-maturity, (4) mental illness or intellectual disabilities, and (5) specific characteristics of the offense.

In a survey of juvenile court judges, Brannen and colleagues (2006) found that the overwhelming majority (97-98%) indicated that it would be useful for forensic evaluations to specifically address the criteria set forth in Kent. Thus, evaluators are encouraged to explicitly evaluate risk, sophistication-maturity, and amenability to treatment interventions in a comprehensive transfer assessment. In a survey of the National Council of Juvenile and Family Court Judges, Brannen and colleagues (2006) found that judges weighed dangerousness and sophistication-maturity more heavily when forming a decision regarding transfer, whereas treatment amenability did not have as significant an impact on their decisions. Of note, the weight of various aspects of the assessment findings in court varies by jurisdiction (Brannen et al., 2006; Kruh & Brodsky, 1997).

**Potential for Risk.** Dangerousness risk is commonly evaluated through use of formal risk assessment measures, and may consider factors such as the likelihood of persistence of offending as suggested by developmental offending histories, including age of onset, severity, and frequency, as well as personality traits (e.g., traits associated with psychopathy). Considerations
regarding dangerousness risk are described in more detail below, in the section entitled Evaluation of Risk of Harm to Others and in Chapter 7 of this volume: Assessing risks and needs with adolescents who have sexually offended: Research-based guidelines.

**Level of Sophistication-Maturity.** As described above, sophistication-maturity is a functional-legal capacity that is routinely addressed both in hearings on waiver up to criminal court and reverse waiver back to juvenile court (Heilbrun & Locklair, 2016). Considerations in the assessment of sophistication-maturity are described above, in the section of this chapter entitled Assessment of Sophistication-Maturity.

**Amenability to Treatment Interventions.** There are essentially two separate issues raised with regard to treatment amenability: (1) clinical mental health issues presented by youth in the juvenile justice system, and (2) prognosis. With regard to clinical mental health issues, children and adolescents within the juvenile system at times present with noteworthy mental health symptoms. Approximately two-thirds of such youth within the juvenile justice system have at least one diagnosable mental illness, and many have two or more comorbid disorders (Cocozza & Skowyra, 2000; Teplin, Abram, McClelland, Dulcan, & Mericle, 2002). Details regarding the assessment of psychopathology are presented in Chapter 6 of this volume: Clinical Approaches to High Quality Assessments.

In spite of the prevalence of mental illness in juvenile forensic samples, children and adolescents are considered more likely than adults to be rehabilitated, and so the juvenile justice system is significantly more focused on rehabilitation. This perception is due in part to medical and psychological research suggesting that juveniles are in fact more amenable to treatment than adults (Salekin, 2002). Thus, evaluation of amenability for treatment begins with knowledge of factors associated with treatment success, as well as treatment failure. Consistent with clinical treatment research, Salekin and colleagues (2002) identified motivation to engage in treatment, awareness of difficulties, positive expectations for treatment, remorse and guilt, empathy, moral decision-making, anxiety related to their legal situation, and a stable and supportive family environment as factors related to the transfer decision, according to clinical psychologists (Salekin et al., 2001) and juvenile court judges (Salekin, Yff, Neumann, Leistico, & Zalot, 2002).

Despite the magnitude of transfer evaluations, given potential consequences of transfer to adult court, there is a paucity of systematic guidelines to assist evaluators in answering the referral question (Brannen et al., 2006). Evaluators may therefore approach transfer evaluations
very differently, in a non-standardized manner, and those evaluators who wish to add more structure may opt to use adult measures of transfer-related constructs that are not normed for use with a youth sample (Salekin, 2002). There is a call for further research to develop and further validate assessment tools to aid forensic evaluators in transfer assessment decision-making (Brannen, 2006). Evaluators are encouraged to be forthright regarding prognosis when expressing an opinion in which the data strongly support transfer, and to also note the limitations of the assessment process, given the high stakes involved in a juvenile transfer evaluation (Salekin, 2002).

**Competence to Waive Miranda Rights**

In *Miranda v. Arizona* (1966), SCOTUS determined that all suspects have a right to be informed of their legal protections (i.e., be provided with a *Miranda warning*), and that awareness of one’s legal rights is integral for being able to provide a knowing, intelligent, and voluntary waiver of those rights. In accordance with *Miranda*, suspects must be provided information regarding: (1) their right to silence, (2) that any statement they make may be used as evidence in court, (3) their right to counsel, (4) that indigent suspects have a right to counsel, and (5) that they may assert their rights at any time. Since *Miranda*, the courts have extended the right to be informed of Fifth Amendment protections to juveniles. In *Gault*, SCOTUS noted that “the constitutional protection against self-incrimination is as applicable in the case of juveniles as it is with respect to adults” (p. 44). In *Fare v. Michael C.* (1979), the Court furthered this reasoning, finding that juveniles had an increased likelihood of incompetence to waive constitutional rights, due to their increased risk for intellectual and emotional deficits. *Fare* set the legal precedent for judges weighing the legitimacy of a juvenile’s waiver of Miranda rights (Grisso, 1998).

A *totality of the circumstances* approach was hence established with regard to Miranda waiver evaluations, in which factors such as age, experience, education, background, and the circumstances of questioning are considered. Moreover, the Court required that juveniles’ capacity to comprehend the Miranda protections, understand their Fifth Amendment rights, and appreciate the consequences of waiving their legal rights should be considered in Miranda evaluations (Rogers et al., 2014). In *J.D.B. v. North Carolina* (2011), SCOTUS specified that the age of juvenile suspects should be explicitly considered in evaluations of Miranda waivers (i.e., as an indicator of developmental maturity), since chronological age has implications for perception and decision-making abilities (Rogers et al., 2014). Thus, forensic evaluators are at
times asked to attest to a juvenile’s ability to waive his/her legal rights under the Fifth Amendment.

Although the aforementioned legal cases set the minimum threshold for Miranda rights on a national level, individual jurisdictions may institute additional safeguards. Each jurisdiction determines the way in which Miranda warnings are provided to suspects, and each jurisdiction establishes the process by which a waiver may be obtained. For example, a few states require that an attorney be provided to a juvenile suspect before a waiver can be accepted as valid, regardless of whether the juvenile can demonstrate knowledge of his/her legal rights. Other jurisdictions require that the juvenile suspect consult with a parent, custodian, or guardian in order to jointly waive the juvenile’s legal rights (Rogers et al., 2008). Regardless of the specific requirement, these protections are in place to ensure that juvenile suspects have a factual understanding of their rights, appreciate the potential consequences associated with waiving those rights, and only provide a waiver (i.e., and any statements following that waiver) in the absence of police coercion. More specifically, Miranda rights help to minimize the likelihood of a false confession, and coerced or otherwise involuntary confession, among other legal injustices. Miranda warnings are therefore “procedural safeguards against self-incrimination and police intimidation for suspects during custodial interrogations” (Zelle, Romaine, & Goldstein, 2015, p. 281). Waiving legal rights leaves a juvenile vulnerable to the power differential that exists between an interrogator and a suspect, compounded by the differential that exists between an adult and a juvenile.

At times, juvenile suspects are provided with general Miranda warnings that are intended for suspects of all ages. In some jurisdictions, Miranda warnings specifically developed to inform youths of their rights (i.e., juvenile Miranda warnings) are required. According to Rogers and colleagues (2008), more than 1.5 million juveniles are arrested and Mirandized annually, and those individuals who provide Miranda warnings to suspects often have little regard for how understandable the warnings are. Warnings vary greatly across jurisdiction with regard to length and difficulty of content (Rogers et al. 2008; Rogers, Sewell, Drogin, & Fiduccia, 2012), as well as by the method of administration (i.e., oral, written, or a combined method), all of which affect comprehension (Zelle et al., 2015). Miranda warnings are sometimes lengthened in an attempt to make the warning more comprehensible to juvenile suspects, such as by providing more context (Rogers et al., 2014). Alternatively, as the legal context differs between juveniles and adults, the warnings for juveniles may be lengthened due to natural expansion upon the rights that are
afforded to adults. For example, Rogers and colleagues (2012) found that many juvenile Miranda warnings include the right to the presence of a parent, guardian, or another interested adult, in addition to the right to an attorney. Juveniles are occasionally also warned that any statements may be used in consideration of transfer to adult court (Rogers et al., 2014). Rogers, Sewell, Drogin, and Fiduccia (2012) found that 37.5% of juvenile Miranda warnings exceeded 175 words, as opposed to 9.9% of general Miranda warnings. Yet, juveniles are less likely to recall and understand lengthy Miranda warnings, as opposed to shorter warnings, due to the sheer amount of information and/or an inability to identify what information is most important.

Aside from length, how well a juvenile understands the content of a Miranda warning often depends on the difficulty-level of the information provided. Historically, the typical Miranda warning requires a reading comprehension level between seventh and eighth grade (Grisso, 1981). This is clearly problematic, as a number of juvenile suspects may have not reached the eighth grade, and many demonstrate reading abilities below grade-level. In a Texas study, for example, most juvenile detainees completed at least an eighth grade education (83% in 2013), yet their median reading level was below the sixth grade (5 years 7 months of education; Texas Juvenile Justice Department, 2013).

In a totality of circumstances approach, Zelle and colleagues (2015) found that age, verbal intelligence, and academic achievement were associated with Miranda understanding and comprehension, whereas gender, and number of previous arrests were not. In his study of youths’ abilities to understand and appreciate Miranda warnings, Grisso (1981) found that understanding of Miranda-related rights was noticeably poorer among juveniles below the age of 15, whereas 15 and 16 year-old juveniles demonstrated a level of understanding similar to that of adults. Grisso (1981) additionally found that deficits were most pronounced among youths with low intelligence, regardless of age. Memory-related abilities in particular may also contribute to a lack of understanding regarding Miranda rights. Rogers and colleagues (2014) found that all juveniles, regardless of maturity level, failed to recall at least 50% of the Miranda warning used in their study. Sophistication-maturity level (i.e., as opposed to age) has been shown to impact juveniles’ immediate recall of a Miranda warning, with the most mature juveniles outperforming juveniles in less-mature groups (Rogers et al., 2014). As alluded to above, sophistication-maturity level, corresponding with neurocognitive development, may impact decisional competence due to development of a greater future-orientation, improved risk perception, and
less susceptibility to the influences of others (i.e., which develop with age; Bonnie, 1992, Grisso, 2003).

Although the courts often assume that Miranda warnings will lead juvenile detainees toward knowledge of their legal rights, and therefore the ability to waive those rights, psycholegal research suggests that juveniles may not be as knowledgeable as may be assumed, even after psycholegal education. For example, Grisso (1981) found that a large proportion of juveniles misunderstood the extent of their legal rights; 82.8% of their overall sample exhibited at least 10 erroneous beliefs, highlighting the potential for ill-informed Miranda-related decisions. Almost two-thirds (61.8%) of the juveniles in their sample believed that they would be penalized for remaining silent, over half (55.3%) believed that the judge could revoke their right to remain silent, over half (57.1%) believed that Miranda rights extended to non-custodial police interviews, and 18% believed that a defense attorney is obligated to report incriminatory evidence to the court. Rogers and colleagues (2014) similarly found that all of the forensically-involved juveniles in their sample endorsed a large number of Miranda-related misconceptions, and that this high rate of endorsement overshadowed any differences between the low-, middle-, and high-maturity groups. It goes without saying that such misunderstandings may lead juveniles to disclose information that they would not have otherwise been reported (i.e., if they were more fully aware of their rights, as well as the implications of their disclosures). Thus, evaluators of competency to waive Miranda rights must perform a thorough assessment to ensure that juvenile suspects’ understandings, regardless of claimed knowledge, sufficiently meets waiver standards.

Adjudicative Competency (Competency to Stand Trial)

Adjudicative competence – often referred to as competence to stand trial, capacity to stand trial, or fitness to stand trial – describes the defendant’s mental and behavioral ability to successfully proceed with and contribute to his/her legal case. The right of adults to adjudicative competence was established in 1960, in Dusky v. United States, wherein an adult male with a history of schizophrenia was charged with kidnapping and attempted rape of an underage female. In Dusky, SCOTUS ruled that a defendant must possess “sufficient present ability to consult with [his/her] lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the charges against [him/her],” in order to proceed with his/her legal case (p. 403). Although this ruling clearly set precedent for adult defendants, the generalizability of the decision to juvenile defendants has been the subject of some debate. Specifically, it is unclear whether juveniles tried in the juvenile court system have a right to adjudicative
competence, and whether juveniles transferred to adult court in particular possess that right (Soulier, 2012).

Although *Kent* (1966) and *Gault* (1967) introduced due process rights into juvenile proceedings, no mention was made of juvenile competency. By the mid-1980s, a third of the states in the United States recognized the legal necessity of being competent to stand trial in the increasingly adversarial environment of the juvenile court (Grisso, Miller, & Sales, 1987). At present, all states acknowledge the right of juveniles to be competent for adjudication (LaFortune, 2016). In Oklahoma, the state to most recently adopt a juvenile competency statute, the courts had previously determined that juvenile adjudicative competence standard was neither appropriate nor necessary, given the rehabilitative focus of the juvenile justice system (LaFortune, 2016; Soulier, 2012). However, as noted above, the climate of the juvenile justice system has been changing. Although SCOTUS has not yet proffered a standard for juvenile adjudicative competence that is distinguished from the adult criminal standard (i.e., the *Dusky* standard), the majority of states have established some minimum standards (Scott & Grisso, 2005) and a few states have incorporated the construct of sophistication-maturity into the standard (Heilbrun, DeMatteo, Goldstein, Locklair, Murphy, & Giallella, 2016). In nearly half of the states, there is still no specific statutory competency standard for juveniles. In such areas, decisions regarding adjudicative competence are often guided by case law, juvenile court statutes, and the standards that apply to adults (Soulier, 2012).

In practice, adjudicative competence is presumed for defendants of all ages until the presumption of competence is challenged. In fact, some have speculated that competency status is too infrequently questioned with juveniles, contributing to lack of attention to issues of juvenile adjudicative competence assessment, and a lessened demand for evaluations in practice (e.g., McKee, 1998). Regardless, the frequency of juvenile adjudicative competence assessments is on the rise (Ryba, Cooper, & Zapf, 2003). When the adjudicative competence of a defendant is questioned, a formal competence evaluation is frequently elicited. Researchers have indicated that young age (i.e., less than 12 years-old), a prior diagnosis or treatment for a mental illness or intellectual disability, borderline intellectual functioning, a significant history of a learning disorder, and pretrial observations suggestive of deficits in memory, attention, or reality testing should also elicit an evaluation of adjudicative competence (Grisso, 1987). As with other psycholegal issues described in this chapter, the assessment of juvenile adjudicative competence is a relatively recent adaptation of adult adjudicative competence assessment.
In performing a competency evaluation, evaluators must be aware of the specific referral question and the legal standard in use in the applicable jurisdiction. Generally, in order to be identified as incompetent, an adult defendant must evidence a mental illness or intellectual disability, as well as a functional deficit. Further, there must be a causal connection between the mental illness/intellectual disability and functional deficit, and the deficit must impair his/her ability to proceed with his/her case in court (Zapf & Roesch, 2009). Thus, evaluators of adjudicative competence must perform comprehensive assessments in order to examine the aforementioned criteria.

As noted above, Dusky established three prongs, describing functional capacities relevant to adjudicative competence: (1) factual understanding, (2) rational understanding, and (3) the ability to consult with counsel; these capacities are at the core of an adjudicative competence assessment. Factual understanding refers to the defendant’s basic knowledge of the legal process, as well as details regarding the charges against him/her. Rational understanding refers to the defendant’s ability to apply his/her understanding of the legal process to his/her own circumstances. The ability to consult with counsel and aid in one’s own defense refers to the defendant’s ability to speak and act in a facilitative manner; this includes the defendant’s ability to cooperate with his/her attorney, and behave appropriately in the courtroom. Jurisdictions in which Dusky applies to juveniles vary considerably. In some jurisdictions, the Dusky standard is typically applied to juveniles whose trial is in adult court, whereas in other jurisdictions it is not. With regard to the juvenile courts, the standards for competence appear to be somewhat less stringent. For example, factual and rational understanding are typically not required of juvenile defendants by current legal standards (Soulier, 2012). In certain jurisdictions, courts consider the totality of circumstances with regard to adjudicative competence in juveniles. In such an approach, the nature, severity, and ramifications of the charges, as well as availability of attorneys and caregivers for legal guidance, are considered in the context of the defendant’s age, background, experience, education, and intelligence (Wynkoop, 2003). Jones (2004) found that judges, attorneys, and forensic examiners who responded to competency vignettes did so in a way that suggested that the perceived threshold for juvenile adjudicative competence varied based on the implications of such a determination; the threshold was higher when stakes were higher (e.g., transfer to adult court, or when the case involved a felony).

In a neuropsychological-developmental discussion of competence, Wynkoop (2003) noted that factors directly related to rational understanding, such as bidirectional and abstract
thinking, as well as moral and complex reasoning, are developed gradually over the course of childhood and adolescence. Perceived autonomy, perception of time, and perception of risks also differ between adolescents and adults, and their development has great implications for legal decision-making (Grisso et al., 2003; Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013). Thus, due to immaturity, as well as a paucity of normative life experiences, children and preadolescents may be expected to have less of an understanding of legal concepts than older adolescents. This perception is supported by the literature. In their examination of age and adjudicative competence, Grisso and colleagues (2003) found that juveniles under the age of 16 demonstrated poorer competency-related abilities than young adults (ages 18-24), with 35% of the youngest of the youths examined (ages 11-13), and one fifth of 14 to 15 year-olds, demonstrating significant impairment. Moreover, children between 11 and 13 were significantly more inclined than young adults to form legal decisions indicative of compliance with authority. Older adolescents (ages 16-17) demonstrated competence and decision making abilities similar to young adults. These findings were consistent with those of other researchers, including McKee (1998), who found that 15 and 16 year-olds had competency-related abilities equivalent to adults, with the exception of knowledge of plea bargaining. Further, McKee identified that preteens were 16 times more likely than adults to be incompetent, and 15 to 16 year-olds were 3.5 times more likely.

With regard to the assessment of sophistication-maturity itself, Ryba and colleagues (2003) found that, of 52 practitioners who reported using a formal assessment tool or procedure to evaluate sophistication-maturity, 34 different tests or assessment methods were used. Of those, the vast majority (e.g., tests of intelligence or personality) were not designed explicitly for the assessment of psychosocial/neurodevelopmental sophistication-maturity. Social skills, cognitive abilities, literacy, decision making, emotional control, behavioral control, and reasoning abilities were additional factors commonly assessed by evaluators of competency when considering sophistication-maturity (Ryba et al., 2003).

In at least one case, In re Causey (1978), SCOTUS recognized developmental immaturity as a potential cause of adjudicative incompetence. More recently, state legislators have begun to acknowledge developmental maturity as a potential prerequisite for competency, along with mental illness and intellectual disability, specific to the adjudicative competence of juveniles (LaFortune, 2016; Fogel et al., 2013; Grisso et al., 2003; Ryba et al., 2003; Wynkoop, 2003). In other words, a young defendant may still be considered incompetent even if he/she lacks a
mental illness, and also lacks an intellectual disability, but lacks the requisite level of neurocognitive maturity for due process to be achieved (e.g., due developmental immaturity).

As with adults, juveniles who are identified as incompetent are subject to treatment efforts intended to improve their adjudicative competence. Grisso and colleagues (2003/2005b) indicated that the attainment of competence, in cases where the barrier is immaturity or lack of experience, might be better conceptualized as competence achievement rather than competence restoration (i.e., the term used to describe the treatment of adults for competence), and that the process of increasing a juvenile defendant’s capacity be referred to as the competence remediation process instead of the competence restoration process. The location of competence remediation varies by jurisdiction, with the potential to occur both in hospitals and in the community for juveniles and adults (Fogel et al., 2013). The remediation restoration process typically involves psychiatric medication, group therapy focused on psychoeducation, and at times individual therapy (Zapf & Roesch, 2011). Recent studies suggest that the rate of successful competence remediation is approximately 60-75% for juveniles, although this rate is lower in cases where the defendant has an intellectual disability. In most cases, when competence was not attained after six months of competence remediation, competence is not attained in spite of additional treatment efforts (Fogel et al., 2013).

Continued lack of competence may be attributable to a number of factors, including neurodevelopmental immaturity. The psychosocial constructs described above, such as moral reasoning, cannot be taught to children prior to their attainment of sufficient neurodevelopmental maturity. Thus, beyond opining as to whether a defendant is incompetent or competent, forensic evaluators are at times tasked with answering the question of whether juveniles are likely to achieve competence in the foreseeable future. This question derives from Jackson v. Indiana (1972), in which SCOTUS found that incompetent defendants could not be hospitalized indefinitely for the purpose of competency remediation/restoration. Instead, defendants should be held no longer than “a reasonable period of time to determine whether there is a substantial probability that [they] will attain the capacity [to stand trial] in the foreseeable future” (p. 738). After a determination of non-restorability, the defendant may be hospitalized through civil commitment proceedings, or they may be released. If adjudicative competence appears attainable, remediation/restoration efforts may continue. The Jackson decision directly applied to adult defendants, and applicability to juveniles is unclear (Soulier, 2012).
Decisions made by forensic evaluators with regard to adjudicative competence and restorability are based on assessments that vary greatly from evaluator to evaluator, but typically involve comprehensive record review, consultation with collateral sources, and a formal assessment of psychopathology and competency-related abilities inclusive of behavioral observations (Ryba et al., 2003). In their survey of juvenile and adult criminal court judges, Viljoen, Wingrove, and Ryba (2008) found that 70% of the judges identified forensic and psychological testing as either recommended or essential. A number of assessment measures exist that aid evaluators in the assessment of real and fabricated symptoms and impairment, and the potential for feigning or malingering in the aforementioned functional domains (for a review of measures, see Grisso, 2003; Zapf & Viljoen, 2003). Although there are many commonly used tests for assessing competency, almost all were developed for adults, none were normed on juveniles, and most were designed without consideration for developmental maturity (cf., Warren, Jackson, & Coburn, 2016). One tool, the Juvenile Adjudicative Competence Interview (JACI; Grisso, 2005b), was developed to assess juvenile defendants’ understanding and appreciation of legal issues relevant to proceeding with their legal case. The JACI is not normed, however, and many have called for additional measures of juvenile competency (Warren et al., 2016). Although the MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA: Hoge, Bonnie, Poythress, Monahan, & Eisenberg, 1997) has demonstrated potential for use with adolescents (Fogel et al., 2013), it too was developed to assess criminal adjudication in adults following Dusky. As it stands, there is a paucity of tools that can be used to assess issues of competency with juveniles. Thus, more often than not, evaluators who require use of formal assessment instruments in the evaluation of juvenile adjudicative competence are compelled to use existing measures designed for adults. Estimates suggest that adult-normed competency instruments are utilized in approximately one third of juvenile adjudicative competence assessments (Fogel et al., 2013). The reader is encouraged to consult Grisso (2005a/2005b), Kruh and Grisso (2009), Soulier (2012), and Wynkoop (2003) for detailed discussions regarding best practice in adjudicative competence assessment.

**Sex Offender Registration, Notification, and Sexually Violent Predatory Commitment**

Despite low rates of reoffense, juvenile sex offenders are subject to registration, and community notification may be required for the remainder of a juvenile’s life (Wynkoop, 2003). The Adam Walsh Act (2006) mandates the registration of adolescent sex offenders, as well as community notification regarding their residence. According to this act, adjudicated adolescent sex offenders
are automatically registered on Tier 3, and therefore subject to indefinite sex offender registration. Under the Sex Offender Registration and Notification Act (SORNA), juveniles could also be required to register as sex offenders. However, registration of juvenile offenders is not required under this act in response to all offenses that would lead to registration if committed by an adult. Specifically, the juvenile must be at least 14 years-old and the offense must be “comparable to or more severe than aggravated sexual abuse” in order to mandate registration (Adam Walsh Act, 2006, 18 U.S.C. §2241). These federal and state statutes frequently require evaluations targeting the risk posed by juvenile sex offenders in the community. Evaluators who conduct these risk assessments should be cognizant of the white paper issued by the Association for Treatment of Sexual Abusers (ATSA, 2012) which concluded: “Increasingly, research findings show that registration and public notification policies, especially when applied to youth, are not effective; and may do more harm than good. Such laws may have deleterious effects on pro-social development by disrupting positive peer relationships and activities and interfering with school and work opportunities, resulting in housing instability or homelessness, harassment and ostracism, social alienation and lifelong stigmatization and instability. Such practices are inconsistent with community safety and promotion of pro-social development, and in fact may actually elevate a youth’s risk by increasing known risk factors for sexual and nonsexual offending such as social isolation” (p. 5-6).

Beyond registration and community notification, in some states juveniles can be civilly committed under a Sexually Violent Predator (SVP) statute (Heilbrun & Locklair, 2016). SVP commitments occur after an individual has been incarcerated for a sexual offense, and thus SVP commitments do not require a recent crime to have occurred (i.e., the juvenile may have committed the governing offense at age 14 or 15, but is petitioned for civil commitment at age 18 or 19). For example, since 2003, Pennsylvania, may petition under Act 21 to civilly commit a juvenile within 90 days of his/her 21st birthday. Civil commitments are indefinite, and may keep the individual in prison for many years past the date that he/she was due to be released from a correctional facility. To be civilly committed, an individual must evidence some type of mental abnormality that would make him/her likely to commit sexual crimes in the future (Witt & Conroy, 2009). Although committed to a facility with security features similar to a prison, a civilly committed youngster is afforded specialized treatment until they are identified as no longer posing a danger to society. When the offender is evaluated for release, the evaluators must determine if changes in dynamic risk factors outweigh the unchangeable static risk factors (Witt
Assessment of Risk of Harm

Risk assessment, in which evaluators are tasked to determine the likelihood that an examinee will offend or reoffend, is an important role of forensic evaluators. Generally, the identification, synthesis, and overview of risk and protective factors, in consideration of a particular outcome of interest, determines a person’s risk (Heilbrun & Locklair, 2016). In the juvenile justice system, risk assessment is used in many different contexts; results of a risk assessment may impact decisions regarding psycholegal opinions regarding sentencing, disposition planning, transfer to adult court, parole/probation, eligibility for diversion programs, and sex offender registration and commitment (Viljoen, McLachlan, & Vincent, 2010).

Forensic evaluations provide the juvenile justice system with information regarding risk for recidivism, treatment needs, and to some extent, sophistication-maturity (Heilbrun & Locklair, 2016). Thus, risk assessment reports tend to differ between adults and juveniles primarily due to the juvenile justice system’s focus on treatment and rehabilitation (Viljoen et al., 2010). Juvenile risk assessment reports often speak to treatment needs, include discussion of protective factors, and should include a caveat that risk must be re-evaluated periodically (at minimum, every six months). Such recommendations, however, are frequently unheeded. The close to universal appreciation of change during adolescence should be accompanied by an equally universal appreciation that a risk identified in adolescence is not fixed, but is instead variable over time. The inconstancy of emotions, behavior, and decision-making during adolescence affects not just assessments of risk but diagnostic and prognostic assessments as well.

Additionally, it should be emphasized that the use of risk assessment procedures for pre-adjudication purposes raises further ethical concerns. Diversion programs, in particular, were introduced in the 1970s with the beneficent goal of avoiding the more harmful effects of the juvenile justice system, and the less heralded goal of alleviating the overburdened juvenile courts and juvenile institutions. These pre-adjudication diversion programs came with a hidden flaw – a reliance on risk screening, often embedded in a psychosexual evaluation. Unlike our common understanding of the utility of risk assessment post-adjudication, risk screening is introduced before there has been any judicial review and ruling and is often used, as noted, for detention – and more recently registration – decisions. Juveniles are effectively subject to the potentially
harmful, enduring effects of risk assessment, including stigmatizing labels, absent any of the procedural due process rights afforded by judicial review.

Although risk assessment methodology with adults and juveniles is similar, there are critical distinctions. For one, forensic evaluators are less likely to use risk assessment tools during juvenile risk assessments, as opposed to adult risk assessments, perhaps because juvenile risk assessment measures are less well-established (Viljoen et al., 2010). It may also be the case that mechanical assessment (i.e., without clinical judgement) of risk in juveniles is perceived to be contrary to the underlying principal of developmental change. There are, never-the-less, numerous juvenile risk assessment measures that are available, consistent with both mechanical and structured professional judgment (SPJ) approaches; such measures differ from adult risk assessment measures in that they incorporate risk factors thought to be uniquely relevant to juveniles. As result of the development of such measures, risk predictions in recent years have been more accurate than prior to their development (Ewing, 1990, Borum, 1996). The more commonly used tools that aid in the prediction of general offending behaviors include: Early Assessment Risk Lists for Boys (EARL-20B; Augimeri, Koegl, Webster, & Levene, 2001) and Girls (EARL-21G; Levene et al., 2001), the Structured Assessment of Violence Risk in Youth (SAVRY; Borum, Bartel, & Forth, 2006), and Youth Level of Service/Case Management Inventory (YLS/CMI; Hoge & Andrews, 2002). For an in-depth discussion of risk assessment of juveniles who sexually offend in particular, the reader is encouraged to refer to Chapter 7 of this volume: Assessing risks and needs with adolescents who have sexually offended: Research-based guidelines.

**Factors Associated with Risk.** There are many different factors positively associated with a juvenile’s risk of offending, including static and dynamic risk factors. Static or historical risk factors, which cannot reflect change, can provide some assistance in identifying individuals or groups at increased risk for criminal behavior. Static risk factors include a history of prior offenses, childhood conduct problems, a history of delinquency, and low intelligence. Static “environmental” factors include peer rejection, parental antisocial behavior, and maltreatment. Maltreatment is a highly complex factor in terms of its proximal influence on behavior, often varying in its impact according to the type of abuse (e.g., physical, sexual, emotional) and most importantly according to morbidity factors (e.g., age of onset of the abuse, duration of the abuse, severity of the abuse, and relationship between the child and the abuser). Other risk factors may
include poor performance and behavioral problems at school or at work, family history of psychiatric disorders and criminality, and family financial difficulties (Hoge & Andrews, 2010).

Children who experience adverse life experiences, most particularly severe neglect, chronic caregiver instability, and caregiver drug abuse and criminality, are more likely to end up in the child welfare system. At least one recent study found that children who are dually involved in the child welfare and juvenile justice systems were more likely to reoffend within the next year than juveniles who were only involved in the juvenile justice system (Baglivio et al., 2016). This is not a surprising finding in that wards of the child welfare system who persist in their acting out and engage in more chronic and antisocial behavior are much more likely to be adjudicated and wind up in the juvenile justice system. In regard to childhood sexual abuse, female juvenile offenders, but not male offenders, were more likely to reoffend if they had a history of childhood sexual abuse and psychiatric issues (Conrad et al., 2014). Childhood physical abuse is more likely associated with anger problems and delinquency in boys than in girls.

In contrast to static risk factors, dynamic risk factors are subject to change throughout the life span, and are often the focus of treatment; dynamic risk factors are therefore extremely important in assessment of risk posed by juveniles. Given that juveniles are in a marked state of bio-developmental, cognitive, and emotional flux, dynamic risk factors become critically important. As discussed above, this mutability is the hallmark of adolescence. Dynamic risk factors may include anger, impulse control, antisocial peers, substance abuse, and neglectful or abusive caregivers. Juvenile risk assessments, compared with adult risk assessments, should be characterized by an explicit and thorough focus on these dynamic and protective factors, as well as increased consideration of the fluctuating quality of risk-relevant personality traits during a period of change (Childs et al., 2013). Optimizing prediction with juveniles must take into account this normative, pervasive developmental flux. Protective factors are presumed to insulate the youngster from risky events (or risky emotional responses to those events), thereby reducing the likelihood of a reoffense. These factors may include responsible caregivers, family stability, prosocial attitudes, prosocial peers, schools and neighborhoods with lower crime rates, and treatment; it is important that these factors be considered during any assessment. (Hoge & Andrews, 2010). Precisely what constitutes a protective factor remains unsettled (Prentky, Righthand, & Lamade, 2015. The apparent absence of a risk factor, for example, might be considered a strength or protective factor. As Prentky and colleagues (2015) suggested, the
apparent absence of a high sexual drive or preoccupation could be considered a strength. By contrast, lack of social isolation may not necessarily be a strength or protective (e.g., if the adolescent’s social life involves delinquency-minded peers), although social isolation may be a risk factor for repeated sexual offending.

**Base Rates and Risk Estimates.** If we are to make progress in developing useful mechanisms for assessing risk of harm among juveniles, our focus must be on the life course of youth. The younger the child, the briefer the window of life experience from which to sample behavior (i.e., assess static risk) and the less stable (and hence less reliable) the behavior that is sampled. Thus, accuracy of all assessments of risk of harm/reoffense in juveniles are frequently compromised by both short time frame of follow-up and base rate neglect (ignoring the base rates). When the estimated base rate of a new offense is low (i.e., is not likely to occur), it is extraordinarily difficult to predict accurately the probability of occurrence of that behavior, resulting, inevitably, in many false positive predictions (i.e., Type I errors; Evans, McGovern-Kondik, & Peric, 2005). Reported rates of sexual reoffending by juveniles are generally around 10% over five years (Viljoen, Mordell, & Beneteau, 2012). As Prentky et al (2015) commented, when the base rate is as low as 10% or less, the true positive target is extraordinarily small, and a very high false positive rate is virtually inevitable. By contrast, base rates for general (non-sexual) delinquency re-offense among both nonsexual and sexual delinquents are moderately high. This is partially explained, because the re-offense target is much larger (a single category of re-offense (sexual) compared with all categories reflecting any nonsexual offenses).

As for time frame, accuracy of prediction drops as time increases (e.g., Zara & Farrington, 2013), with short-term predictions yielding greater accuracy. With juveniles, long term predictions are likely to be highly unreliable. That said, all estimates of risk must include the intended or implied time frame for the estimation (DeMatteo, Wolbransky, & LaDuke, 2016), and should underscore the complexity and (in)stability of accurately forecasting future behavior among juveniles. To some extent, theory can help to guide predictions in cases where base rates are low, as well as when they are not. Developmental psychopathology and developmental criminology have become the dominant paradigms (e.g., Guerra, Williams, Tolan, & Modecki, 2008; Thornberry, 2005) for examining the antecedents of proximal outcomes of delinquent behavior, including the onset, persistence and desistence of antisocial behavior (Hoge and Andrews, 2010).
Trajectories of Offending Behaviors. An understanding of the trajectories of offending behaviors, including those based on developmental taxonomies, is important for accurate base-rate estimates, and therefore accurate estimates of risk. For example, short-term situational antisocial behavior is common among adolescents, but persistent antisocial behavior is rare (Moffitt, 1993). In other words, it may be viewed as normative for juveniles to engage in some degree of delinquent behavior. The rate of antisocial behavior typically peaks in adolescence (i.e., around age 17) then sharply decreases as juveniles age into adulthood (e.g., Moffitt, 1993).

It is a small subgroup of juvenile offenders who commit most of the crimes committed by juveniles (Halikias, 2000); specifically, it is estimated that about 5-6% of offenders commit 50% of known crimes (Moffitt, 1993). Moffitt’s longitudinal study of 1,037 New Zealand children compared the base rates of persistent and temporary antisocial behavior problems (Moffitt, Caspi, Rutter, & Silva 2001). Approximately 5% of boys were rated as Very Antisocial by any of three sources (parents, teachers, youth). Moffitt found clear evidence that the temporal stability of delinquency was attributable to these 5% of the youth whose behavior most extreme and most persistent. When it comes to predicting risk of sexual reoffense, overcoming the low base rate among juvenile sex offenders represents an intimidating challenge (Prentky et al., 2015).

Neurocognitive development may play a role in the persistence of juvenile offending, and thus may inform risk assessment. Some research to date has provided support for this notion, identifying neurocognitive differences in those offenders who are persistent in their offending from those who are not. However, these differences may be accounted for by environmental factors to a larger extent than organic factors. For example, Moffitt and Caspi (2001) identified two groups: (1) juveniles who were persistent in their offending over the course of the lifespan (life-course-persistent offenders), and (2) those whose offending was generally limited to adolescence (adolescence-limited offenders). The researchers found that life-course-persistent offenders commonly experienced poor parenting, had neurocognitive risk factors, a difficult temperament, and inattention/hyperactivity, to a greater degree than adolescence-limited offenders. Considering the initial similarity, Moffitt and her colleagues (2001) concluded that differences might be a consequence of childhood adversity (Moffitt & Capsi, 2001). Thus, it may be important to include neuropsychological testing in a comprehensive assessment of risk, in order to evaluate potential deficits associated with increased risk (Soulier, 2012).
Psychopathy

Psychopathy is identified by the American Psychological Association as a classification that merits additional research (American Psychological Association, 2013b). More often than not, it is considered distinct from diagnoses largely based on behaviors (e.g., CD, ODD), since psychopathy encompasses more cognitive and emotional traits such as pathological lying, lack of remorse, and irresponsibility (Hoge & Andrews, 2010). Given normative developmental changes, classifying juveniles as psychopaths is controversial. Further, the label itself is highly stigmatizing ((Viljoen et al., 2010, Weaver, 2008) and can adversely affect management decisions (e.g., whether or not to provide treatment). Forensic assessments, however, do occasionally include an assessment of psychopathy, requested by an attorney, an agency, or the court, or simply deemed necessary by the examiner in order to answer a broader psycholegal question (e.g., risk of recidivism). Viljoen and colleagues (2010) found that 79% of clinicians have used a formal psychopathy assessment instrument at least once when conducting a juvenile risk assessment, typically using the Psychopathy Checklist: Youth Version (PCL:YV; Forth, Kosson, & Hare, 2003). In addition to the PCL:YV, which usually relies on a clinical interview, there are several other approaches to assessing psychopathy in juveniles, including a self-report measure (Youth Psychopathic Traits Inventory; YPTI; Andershed, Kerr, Stattin, & Levander, 2002) and a personality-based measure (NEO Psychopathy Resemblance Index; Lynam & Widiger, 2007), and screeners such as the Antisocial Process Screening Device (Frick & Hare, 2001).

The PCL:YV is composed of essentially the same set of items as its adult counterpart, the Psychopathy Checklist-Revised (Hare, 1991), although it includes some modifications to scoring criteria in order to achieve a more sensitive focus on adjustment (i.e., social/peer, family and school). Otherwise, psychopathy is assumed to manifest in the same way in juveniles as adults (MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, 2006). When juvenile psychopathy measures are used, it is imperative to note that they were developed originally for adults, not juveniles, and that any measures used must be normed for children and adolescents due to the aforementioned differences in presentation and obvious implications of false positive classifications (Seagrave & Grisso, 2002).

A study, the findings of which are significantly disquieting, was conducted by Cauffman, Kimonis, Dmitrieva and Monahan (2009). Cauffman et al. (2009) compared 1,170 serious male juvenile offenders on the PCL:YV, YPTI, and the NEO, finding little more than a modest
overlap. Often, one measure of psychopathy, and not others, identified a juvenile offender as psychopathic; Cauffman and colleagues found that the measures had low correlations with reoffense at six- and 12-months post-assessment. The authors warned that “the lack of long-term predictive power for the PCL:YV and the inconsistent psychopathy designations obtained with different measures raise serious questions about the use of such measures as the basis for legal or clinical treatment decisions,” (p. 528). These findings suggest clear practice implications, not the least of which is that great caution must be exercised when evaluating a juvenile for psychopathy, with a mandatory “black box” warning that while a youngster may evidence traits associated with psychopathy he should not be classified as “a psychopath,” and that all facets of personality are in flux during adolescence.

Psychopathic traits may be considered more malleable and, perhaps even more importantly, appear to be subclinical (i.e., not rising to the level of a formal classification). In either case, juveniles identified as evidencing psychopathic traits, as opposed to a defined psychopathic personality style, may be perceived by themselves and others as more amenable to treatment. Perhaps due to sophistication-maturity, and perhaps due to treatment, juveniles appear capable of maturing out of psychopathic traits (Weaver, 2008; Lynam, Caspi, Moffitt, Loeber, & Stouthamer-Loeber, 2007).

Given that juveniles are often viewed as more receptive to treatment than adults, and that rehabilitation is a central tenant of the juvenile justice system, it follows that treatment providers routinely treat juveniles with psychopathic traits. Caldwell, Skeem, Salekin, and Van Rybroek (2006) found that juvenile offenders with high PCL:YV scores in a traditional correctional setting were twice as likely to violently reoffend during the 2-year follow-up than juveniles who participated in an intensive treatment program. In regards to adults, Skeem, Monahan, and Mulvey (2002) found that psychopathic patients who received more treatment were less likely to be violent during follow-up periods than those patients who received little (1-6 sessions) or no treatment (0 sessions) were. Thus, it appears that both juveniles and adults labeled as ‘psychopathic’ can benefit from intensive treatment.

Lastly, it should be pointed out that there are several risk assessment scales with substantial empirical support that are commonly used when evaluating juveniles for delinquency and violence, including the Structured Assessment of Violence Risk in Youth (SAVRY) and the Youth Level of Service / Case Management Inventory (YLS/CMI). Risk judgments using the SAVRY correlate .64 with the YLS/CMI and .68 with the PCL-YV (Borum & Verhaagen,
2006). These alternatives to the PCL-YV avoid the potential deleterious stigma of the label of psychopathy.

**Biased Responding**

As adults, juveniles undergoing forensic evaluations may present with a biased response style in which they understate their pathology, overstate their adjustment, or present in an otherwise non-genuine manner for one or more reason (Rogers, 2008); such biased responding may inhibit the evaluator’s ability to develop an accurate understanding of the case at hand. In particular, the evaluation of juveniles in forensic contexts should include some consideration of whether there is dissimulation in the form of malingered deficits, typically on cognitive and neuropsychological tests and feigned reports of historical information. The assessment of veracity is particularly relevant in forensic contexts, wherein examinees may be motivated to feign symptoms or impairment for external gain. In particular, the motivation to malinger cognitive impairment may be great given the obvious incentives (e.g., to increase the chances that legal charges will be dropped, to be transferred to a treatment facility from a juvenile detention center, to avoid transfer to adult court). As Grisso (1998) noted, malingering may be the cause of observed deficits on cognitive measures in particular, commenting that, “the importance of assessing the potential for dissimulation in evaluations for capacities to waive Miranda rights cannot be overstated” (p. 52). Differentiating between feigning and suboptimal understanding, as in the case of Miranda comprehension, can thus pose a problem (Grisso, 1998).

Evaluators of juvenile adjudicative competence also must be especially mindful of defendants fabricating, feigning, or exaggerating symptoms for the purpose of being found incompetent (i.e., *malingering*; American Psychological Association, 2013b). Within the context of adjudicative competence, malingering may take the form of feigned or exaggerated impairment with regard to any or all aspects of the *Dusky* standard: mental illness (i.e., psychiatric or somatic symptoms), intellectual disability (i.e., cognitive impairment), functional impairment (i.e. factual or rational understanding, or the ability to consult with counsel), and in the case of juveniles, immaturity.

As Salekin (2015) pointed out, lack of veracity in general can, to some extent, be normative in childhood and adolescence; at times, however, it may be a sign of pathology (e.g., Conduct Disorder). For all of the aforementioned reasons, discerning intentional disclosures of inaccurate/incorrect information from true cognitive deficits or misunderstanding is critical with juveniles, just as it is with adults. The motivation for dissimulation in juveniles and adults is
much the same, and the approach to feigning and dissimulating (e.g., denying and minimizing wrongdoing) in juveniles may be very similar to adults (Grisso, 1998). Veracity can be tested in a number of ways, such as by checking information provided by the juvenile against collateral sources of information, consultation (e.g., with the youth’s caregivers and teacher), and through the administration of psychological measures designed to identify biased responding. There is, however, a paucity of formal assessment tools designed specifically to aid in the detection of malingering among juveniles.

Summary

Over the past 100 years, the juvenile court system in the United States has traditionally taken a caretaking role with juveniles, guiding its errant, impulsive charges through the turbulent waters of adolescence into calmer, more civilized waters. When rates of crime and violence escalated during the 1980s and 1990s, the instant response was punitive, to treat juveniles harshly by sending them to adult court and sanctioning them in much the same way as adults. In a series of challenges to these waivers to adult court, SCOTUS confronted the problem of how juveniles were expected to navigate adult court without all of the same constitutional protections afforded to adults. The resulting conundrum was apparent – if juveniles were to be treated as adults, they needed the protections that rightly came to adults, but if juveniles were granted those protections, they were now being adjudicated as adults and the entire historical mission of the juvenile court would be subverted. Over the span of several decades, a major thrust of sound empirical literature underscored the principle finding that juveniles were not simply junior adults. Adolescence is a true stage of human development in which most systems are immature. Many of these developmental changes, most obviously neurocognitive, hormonal, and social, left teenagers with a legitimate defense against full responsibility for their criminal behavior.

Recognition of youths’ developmental immaturity led to a series of landmark cases by SCOTUS. Immaturity, a functional condition that is now routinely addressed by the court, has led to significant changes in the ways that juveniles are evaluated for competency, for waiver to adult court, for Miranda warnings, and for risk of dangerousness. Juvenile courts, for the most part, have become hybrids, retaining some of the parens patriae features (and philosophy) of the pre-Gault era and features (and philosophy) of the post-Gault era. Although youth violence continues to be of concern in some large cities, trend lines have been slopping downward nationwide, and there is increased appreciation of developmental flux and that delinquency in childhood and adolescents most often does not persist into adulthood.
References


Butcher, J. N., Williams, C. L., Graham, J. R., Archer, R. P., Tellegen, A., Ben-Porath, Y. S., & Kaemmer, B. (1992). *MMPI-A (Minnesota Multiphasic Personality Inventory-


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*Graham v. Florida, 560 U. S. ___, No. 08-7412, (2010).*


*In re Causey*, 363 So. 2d 472 (La. 1978).


   Implications for theory, practice, and public policy. *Psychological Science in the Public Interest, 7*, 1-44. doi:10.1111/j.1529-1006.2006.00026.x


Salekin, R. T. (2002). Clinical evaluation of youth considered for transfer to adult criminal court:
   Refining practice and directions for science. *Journal of Forensic Psychology Practice, 2*, 55-72. doi:10.1300/J158v02n01_03


*State v. Aaron* 4 N.J.L., 231, 244 [reprint 269, 277] (Sup. Ct. 1818)

*State v. Monahan* 15 N.J. 34, 104 A. 2d 21 (1954)


