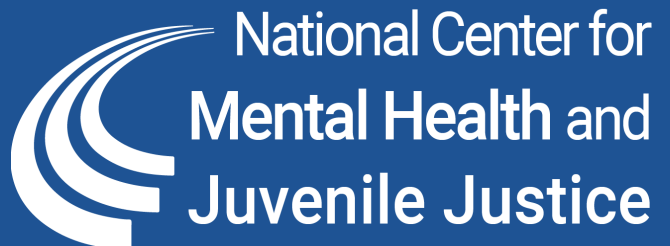


Developing Service Delivery Systems
for Evaluations of Juveniles'
Competence to Stand Trial:
A Guide for States and Counties

Ivan Kruh

Thomas Grisso



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Introduction

The purpose of this Guide is to help states or counties develop a “forensic evaluation system” (FES) for providing courts evaluations of juveniles’ competence to stand trial (JCST). An FES for JCST evaluations has three components that are described in the three modules in this Guide:

Module 1: Developing a JCST Evaluation Service Delivery System (SDS)—An organizational structure and procedures within which JCST evaluations are provided to the courts

Module 2: Creating Evaluation Standards—Criteria that JCST examiners should meet when performing JCST evaluations and writing reports

Module 3: Quality Control: Developing a Process to Apply the Standards—Ways to ensure that the evaluation standards for examinations are actually implemented properly by examiners

About the Guide

Why the Guide Is Needed

The requirement that juvenile court defendants¹ must be competent to stand trial is fairly new, not being in evidence much before the 1990s. When attorneys and juvenile advocates began to claim that competence to stand trial (CST) should apply to delinquency proceedings, there was some doubt about the need for it, as the juvenile court had existed for almost 100 years without the requirement. But in the past fifteen years, appellate courts examining the issue decided that CST was a fundamental due process right in juvenile delinquency cases.

This created new demands and challenges for juvenile courts. What exactly was required to be a competent juvenile defendant? How would evaluations be done, and who would do them? What should the evaluations look like?

Some states simply tried to use their definitions of CST and process for getting CST evaluations that had been in place for adult criminal defendants. But other states recognized that CST in juvenile court required its own definitions and procedures. As a consequence, many states began developing new, specialized statutes for

¹ In many jurisdictions, youth facing adjudication are commonly referred to as *respondents*. We use the term defendant here to enhance clarity. Local terminology should be favored whenever it differs from the terms used in this Guide.

the application of CST in juvenile court, 20 of them by 2010. In 2011, the need for guidance in development of JCST legislation prompted the publication of a guide for lawmakers.² Between 2010 and 2015, eleven more states passed specialized JCST statutes, bringing the current total to 31 states with juvenile-specific statutes that guide JCST.³ The remaining 19 states and the District of Columbia recognize CST in juvenile court, and it is likely that many of them will develop legislation to codify its application before long.

Once juvenile-specific statutes are passed and enacted, the job is far from done. States must then tackle the complex task of implementation—that is, putting the new laws into practice. How will the new laws be applied? How will the legal and mental health systems manage the new demands for obtaining JCST evaluations?

This Guide, then, aims to assist states in one part of this implementation phase assuring that courts and attorneys can obtain reliable forensic evaluations to assist the juvenile court in reaching decisions about CST in juvenile cases. JCST evaluations require a specialized process that is similar to such evaluations in criminal court in some ways yet dissimilar in others. On average, children and adolescents do not have adult capacities. The complex contours of child development, developmental psychopathology and the juvenile court system call for different rules, examiners with different skills, and different considerations in JCST cases than in adult CST cases. Those differences were outlined in an earlier clinical guide devoted to conducting JCST evaluations.⁴ In addition, Kruh and Grisso⁵ offered a best-practices manual for conducting JCST evaluations that was published soon after. Those documents offer a background for the present Guide, in that they describe the task of the examiner in JCST evaluations.

The present Guide goes beyond that, however, in its focus on developing a forensic evaluation system (FES) within which court-ordered JCST evaluations are performed. By court-ordered, we mean evaluations requested by the courts and therefore regulated by a jurisdiction's court system. These systems generally do not provide independent evaluations initiated by one or the other attorney and conducted within the context of attorney-client privilege, though high-quality court-ordered evaluations can create pressure for independent evaluations to meet similar standards. Developing the FES for these court-ordered juvenile CST evaluations requires a system for enlisting mental health professionals to conduct these specialized evaluations as well as developing standards they must apply and ensuring that they do so. Even when a state has had an FES in place for other types of evaluations (e.g., adult CST evaluations; juvenile disposition evaluations), unique elements of juvenile CST often require adjustments and adaptations to the existing system.

2 Larson, K.A., Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. and Catherine T. MacArthur Foundation.

3 MacArthur Foundation (2015). *Juvenile justice in a developmental framework: A 2015 status report*. Retrieved from https://www.macfound.org/media/files/MacArthur_Foundation_2015_Status_Report.pdf.

4 Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.

5 Kruh, I., & Grisso, T. (2009). *Evaluations of juveniles' competence to stand trial*. New York: Oxford University Press.

Policy makers and administrators need guidance when faced with the task of developing or modifying pretrial evaluation systems to maximize efficient use of scarce resources.⁶ This Guide provides a structure for them to think about the development of the system. It identifies key decision points that will typically need to be considered, and offers some options for those decisions with some discussion of possible advantages and disadvantages of each option. The Guide will be especially important for states that have recently passed JCST legislation. But it will also assist states that have been applying JCST statutes for a longer time yet have encountered problems or limitations with the existing system, so that they may be looking for solutions to certain focused concerns.

How the Guide Was Developed

This JCST implementation Guide was developed with a subcontract from the National Center for Mental Health and Juvenile Justice, which was funded by the John D. and Catherine T. MacArthur Foundation. We employed several steps in its development.

First, we sampled the problems experienced by states in developing their JCST evaluation service delivery systems. Late in 2015, we administered a semi-structured interview to key informants in four states that had considerable experience in adapting their systems to their JCST legislation. We sought strategies that various “experienced” states had employed, including both successful strategies and approaches that were less satisfying for them. Special inquiry was made about the process by which they had or had not resolved issues in JCST implementation. The target jurisdictions were chosen to survey a diversity of experiences and strategies in developing a JCST service delivery system.

Second, we were guided by our own experience gained from twenty-five years of involvement in JCST evaluations. Our experience included performing such evaluations in the context of many states’ FESs for JCST, and consulting to many states nationwide as they sought to meet the new systemic demands of JCST cases. Our expertise was supplemented by the best available literature on adult and juvenile forensic evaluation systems, as well as literature guiding the development of JCST services in areas other than evaluation.⁷

After producing a first draft of the Guide, it was submitted to several national experts in juvenile forensic evaluations, juvenile advocacy, and juvenile forensic systems. Their comments were of great assistance in making revisions to the Guide.

6 Grisso, T., Cocozza, J., Steadman, H., Fisher, W., & Greer, A. (1994). The organization of pretrial forensic evaluation services: A national profile. *Law and Human Behavior, 18*, 377-393.

7 Larson, K.A., & Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. and Catherine T. MacArthur Foundation; Grisso, T., Cocozza, J., Steadman, H., Fisher, W., & Greer, A. (1994). The organization of pretrial forensic evaluation services: A national profile. *Law and Human Behavior, 18*, 377-393; Grisso, T., & Quinlan, J. (2005). Juvenile Court Clinical Services: A National Description. *Juvenile and Family Court Journal, 56*, 9–20.

Finally, the penultimate version of the Guide was reviewed by key individuals in three states (in October 2016) that had more recently experienced new JCST legislation. This allowed us to identify ways to modify the Guide in terms of its clarity, and to determine what difficulties they might encounter in implementing its guidance.

Before proceeding to the three modules at the heart of this Guide, the following two sections are offered in preparation. The first provides some basic background information about competency to stand trial (CST) and JCST specifically. The second introduces the three modules and offers some suggestions about the process for using the guidance that the modules describe.

Background

Before proceeding to the three Modules, this “background” section offers some legal and clinical information for users of the Guide who are not familiar with CST generally or JCST specifically. This background will provide some context for the issues that the Modules address when developing a system for implementing JCST evaluations. We will (a) describe the basic definition and importance of CST, and (b) provide a brief sketch of JCST.

Competence to Stand Trial (CST)⁸

The rationale and standard for CST is based on a legal concept dating back to English Common Law. CST recognizes that criminal defendants must be competent to meaningfully participate in the court proceedings against them. Without such a requirement, the criminal justice system risks fundamental unfairness, leaving defendants “defenseless” against the power of the state to deprive them of liberty. It also risks inaccuracies at trial (for example, if the defendant is unable to present facts that might be relevant to the charges) and the public’s perception of an unfair legal system.

In the United States, to possess CST, criminal defendants must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and possess “a rational as well as factual understanding of the proceedings against him.”⁹ In the adversarial criminal justice system of the U.S., the requirement for CST is Constitutionally based, considered “fundamental,”¹⁰ and rests on Sixth Amendment guarantees of right to effective counsel, to confront one’s accusers, and to present evidence on one’s behalf.

The definition of CST, as it has evolved, requires a consideration of specific functional abilities of the defendant associated with the broader abilities described in *Dusky*. Typically, these abilities focus on the individual’s

8 Comprehensive guidance on the legal concept of CST can be found in Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd edition). New York: Kluwer Academic/Plenum Publishers; Melton, G., Petrila, J., Poythress, N., & Slobogin, C. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd ed.). New York: Guilford.

9 *Dusky v. U.S.*, 362 U.S. 402 (1960) at p. 402.

10 *Drope v. Missouri*, 420 U.S. 162, 1975.

(a) basic understanding of the reason and consequences of a trial, as well as the roles of those who participate in it, and (b) the person’s ability to work with legal counsel and collaborate in the process of making decisions (e.g., about pleading guilty, waiving or asserting rights, and assisting counsel during a defense).

In criminal court applications, the symptoms of major mental illness or severe intellectual limitations typically have been the underlying reasons for defendants’ deficits in those abilities associated with CST. The symptoms of major mental illnesses, such as psychosis, are less common among youth than adults, so such problems less commonly interfere with the competency-related abilities of juveniles. However, the symptoms of less severe mental illnesses (e.g., perseveration of idiosyncratic interests as in Asperger’s Disorder; inattention and poor concentration as in Attention-Deficit/Hyperactivity Disorder) that would be unlikely to significantly impair case-related functioning among adults can do so with youth. And as we will note later, as CST began to be applied to juveniles, a third reason for deficits in CST abilities began to be applied—specifically the potential for juveniles’ immaturity to be the reason for CST deficits.

CST in Juvenile Court (JCST)

Despite its long history in criminal court, CST received minimal attention within juvenile court proceedings until the 1980s and 1990s. At its inception at the turn of the 20th century, the U.S. juvenile justice system was intended to be a rehabilitative system aiming to meet the psychosocial needs of each child within its jurisdiction. The system was predicated on a *parens patriae* philosophy in which the state aimed to protect and nurture those unable to protect themselves. With such benevolent goals, there was little concern about the abilities of youths to understand and participate in the court’s proceedings. The early juvenile courts had no trials and no defense attorneys because, in the context of the *parens patriae* doctrine, it made little sense for youths to defend themselves against the benevolent efforts of the court.

How CST Developed as a Requirement in Juvenile Court. By the 1960s, however, the U.S. Supreme Court recognized that the actual practices of the juvenile justice system were not nearly as benevolent as intended. The Court acknowledged that adolescents often got the worst of both worlds—deprivation of liberty without treatment benefits, and lack of due process to protect them from that condition. Beginning with two U.S. Supreme Court decisions in the 1960s,¹¹ due process protections were extended to juveniles. Although the doctrine of CST is closely tied to these due process protections, the primary focus was on the right to counsel and to avoid self-incrimination, so that the Court did not specifically mention the application of CST for juveniles or how it might be applied. Therefore, its use in juvenile court remained extremely rare for many more years.

Then, in the late 1980s and 1990s, policy-makers responded to a politicized cry to “get tough on juvenile crime” by emphasizing punishment, accountability, and community protection. Almost all states revised

¹¹ *Kent v. United States*, 383 U.S. 541 (1966) and *In re Gault*, 387 U.S. 1 (1967).

their juvenile statutes accordingly, and the rehabilitative goal of juvenile court was nearly lost. Juvenile court proceedings became increasingly adversarial and the sanctions imposed on youth became more serious.

Within that context of more punitive consequences of trials in juvenile court, juvenile defense attorneys became more concerned about the abilities of their clients to participate in their defense, and they began to raise the question of juveniles' CST more commonly. Between the middle-1990s and about 2010, the demand for evaluations of JCST had increased in some jurisdictions from a handful annually to hundreds.¹² This led appellate courts to consider the special issues raised in JCST cases, because prosecutors in many states challenged the applicability of CST to juvenile court. Between 1978 and 1980, appellate courts in all five states in which CST in juvenile court was challenged concluded that it did apply in delinquency proceedings.¹³ Continued challenges extending into the 21st century all arrived at the same conclusion, so that today JCST in delinquency cases is recognized in all states.

Development of JCST Statutes

Although JCST became recognized in delinquency cases, appellate courts in many states offered little guidance about the standards to be applied or the legal procedures to be used. Without such guidance, most states initially relied upon much the same standards and legal procedures in place for CST evaluations of adults in criminal court.¹⁴ It did not take long, however, for juvenile justice officials to realize that unique issues arise in JCST evaluations that cause definitions and procedures designed for adults to be a poor fit.

The main reason for this was, simply, that adolescents are different because of their developmental status. They have different clinical disorders than adults, offering different reasons for deficits in their CST abilities. Their developmental status—the fact that they may not yet have developed the cognitive and social capacities of most adults—offered reasons for possible incompetence that had nothing to do with mental health disorders. Youths' dependency on caregivers raised distinctively different legal and clinical issues when applying CST to juveniles, such as concerns that some youth would make case decisions based on the instructions of elders rather than on independent judgment. Forensic examiners who ordinarily had been performing CST evaluations in criminal court might not be qualified to perform evaluations of children. And if children are found incompetent, the criminal court procedures for treating defendants for incompetence might not be appropriate for adolescents.¹⁵

12 One city, Cincinnati, had over 300 referrals for JCST evaluations annually during that time.

13 California: *James H. v. Superior Court of Riverside Co.*, 77 Cal.App.3d 169, 174, 143 Cal.Rptr. 398 (1978); Louisiana: *In re Causey*, 363 So.2d 472, 476 (La., 1978); Nevada: *In re Two Minor Children*, 95 Nev. 225, 230-231, 592 P.2d 166 (1979); Minnesota: *In re Welfare of SWT*, 277 N.W.2d 507, 511 (Minn., 1979); and Arizona: *State ex rel. Dandoy v. Superior Ct.*, 127 Ariz. 184, 187, 619 P.2d 12 (1980).

14 e.g., Washington: *State v. E.C.*, 83 Wn. App. 523, 922 P.2d 152 (1996).

15 For a review of these issues, see Larson, K.A., & Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. & Catherine T. MacArthur Foundation.

In some jurisdictions, appellate courts clarified some of these confusing issues, but often not consistently across states. For example, some courts decided that juvenile defendants require the same level of ability as adult defendants,¹⁶ while others decided that juvenile court required lesser ability, so that juveniles should be compared to other juveniles in deciding whether they had “enough” capacity.¹⁷ Some appellate courts held that normal developmental immaturity was a possible basis for incompetence in juvenile court,¹⁸ while a few said that it need not be.¹⁹ Moreover, attempting to resolve the issues through appellate case law offered only a piecemeal approach, given the dozens of questions that arose when trying to apply CST to juvenile court.

Increasingly, therefore, states turned to the development of specialized and comprehensive statutes for specifically applying CST in juvenile court. Since they began doing so in the 1990s, 31 states have passed juvenile-specific CST legislation. These statutes, where they have appeared, typically have gone far to set the foundation for a more consistent and meaningful application of JCST²⁰.

From Statutes to Implementation

As the states increasingly respond to JCST with specific legislation to frame it, there has been a growing need for assistance in implementing the legislation. What do we mean by *implementation*?

Statutes typically define the broad legal intent of law and lay down some definitions and procedures. But usually statutes do not specify how to put those definitions and procedures into operation. Statutes are not like a blueprint. They more or less describe what a forensic evaluation system must do, but typically they do not depict how the system must look in order to get that end result. Putting laws in operation in ways that accomplish what they are intended to do is *implementation*.

For example, statutes might require that forensic mental health examiners will be ordered to perform evaluations for JCST, and often they specify in broad brush strokes what such evaluations are expected to include. But typically they will not define how such examiners are to be found, vetted, trained, paid and, if necessary, prohibited from doing such evaluations. Often there are many different ways to implement the law, and the purpose of this Guide is to describe options for implementation regarding JCST evaluations.

16 e.g., *In the Matter of the Welfare of D.D.N.*, 582 N.W.2d 278 (Minn. Ct. App. 1998).

17 e.g., Ohio; *In re Williams*, 687 N.E.2d 507, 511 (Ohio Ct. App. 1997).

18 e.g., Michigan: *In the Matter of David Anthony Carey*, 615 N.W.2d 742 (2000); California: *Timothy J. v. Superior Court*, 150 Cal.App.4th 847, 860.

19 e.g., Washington: *State v. Swenson-Tucker* 131 Wash. App. 1045, Unreported (2006).

20 For more detail about the development of JCST statutes, see Larson, K.A., & Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. & Catherine T. MacArthur Foundation.

Introduction to the Modules

As noted early in this Introduction, we have broken down the process of creating a juvenile CST FES into three parts:

Module 1: Developing a JCST Evaluation Service Delivery System (SDS)—developing an organizational structure and procedures within which JCST evaluations are provided to the courts

Module 2: Creating Evaluation Standards—developing criteria that JCST examiners should meet when performing JCST evaluations and writing reports

Module 3: Quality Control: Developing a Process to Apply the Standards—developing ways to ensure that the evaluation standards for examinations are actually implemented properly by examiners

Before delving into the Modules on these three essential parts of a Forensic Evaluation System (FES) and how to develop them, there are two things that apply to efforts in all these areas when seeking to build an effective FES: the *objectives*, and the *process*.

Three Primary Objectives

Project management philosophy speaks of “The Triple Constraint” that requires effective handling of scope, time, and cost to achieve successful project completion. Likewise, when considering an FES for JCST evaluations, stakeholders will have to consider and find an acceptable balance among a number of potentially competing objectives which we call here quality, efficiency, and cost.

Quality refers to providing the courts with JCST opinions that are accurate, that satisfy the needs of the legal decision-makers, that attorneys will see as appropriately supported by evaluations, and that do not ask mental health professionals to violate their professional obligations. In other words, the FES should produce evaluation reports and expert testimony that are of adequate quality.

Efficiency refers to timeliness. Justice systems seek to adjudicate cases as rapidly as possible, requiring FESs to produce evaluations in an efficient manner and free of avoidable delays. Typically, the statutes guiding JCST evaluations specify a timeline for examiners to offer their opinions that is seen as adequately efficient. Often those timelines are relatively short (e.g., 15 to 30 days), highlighting the importance the courts place on efficiency.

Cost refers to financial concerns. FESs are often run by entities with tight budgets, so operating cost is always an important consideration.

Project managers appreciate that changes to one of the three elements of The Triple Constraint affects the other two. They also recognize that all three elements can never be fully optimized, requiring at least one to be deprioritized. Similarly, the discussions about development of an FES often will revolve around balancing one or two of our three objectives against another. For example, greater efficiency can increase costs by

requiring more evaluators to keep caseloads low or produce challenges for quality when it requires examiners to “cut corners” in performing their evaluations. Likewise, reduced cost sometimes will have negative implications for quality and/or efficiency. In fact, those who are focused on economic interests may resist the perceived costs of some of the suggestions we make in this Guide. They may need to be reminded of the potential reductions in quality and efficiency that can result, as well as the longer-term financial costs that can arise from front-end savings.

Balancing these three factors requires that special consideration is given to quality. As we will discuss below, there are various levels at which quality goals can be set. FES decision makers have flexibility when setting quality requirements. However, there is a floor below which practice would become unethical, unprofessional, and inadequate. Throughout this Guide we will discuss quality at a level that supports, at least, ethical, professional and adequate practice.

The Process

The process of developing an FES requires a thoughtful approach to achieving *system coordination*. By system coordination, we mean that developing a good FES, especially for juvenile forensic evaluations like CST, often requires careful coordination within the FES and between a number of systems or agencies in the community that share child-serving interests. Whatever evolves must fit well with the needs of the juvenile justice system, the mental health system, and any other organizations that depend on or serve the FES that evolves.

For this reason, many states use what we will call a *coordination committee*, comprising representatives from several agencies or departments, charged with developing the FES and then meeting regularly to discuss its functioning. Coordinating services, training, and quality control across community-based FESs can be challenging. In our opinion, it is ideal for all FESs to have centralized coordination.

In the best of circumstances, a coordination committee should have representation from all involved parties. This might include representatives from mental health and court administrators, judges, prosecutors, defense attorneys, detention officials, community mental health officials, patient rights groups, and examiners. When available, the committee might also include representatives from local universities offering forensic mental health training and/or housing relevant policy institutes.

Ideally, the coordination committee will inform the initial planning of and policy development for the FES as well as provide ongoing monitoring and needed modification of the FES. Once the FES is well-established, such a committee might not need to meet more than once or twice a year. These meetings help to keep all relevant entities educated about the FES, facilitate the development of inter-agency relationships that maintain coordination, and allow the competing interests of each of these parties to be adequately considered in policy development and inter-agency agreements.

Another approach to the coordination committee used in some locations is to hold meetings attended only by representatives from the agency that oversees the FES, such as a state Department of Mental Health, with representatives bringing information and feedback from outside stakeholders obtained through formal or informal means. Focusing on a smaller internal coordination committee probably allows for more frequent and consistent meetings, but may forfeit some of the benefits of cross-systems committees just discussed.

A second key to strong system coordination is the inclusion of what are called “boundary spanner” positions. These are staff members who create and sustain relationships across the relevant systems, have expert understanding of the functioning of the FES, and are in a good position to negotiate solutions to problems as they arise. These positions may take on a variety of forms, but typically will include a key person central to the agency with key responsibility for the FES who maintains close and continuous contact with other agencies and departments who have an interest in the FES.

With these comments about the objectives and the process in mind, let’s proceed to the three modules and their guidance for thinking through a jurisdiction’s plan for developing and implementing a FES for JCST evaluations.

MODULE 1

Developing a Juvenile CST Evaluation Service Delivery System

In this first module, we offer guidance for constructing a juvenile competency to stand trial (JCST) *service delivery system* (SDS). By service delivery system, we mean the organizational structure in which JCST evaluations are accomplished. What part of government will be responsible for contracting for evaluations? How will cases be referred to examiners? How will examiners be compensated? Questions like these are about the organizational and financial framework for JCST evaluations—what we are calling the SDS. There are several aspects of an SDS that need to be considered, and they constitute the outline for Module 1:

- A. Identifying a Basic Service Delivery Model
- B. Developing an Evaluation Referral Process
- C. Choosing a Payment Method and Pay-Scale
- D. Managing Special Issues for Post-Remediation Re-Evaluation of Juveniles Found Incompetent

We describe these considerations sequentially. Typically, though, the process of arriving at an SDS requires that a coordination committee consider all four of these aspects of an SDS simultaneously because they are not discrete questions. Choices about one will influence choices about the other.

Identifying a Basic Service Delivery Model

A fundamental starting point for identifying a JCST Service Delivery System (SDS) for one's jurisdiction is to consider several basic models that are available. Many early twentieth-century juvenile courts had court clinics staffed with professionals to assist in decision-making and rehabilitation efforts, but other models have

evolved since then. Grisso and Quinlan¹ provided the first analysis of modern juvenile court forensic SDSs nationally. First we describe these models, then review their strengths and weaknesses, as well as a number of considerations when thinking about how they might fit with one's own plans for a local SDS to deliver JCST evaluations.

Basic Models

The Grisso and Quinlan survey interviewed forensic SDSs in 87 of the 100 largest juvenile court jurisdictions in the nation to examine the structure of their services and the types of clinicians providing services. Three main service delivery models emerged:

1. Court Clinic model
2. Community Mental Health model
3. Private Practitioner model

Notice that each of these labels describes where the examiners are employed and the context in which they work—that is, where they are based when they perform their work. Each model also tends to be associated with a certain Payment Method, which will be discussed later in this Module.

In the *Court Clinic (CC) Model*, examiners are housed in offices within or near the court building. The examiners are forensic “specialists” spending most of their time conducting juvenile court evaluations. About one-half of the surveyed cities or counties used the CC model, and it is the predominant approach in the Northeast and Great Lakes states.

In the *Community Mental Health (CMH) Model*, examiners are housed in community mental health centers or in local or state hospitals. Examiners spend about half of their time conducting juvenile court evaluations and about half of their time in other clinical activities. Only about one-eighth of the surveyed jurisdictions used the CMH model.

Other jurisdictions use a *Private Practitioner (PP) Model* in which examiners are local private practitioners with general clinical expertise and often some forensic specialization. They have met eligibility requirements for inclusion on a roster of examiners from which case assignments are made on a case-by-case basis. The roster is maintained by a state agency (such as a Department of Mental Health) or the local court. In some cases, a private group practice vendor is contracted to provide the evaluations. About one-third of the surveyed jurisdictions used the PP model, and it was the predominant approach on the Pacific Coast, as well as some other Western and Southern states.

1 Grisso, T., & Quinlan, J. (2005). Juvenile Court Clinical Services: A National Description. *Juvenile and Family Court Journal*, 56, 9–20.

An immediate question that arises once SDSs are categorized is whether one is “better” than the others. Unfortunately, little if any research has been conducted on the relative value of these models. Therefore, at least currently there is no single model that can be fully recommended across the board. Rather, each model has probable advantages and disadvantages that must be considered by the coordination committee, which we will describe next. Beyond that, the choice will often depend on what seems to best fit a given jurisdiction’s circumstances, and we will outline some of those considerations as well.

Strengths and Weaknesses in the Models as JCST Delivery Systems

In the context of new JCST legislation, a coordination committee developing a JCST evaluation SDS will want to consider the strengths and weaknesses of each model for conducting JCST evaluations.

A notable advantage of the CC model is the proximity of examiners to judges, attorneys and probation officers, because examiners’ offices are located in or near the courthouse. This access can reduce evaluation turn-around time to more effectively meet the efficiency requirements in most JCST statutes. Court personnel also can more easily access examiners when they need more information or testimony about evaluation findings, or when they seek other forms of consultation or education. Greater frequency and depth of interaction between examiners and court personnel than in other SDS models can enhance examiners’ understanding of their court system in both general ways (e.g., common terminology and legal procedures) and specific ways (e.g., knowledge of the typical concerns of specific judges and attorneys). Because examiners in a CC system spend most of their time conducting juvenile court evaluations, they also may have enhanced familiarity with the lives and clinical issues typical of local justice-involved youth. These factors can enhance the quality and utility of JCST evaluations. However, the CC model may be inefficient in small jurisdictions in which the need for services is limited.

The CMH model also offers some unique advantages in the JCST context. As compared to their counterparts in CC systems, community mental health professionals may be exposed to a broader array of child and adolescent mental health issues that can yield more informed JCST evaluations. Based on other clinical work they perform, CMH staff may be uniquely familiar with assessing and conceptualizing less common disorders and with the types and efficacy of medications and other treatments in managing the disorders. Compared to the CC model and especially to the PP model, the CMH model also better lends itself to addressing cases with multi-disciplinary teams, including psychiatrists, psychologists and social workers.

The locations in which CC and CMH models are housed may have some disadvantages. For example, where the examiners are housed may influence how youth and families perceive them, which in turn can influence their responses to examiners. With CC offices in the courthouse, youth and families who have negative perceptions of the larger juvenile justice system might approach examiners accordingly. With examiners located in community mental health centers, a reverse perception might arise. Youth and families may tend

inappropriately to perceive the examiners as “therapeutic allies,” failing to recognize that in performing JCST evaluations, the examiners are, in effect, working for the court and not for them.

If the PP model uses examiners in geographically diverse areas associated with examiners’ offices, this can reduce travel distances to evaluations by families that may have limited mobility and are particularly stressed as a child faces adjudication. However, that same geographic diversity may limit opportunities for JCST examiners to interact with one another and may challenge coordination of services across the SDS. Unlike CC examiners who interact with each other every day and develop similar ways of performing their evaluations, PP examiners are more likely to have diverse methods, which can make for less efficient understanding of their evaluations by judges and attorneys. As we will see later, however, there may be ways to address this weakness of the PP system.

Considering an Integrated vs. JCST-Specialized SDS

A coordination committee developing the JCST evaluation SDS should look for an SDS that will offer maximum benefit specifically for managing JCST evaluations. Nonetheless, decision makers will often need to consider if it is best to develop a new SDS for JCST evaluations or to integrate JCST evaluation service delivery into an SDS that already exists. For example, if a jurisdiction already has used a PP model for juvenile court evaluations of other kinds, often it may seem logical and most feasible for JCST evaluation services to be integrated into that pre-existing system.

Integrated SDSs may take one of two main forms. First, the responsibility for conducting juvenile CST evaluations may be assigned to an SDS already providing other types of *juvenile* forensic mental health evaluations. We will call this an *Integrated Juvenile Forensic SDS*. An alternative is to assign responsibility for conducting JCST evaluations to the existing *adult* CST evaluation SDS. We will call this an *Integrated CST Evaluation SDS*. It is reasonable to assume that integration into an existing SDS will be less expensive than developing an entirely new system. Yet developing an integrated SDS of either type requires careful consideration for several reasons.

The coordination committee may first need to consider the logistics of assigning responsibility for JCST evaluations to an existing SDS and whether it presents obstacles. For example, the existing juvenile forensic evaluation SDS may have heretofore focused on conducting post-adjudication, dispositional evaluations (for example, placement and treatment after the youth is found delinquent). Examiners in that kind of system most commonly interface with the local probation department. For such a system to add pre-adjudication evaluations (like juvenile CST) that require frequent interaction with attorneys may be challenging. Likewise, an existing adult CST evaluation SDS may be housed in the criminal courthouse or in an adult psychiatric institution and be a less appropriate setting for conducting JCST evaluations.

When assessing either of these integrated SDSs, the coordination committee also must consider whether examiners in the relevant SDS meet eligibility requirements to conduct JCST evaluations (which will be

discussed in Module 3) and, if not, what steps will be needed so that some or all become eligible. Of course, the needs will likely be different depending on which type of integrated system is targeted. Examiners in an Integrated Juvenile Forensic SDS will more likely need to develop expertise on the forensic concept of CST and the specialized ways to assess and formulate it. In some cases, such as when the existing juvenile forensic SDS focuses on more traditional evaluations (such as rehabilitation planning evaluations), examiners may also need more fundamental training in forensic assessment and forensic ethics. Examiners in an Integrated CST Evaluation SDS sometimes may not have adequate general child and adolescent training and experience. They will be more likely to need experience and training on the unique clinical issues that arise in JCST evaluations (e.g., the role of normal developmental immaturity) and specialized juvenile forensic assessment approaches. They also may need support when legal concepts differ between adult CST and juvenile CST.

The coordination committee also should consider the capacity of an existing SDS to take on the additional responsibility of JCST evaluations. The sheer number of JCST evaluations that will be ordered may exceed what the examiners in the current SDS can manage without significant expansion. We are aware of some counties that require as many as 300 JCST evaluations annually. Decision makers should remember that it can be difficult to predict the number of JCST evaluations that will be ordered year to year, but national trends suggest referrals for JCST evaluations are on the increase. Further, it is not uncommon for the implementation of new JCST legislation to increase awareness of and clarity about the issue such that referrals increase even more steeply in the years immediately after implementation. Also, there may be costs associated with taking responsibility for JCST evaluations, including obtaining specialized training, purchasing unique assessment materials, and potential increases in examiner travel or testimony time that should be considered.

In short, the obstacles to developing an integrated SDS can, in some cases, cause development of a new SDS specializing in the provision of JCST evaluations to be the less expensive and potentially more efficient route. Developing a new SDS specifically for conducting JCST evaluations allows each decision in the development of the SDS to be tailored to the best balance of quality, efficiency and cost within the unique context of JCST evaluations.

There is an additional point that should be made. As decision makers examine an existing SDS, they might find that it simply has weaknesses, disadvantages, or flaws in delivering the services it has always delivered, such that rethinking is warranted. What may have worked thirty years ago might not be meeting current needs. In this way, sometimes thinking about how best to implement JCST legislation might lead to rethinking a broader SDS that has been in place for some time. Sometimes the best approach is a revised SDS that conducts JCST evaluations in addition to other types of evaluations the SDS traditionally offered.

Tradition vs. Innovation

The coordination committee should consider also the extent to which the jurisdiction's historical traditions in evaluation service delivery will be retained or modified. Diverging from history and going in new directions

has costs. Although refinements can yield long-term financial savings, there are almost invariably front-end expenses that may worry decision makers. Beyond financial costs, there are inevitable growing pains associated with culture shift. Administrators, examiners and report consumers alike may be used to how “the business of forensic evaluations” has always gotten done and changes may be experienced as stressful. At any given time, also there will be a political mood around issues of innovation versus maintaining status quo.

Given these costs of innovation, divergence from historical trends in evaluation service delivery may be most warranted when there is a very clear advantage. And sometimes there are very clear advantages. The history of criminal justice (adult) CST evaluation service delivery provides an example.² Before the 1980s, criminal justice SDSs almost invariably conducted CST evaluations in one or two central inpatient facilities in a state, such as forensic units of state psychiatric hospitals. Evaluations were conducted by a multi-disciplinary team over a period of days to months of expensive hospitalization. As the field of forensic mental health matured, though, it became apparent that CST evaluations could be conducted by a single clinician conducting a focused interview of two to four hours using structured tools (newly available in the 1980s), with some additional time for obtaining and reviewing collateral information (e.g., mental health records). Studies showed that the quality of evaluations did not suffer from this methodology; indeed, they improved, and it was much less costly. Consequently, nearly all states have transitioned to an outpatient evaluation model for all or most adult CST evaluations.³ Sometimes the benefits of change make innovation warranted.

Jurisdictional “Fit”

When considering the available SDS models, a coordination committee also should examine the unique needs and contours of their jurisdiction. Each locale has its own economic, geographic, and population demands that will impact how well a SDS functions and, therefore, which model is most appropriate. A model that works well in a small, densely-populated Northeastern state may not function well in a large, geographically diverse Western state. Each location will vary in how readily it can staff a court clinic, find community mental health centers well-suited to taking on the task of conducting JCST evaluations, or identify private practitioners interested and appropriate for signing on to a roster. Jurisdictions sometimes have very unique situations or characteristics that also can impact model preference. For example, a jurisdiction might have a local university with a forensically-focused psychology or psychiatry program to collaborate with, or another might have a major regional child mental health center within it, or yet another might have a particularly well-organized forensic examiner community led by clinicians with board certification in forensics. These unique factors can impact how well a particular SDS model will work in that jurisdiction.

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- 2 Grisso, T., Cocozza, J., Steadman, H., Fisher, W., & Greer, A. (1994). The organization of pretrial forensic evaluation services: A national profile. *Law and Human Behavior, 18*, 377-393.
 - 3 Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford.

Of course, some states have different needs for their largest population centers than for their otherwise rural areas. Sometimes “hybrid” systems that mix elements of the three basic models in various ways provide the best balance of quality, efficiency and cost. For example, some states best meet their needs when one model (such as the Court Clinic model) is used in urban centers while another model (such as the Private Practitioner model) is used in rural regions.

Still other locales have developed systems that do not fit well into any of the three categories. For example, in one geographically diverse state to which we consulted, JCST examiners were salaried state employees serving the entire state from a single centralized location using a mix of transporting examinees to that location and having examiners travel to examinees to conduct evaluations. Other jurisdictions are exploring the use of video-conferenced evaluations to manage geographic diversity and reduce the need for large examiner rosters.⁴ While the three basic models provide a useful starting point, stakeholders should never exclude “thinking outside the box” to best serve the needs of a given jurisdiction.

To summarize, a coordination committee should carefully consider a number of issues when deciding which SDS model or models are best suited for providing JCST evaluations in a jurisdiction. They should consider the advantages and disadvantages of each model for providing JCST evaluations. They should consider SDSs that already exist and how well-suited they are for providing JCST evaluations with few or some changes. They should consider the costs, stresses, and political will required to refine an existing SDS or create a new one. And they should consider the unique characteristics of the jurisdiction being served. In addition to determining a basic model, decision makers will need to consider the manner in which court orders for evaluations result in assignments to examiners. That is, they will need to develop an Evaluation Referral Process. We now turn our attention to that issue.

Developing an Evaluation Referral Process

Whether a Forensic Evaluation System (FES) is using a Court Clinic or Community Mental Health Service Delivery System (SDS) where examiners are “on staff,” or a Private Practitioner model where examiners are on a roster, one needs a mechanism for making referrals to examiners. By a *referral process* we mean the steps in moving from a judicial decision to order a JCST evaluation to the point of receipt of the assignment by the examiner. Ideally, such referrals are conducted in a routine fashion that becomes familiar to everyone involved. Here is a description of the important aspects of that process.

4 Antonacci, D.J., Bloch, R.M., Saeed, S.A., Yildirim, Y. & Talley, J. (2008). Empirical evidence on the use and effectiveness of telepsychiatry via videoconferencing: Implications for forensic and correctional psychiatry. *Behavioral Science and the Law*, 26, 253 – 269.

Creating Clear Referral Orders

A judicial order for a JCST evaluation arises (often soon after arraignment) by (a) judicial discretion or (b) a request from either party in the case. The judicial order must be screened to ensure that it complies with relevant laws and rules. Screening should also assure that the evaluation order is clear in its request for a JCST evaluation. This would seem straightforward, but sometimes it is not. For example, we have been examiners in cases where the court initially ordered an evaluation of “competency,” without clarifying if the issue at hand was competency to stand trial, competency to waive *Miranda* rights, or some other competency. In other cases, legal standards are sometimes confused, such as ordering an evaluation of “competency to know right from wrong” (that is, criminal responsibility or culpability, which has nothing to do with CST). In some cases, some degree of back and forth with court clerks or attorneys will be necessary before the order is considered acceptable and the referral process can proceed. The coordination committee should consider ways to minimize these problems in court-ordered evaluations at the first step in the referral process. A common method is developing model court orders that will be used routinely by courts and attorneys.⁵

Choosing the Examiner

With clarity that a JCST evaluation is being ordered, a specific examiner (or examiners) who will conduct the evaluation must next be identified and assigned to the case. As Modules 2 and 3 will explain, not all examiners to whom a court has been referring juvenile court evaluations in general will be qualified to perform JCST evaluations. Those modules will describe a process for identifying the pool of JCST-qualified examiners. The discussion here will focus on the assignment of cases within the pool of eligible examiners whom the system has already determined are qualified.

We recommend that the best general approach to case assignment is one that approximates random assignment among the available qualified examiners. There will be cases, though, in which the unique skills or experience of a given examiner may warrant purposeful selection of a specific examiner. Examples include a bilingual examiner, an examiner who has expertise in the diagnosis that has been assigned to the youth in the past, or an examiner who has conducted prior JCST evaluations of the same youth. In some cases, examiners with certain skills are required by law for youths with certain clinical concerns, such as when evaluations of youth with developmental disabilities must be conducted by a legally defined Developmental Disabilities Specialist. And in some cases, especially in a jurisdiction using a Private Practitioner model, geographical factors may impact assignment, such as when a family with few travel resources lives closer to one examiner’s office than another’s. All other things being equal, though, equity is maximized when cases are assigned to the next examiner in the rotation.

⁵ As an example, a South Carolina model court order for JCST evaluations can be found at <http://www.myflfamilies.com/service-programs/mental-health/afmh-model-court-orders-and-motions>

We are aware of some FESs in which prosecutors or defense attorneys are permitted to request or demand specific, named examiners to conduct the evaluation. When considering whether a referral process should allow this, planners should be aware that this can sometimes exacerbate what has been called a “pull to affiliate.” Selection by one of the attorneys increases the likelihood that the examiner will feel subtle pressure to favor arriving at an opinion in the direction preferred by that party in order to increase the likelihood of receiving future evaluation referrals. Likewise, referral processes that allow one or both of the parties to exclude certain specific examiners can create similar pressures. The desire to select specific examiners seems to come up more frequently when a Private Practitioner SDS model is in use. However, SDSs using Court Clinic or Community Mental Health models are not immune to this issue. No matter the model in use, we advise that it is better for evaluation quality to be assured in some systematic manner (as will be discussed in Module 3) rather than allowing attorneys to have undue influence over the process.

Options for Vetting the Referral

Within the Court Clinic and Community Mental Health models, typically there will be a point-person at the court clinic or community mental health center, such as a program coordinator or a trained administrative assistant, who does two things. The referral point-person screens the order (Is it appropriate? Does it meet criteria for a CST evaluation?), then assigns the case to one of the examiners on staff. In locales using a Private Practitioner model, however, courts sometimes communicate directly with the examiner who will assist with the case. The latter process—from judge to examiner—can raise several problems.

First, when this direct referral process is used, it becomes the sole responsibility of each examiner to screen the evaluation referral and to communicate directly back to the Court when they have concerns. Using this process requires that each examiner is trained to distinguish valid and invalid orders and has adequate relationships with court clerks and/or attorneys to resolve concerns and problems when they arise. Some examiners in the Private Practitioner model may do this conscientiously, while others might not.

A second difficulty with the direct referral process method is that it also requires that each court is clear about which examiners are eligible or appropriate to conduct the evaluations. We have heard from some states that employ this direct referral process method that courts may vary in their adherence to the rules around eligible examiners, sometimes ignoring or not knowing the requirements. These courts may utilize familiar examiners whether or not they meet eligibility requirements.

Thus, especially for courts using the Private Practitioner model, we recommend that the SDS create a position we will call the *JCST Coordinator*. The *JCST Coordinator*’s role is to vet all *JCST* evaluation orders received from the court, reviewing them for clarity regarding the request, making sure the referral is being made to a qualified examiner, receiving the evaluation report from the examiner to assure that it meets standards (as described in Modules 2 and 3), and then forwarding it to the court. Other duties can be added to this position: for example, notifying the agency regarding payment of the examiner for the evaluation (see next major

heading in this Module) and managing periodic training and certification of the examiners (see Module 3). The JCST Coordinator strategy has been used in a few states and has proved very valuable.

Obtaining Collateral Records

Another potential role of the JCST Coordinator is managing the process of obtaining collateral records the examiner will need to perform the evaluation. The term *collateral* is used in psychiatric and psychological settings as one might use the term *secondary*. The primary source of data typically is seen as coming from direct observation of the examinee, while past records and interviews with others in the person's life are secondary, or collateral. The appropriate role of collateral records/interviews in the evaluation process is discussed in Module 2. Here we address the fact that the ideal referral process includes a process by which collateral records for an evaluation are provided to the examiner at or as close as possible to the outset of the evaluation process.

Acquiring collateral records can be a time-consuming process fraught with delays. Caregivers may not be available to sign release of information forms needed to request records. Records departments may be less than ideally responsive to requests because they have a back-log of requests, have concerns about the authorization to access information (such as when the court ordering the evaluation orders that records are to be released to the evaluator), or they may simply be closed (a common occurrence when schools are out of session, for example). Challenges obtaining needed collateral records place a great deal of tension on the balance between evaluation quality and efficiency. Confusion about who is responsible to access collateral records should be avoided so that the delays are not compounded. Nonetheless, lack of clarity is not uncommon among FESs with which we have spoken.

For this reason, the referral process should be set up to clearly identify who is responsible for obtaining collateral records and how records will be obtained. In some systems, responsibility is assigned to attorneys—sometimes to defense counsel and other times to whichever party motioned for the evaluation. This can present problems because, unless the attorney is well-trained on the issues, he or she may not appreciate the importance of accessing collateral records and may not be fully motivated to overcome the inherent obstacles in doing so, or may tend to see it is an added burden when already challenged to manage large caseloads. Even when the attorney pursues the records, he or she may have difficulty differentiating relevant and irrelevant information.

Examiners could themselves be tasked with responsibility for accessing the records they believe they need for the evaluation. Ideally, though, the central organization of the FES provides this service to examiners by having a CST Coordinator (or other clinical or administrative assistant position) assigned to obtaining needed records. Having the task completed by a central authority can be more effective because that person will establish relationships with the sources of the records and, consequently, be clearer about what is necessary for a

smooth fulfillment of the request. Offering this service allows the examiners to focus on the clinical elements of the evaluation.

The ideal referral process provides examiners as many of the collateral records as possible at the time of the evaluation referral. Sometimes, however, accessing relevant records will need to occur while the evaluation is in process. In some cases, information about relevant records may only come to light as the evaluation is unfolding. For example, the youth or a caregiver may report to the examiner that the youth participated in mental health services of which the court was unaware.

We believe it is important that examiners are authorized to determine the information needed to complete the evaluation. Only the examiner can be expected to have the skills to know when missing information compromises confidence in the evaluation conclusions. For both of these reasons, there needs to be a clear process by which examiners can request records while the evaluation is in flow. Again, there must be clarity about who is responsible for obtaining the newly identified records and how.

In conclusion, a thoughtful referral process is an important foundation for a JCST service delivery system. A sound referral process is a “front end” process that increases the likelihood that JCST evaluations are conducted fairly, skillfully, and only when they are truly needed. We now turn our attention to what is typically a “back-end” element of SDSs: payment for evaluations once they are conducted.

Choosing a Payment Method and Pay Scale

Examiners must be reimbursed for their services, and there are two primary issues when it comes to paying for JCST evaluations. The *Payment Method* concerns the source and flow of payments for evaluations, as well as the hiring structure for examiners. The *Pay Scale* concerns the amount of money examiners receive for conducting evaluations. Both the Payment Method and Pay Scale can vary greatly from state to state.

Typically, there will be no reason to use a different Payment Method to pay examiners for JCST evaluations than for other types of juvenile court evaluations. Our guidance on Payment Method, therefore, is general, in the event that some jurisdictions might wish to use the JCST planning opportunity to adjust their Payment Method for juvenile court evaluations generally (including JCST evaluations). Some aspects of JCST evaluations, however, argue for differences in the amount of compensation (Pay Scale) compared to other child clinical evaluations.

The Payment Method

When examining the Payment Method, one first asks, “What is the source of the money that pays for JCST evaluations?” In many states, funding for JCST evaluations begins with the state’s primary mental health agency (e.g., Department of Mental Health, or DMH). Funding from a DMH may flow to examiners from any of several paths: (a) from the general DMH, (b) through a special forensic division of the DMH, (c) through

regional offices of the DMH, or (d) through targeted funding of court clinical services.⁶ In some locations, payments originate with the state courts.⁷ In other locations, however, payment for evaluations begins at the local level (e.g., county government; local courts). When evaluation funding is tied to local (e.g., county) budgets, significant state-wide disparities in funding can arise. That can lead to differences in quality of evaluations across local areas, and avoiding this is one of the advantages of a state-wide Payment Method system.

Based on the national survey of juvenile court jurisdictions conducted by Grisso and Quinlan (mentioned earlier), the three basic Service Delivery System (SDS) models tend to have different funding sources. Court Clinic models tend to be funded by the specific court being served by the clinic or from state health or welfare agencies. State health and welfare agencies also tend to be the funding source for evaluations in jurisdictions using the Community Mental Health model. In the Private Practitioner model, funding for the evaluations tend to come from county funds designated to the court. This is not to say that each model must be funded in the ways just described, but these are the national trends.

As was discussed above, payments by the state-level funding source sometimes target the court clinical services in less direct ways than straightforward payment of salaried or contracted examiners. In some cases, the source funds local agencies or private group practices to conduct the evaluations for a given region. In such situations, the source may pay the agency a pre-determined lump-sum amount annually based on anticipated costs or may make payments based on the number of evaluations actually conducted. There is some advantage to a system that combines the lump-sum and fee-for-service approaches.⁸ Case-by-case payments incentivize local agencies to conduct evaluations efficiently, in return providing a modest but dependable cost recovery. However, additional monies, best offered in a lump sum, may be needed for local agencies to adequately support the quality control of the evaluations (discussed in Module 3). Alternatively, the funding source may provide the quality control supports (see Module 3) and eliminate the need for the lump sum payment.

Another element of the Payment Method is the hiring structure of examiners. In some locations, JCST examiners are salaried employees (e.g., of the state DMH or the county). In other locations, examiners are paid on a fee-for-service basis. Again, the different SDS Models tend to use different approaches. Examiners in the Court Clinic and Community Mental Health models tend to be salaried employees, and examiners in the Private Practitioner model tend to be paid for each case they complete.

6 Grisso, T., Cocozza, J., Steadman, H., Fisher, W., & Greer, A. (1994). The organization of pretrial forensic evaluation services: A national profile. *Law and Human Behavior, 18*, 377-393.

7 Hawk, G. & Fitch, L.W. (2001). Community forensic evaluation: Trends and reflections on the Virginia experience. In Frost, L.E. & Bonnie, R. J. (Eds), *The evolution of mental health law*. (pp. 213-226). Washington, DC: American Psychological Association.

8 Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford.

In the Private Practitioner model, the fee-for-service Payment Method generally takes either of two forms: a “fixed rate” per hour for time that the evaluation required (sometimes with a “cap” on the allowable hours), or a fixed amount for performing an evaluation (often called a “flat fee”). A primary attraction of fee-for-service models is a reduction in SDS costs since it eliminates paying for “examiner down-time” (such as when evaluation referrals slow) or any other costs outside of conducting evaluations (especially employee benefits). One needs to realize, however, that salaried employees also may use “down-time” engaged in activities that benefit the SDS, such as offering direct consultation or education to judges or attorneys. The coordination committee also should consider that the fee-for-service Payment Method often requires higher coordination and quality assurance costs than in a salaried position Payment Method, offsetting some of the cost savings associated with a fee-for-service Payment Method.

Another consideration is that systems using the fee-for-service Payment Method may have greater difficulty managing complex, time-consuming cases than systems based on salaried employees. Within all SDSs, cases arise that require a much greater time investment than the “typical” case. Some special cases involve complex clinical issues requiring specialized expertise and assessment approaches (e.g., an examinee with a brain tumor, requiring consultation by a pediatric neurologist), or involve complex legal issues, such as a case with a high media and public profile. In systems with salaried employees, case-loads can usually be juggled and shifted to allow a given examiner more time than usual to manage a difficult case. In contrast, in fee-for-service SDSs in which evaluations are paid on an hourly basis, the hours can quickly pile up in complex cases causing soaring costs.

When the hours allowed for an evaluation are “capped,” the examiner may be faced with doing work that is not remunerated or minimizing the hours spent on the evaluation and jeopardizing its quality. Similarly, when evaluations are paid for with a “flat fee,” examiners may be incentivized to minimize the time spent conducting the evaluation, which can cause the quality of the evaluation to suffer. There may be creative ways, though, to address this issue, such as developing a metric for identifying complex cases and then paying for those cases in a manner that differs from more typical evaluations.

The Pay Scale

It is reasonable to expect JCST examiners to be better paid than general mental health examiners.⁹ Conducting these evaluations requires specialized skills and knowledge. Examiners need not only have a well-developed understanding of clinical conditions and matters, but also must understand specific legal definitions related to the questions the court must address, legal procedures associated with both defendant and examiner participation in the process, and ways to communicate their findings in a manner that courts and attorneys can use. We will examine the specialized skill-set required of JCST examiners in more detail in Module 3.

9 Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford.

Moreover, there are unique conditions faced by forensic examiners that general clinical professionals less often encounter, such as managing court demands and delays, working with risky populations in risky settings, and the demands of participating in an adversarial system in which one's work is sometimes subjected to considerable scrutiny. Nonetheless, forensic mental health professionals conducting court-ordered evaluations seem to make less money than other clinicians.¹⁰ Based both on our experience and on survey results,¹¹ fee-for-service JCST examiners, in particular, tend to be remunerated minimally for their work.

Inadequate pay can cause problems in any SDS, especially in terms of examiner satisfaction and quality assurance. Low salaries for full-time examiners can limit a SDSs capacity to recruit quality examiners. Low payments for evaluations housed in local agencies or group private practices may motivate administrators to reserve their best staff for other higher-paying services. Similarly, low payments for private practitioners may cause more competent examiners to pursue roles that pay better than the JCST examiner roster. It may be particularly problematic that fee-for-service systems typically lack mechanisms for rewarding examiners with more experience, as is typical when salaries are negotiated. It is not surprising, then, that low salaries or fees tend to yield lower quality evaluations.¹² In working with and talking to an array of representatives from JCST FESs, the old adage, "You get what you pay for," seems to hold true. The Pay Scale should be developed with this in mind.

When setting salaries and fees, a coordination committee also must consider the evaluation requirements set by its standards subcommittee in its Standards and Procedures document (discussed in Module 2). Whether based on statutory requirements or internal choices, standards subcommittees can set evaluation requirements along a broad dimension of rigor. More rigorous evaluation requirements clearly warrant greater remuneration. Sometimes the Pay Scale is simply inadequate to meet the requirements of the FESs Standards and Procedures. When that occurs, it can be tempting to encourage "cutting corners" to reduce the time required to complete evaluations. For example, officials in one state experiencing this problem reported that they were considering requiring defense attorneys to review collateral records and highlight or summarize the historical issues they wanted examiners to consider. Such a solution, however, introduces bias into the evaluation process and simply shifts the workload from one under-paid group to another. However, there are some more reasonable ways to reduce the time commitments needed to conduct evaluations, as we will discuss in Module 2.

Coordination committees must also consider special circumstances that can arise in JCST evaluations. For example, it is not uncommon for examinees to fail to appear for interview appointments. The Pay Scale should

10 <http://www.psychologycareercenter.org/salaries.html> and <http://www.bestpsychologydegrees.com/25-most-lucrative-careers-in-psychology/>

11 Grisso, T., & Quinlan, J. (2005). Juvenile Court Clinical Services: A National Description. *Juvenile and Family Court Journal*, 56: 9–20.

12 Grisso, T., & Quinlan, J. (2005). Juvenile Court Clinical Services: A National Description. *Juvenile and Family Court Journal*, 56: 9–20.

have built into it reasonable reimbursement for the time an evaluator spends waiting. The need for court testimony also requires consideration when determining Pay Scale. Preparation for testimony and waiting at court to testify can be time-consuming. When examiners are salaried employees, their salaries automatically reimburse them for the time spent in these activities during the workday. When fee-for-service examiners are paid on an hourly basis, SDSs must decide between excluding testimony time from reimbursement or paying for many more hours of work (either at the set rate or some adjusted rate) when cases require testimony. Some SDSs that pay a flat fee for evaluations offer an additional flat fee for testimony, but again that flat fee should be commensurate with the hours typically required to provide appropriate testimony. Providing testimony is a unique and potentially stressful job responsibility in forensic evaluation work, so inadequate reimbursement where testimony is commonly needed can quickly lead to examiner dissatisfaction and burn-out.

Some high-quality examiners will be attracted to conducting JCST evaluations for reasons outside of the Pay Scale. Some examiners may find the work uniquely interesting and others may see the work as a stepping-stone to conducting more lucrative independent evaluations.¹³ Yet such examiners typically are not sufficiently numerous to satisfy the workforce needed to meet the needs for JCST evaluations. As this discussion suggests, coordination committees need to consider carefully the Pay Scale to balance costs with the quality of evaluations that can be obtained.

Managing Special Issues for Post-Remediation Re-Evaluation of Juveniles Found Incompetent

When a juvenile defendant is found incompetent, state laws typically require that the youth is considered for treatment to remediate abilities so that he or she may become competent to stand trial. Most statutes specify a time period for remediation interventions. They also provide for a re-evaluation of the youth when those remediation personnel believe that the youth might have achieved abilities sufficient to be found competent to stand trial and/or when they have concluded that remediation efforts are not going to be successful. Typically, that re-evaluation is much like the original JCST evaluation, but with an emphasis on change in the youth's relevant abilities. The re-evaluation typically is provided to the court for its judgment about whether the youth has gained competence sufficient to stand trial.

¹³ Hawk, G. & Fitch, L.W. (2001). Community forensic evaluation: Trends and reflections on the Virginia experience. In Frost, L.E. & Bonnie, R. J. (Eds), *The evolution of mental health law*. (pp. 213-226). Washington, DC: American Psychological Association.

States that create new JCST statutes are faced with devising a JCST remediation system for juveniles found incompetent. Here we do not describe that effort, because it has been discussed in two other sources.¹⁴ The discussion that follows makes evident that it is best when jurisdictions develop their JCST evaluation system and remediation system in a coordinated manner that considers the needs of each system and facilitates communication between them. For this Guide, however, we will comment briefly on some of the ways in which JCST remediation systems are evolving across the states before focusing more narrowly on the management of evaluations that are required by statute to determine whether, during or after a remediation process, the youth has gained sufficient CST abilities to be considered competent. For convenience, we will call these “Post-Remediation Re-Evaluations” simply “*re-evaluations*.”

JCST Remediation Systems

JCST remediation systems provide two main services: (a) providing interventions aimed at resolving the functional deficits that led to the youth being found incompetent; and (b) assessing the extent to which the youth is benefiting from the services that are provided. Interventions provided by traditional *adult* CST remediation programs have focused on reducing interfering mental health symptoms through the administration of psychotropic medication or provision of other psychotherapeutic services and on providing education about the legal system and functioning as a defendant within it. Major mental illness is less common among juveniles found incompetent, but developmental immaturity often plays a significant role. Therefore, JCST remediation programs tend to be more focused on education and only secondarily upon symptom reduction. One recent article described the ideal JCST remediation programs as offering training that is “interactive, repetitive, and in which information is presented in narrative form,” allowing for an “interplay between teaching, extrapolating, and reviewing the impact of... new knowledge on the behavior and decision making of youth [as] best observed in one-to-one relationship that allows an iterative process specific to each child and which is sustained and internalized over time.”¹⁵

Although it is now beginning to change, adult CST remediation programs traditionally have been housed in psychiatric hospitals. In contrast, JCST remediation programs tend to be offered in community-based, non-psychiatric settings whenever possible. For example, Virginia has long operated a JCST remediation program involving in-home visits by specially-trained JCST remediation counselors. Other states, like Florida, offer

14 Larson, K.A., & Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. and Catherine T. MacArthur Foundation; Warren, J.I., Jackson, S.L., & Jones Coburn, J. (2016). Evaluation and restoration of competency to stand trial. In Heilbrun, K., DeMatteo, D. & Goldstein, N.E.S. (Eds.), *APA handbook of psychology and juvenile justice* (pp. 489-514). Washington, DC: American Psychological Association.

15 Warren, J.I., Jackson, S.L., & Jones Coburn, J. (2016). Evaluation and restoration of competency to stand trial. In Heilbrun, K., DeMatteo, D. & Goldstein, N.E.S. (Eds.), *APA handbook of psychology and juvenile justice* (pp. 489-514). Washington, DC: American Psychological Association.

non-psychiatric facilities where juveniles found incompetent receive JCST remediation training.¹⁶ Some states provide JCST remediation while youth are in juvenile detention centers. JCST remediation is an evolving area, and efforts are underway to develop evidence-based and best practices in juvenile CST remediation interventions.¹⁷

The Relation Between JCST Remediation and Post-Remediation Re-Evaluations

JCST statutes do not allow indefinite time to achieve JCST remediation. Some statutes specify a maximum duration of remediation services (e.g., up to 180 days), while others specify a time period calculated on the basis of the nature of the alleged offense. If remediation is not accomplished in that period of time, most statutes require that the charges be dismissed (often with an option to civilly commit the youth if the youth's mental disability meets the designated criteria).

During the remediation period, informal assessment of a youth's benefit from remediation services occurs on an ongoing basis by those who are implementing the educational elements of remediation, whom we will call *remediation counselors*. Sometimes they also have ongoing clinical evaluation of their mental health symptoms. Beyond this, most JCST statutes require that courts conduct periodic (e.g., every 90 days) formal reviews of the competency status of youth proceeding through remediation programs. Reviews are also needed when one party argues that the youth has gained competency or argues that the youth is unlikely to gain competency with further remediation efforts. Thus formal re-evaluations are necessary to inform the court regarding the youth's progress and, eventually, that the youth has sufficient abilities for competence or has not gained them when the time for remediation expires.

In some remediation systems, courts rely upon the opinion of the remediation counselor to determine if competency has been gained. Service Delivery Systems (SDSs) for JCST evaluations will require no attention to re-evaluations in those jurisdictions. However, this approach has its drawbacks. First, there is little difference between an "original" JCST evaluation and a re-evaluation. Both require the same diagnostic processes, in-depth evaluation of the relevant CST abilities, and a knowledge of related clinical and developmental concepts for understanding youth. Many remediation counselors are not trained to conduct JCST evaluations and often will not meet eligibility requirements to do so (see Module 3). Many are persons with bachelor degrees who have been trained to perform remediation training, but have not been trained to perform forensic clinical evaluations.

16 Larson, K.A., & Grisso, T. (2011). *Developing statutes for competence to stand trial in juvenile delinquency proceedings: A guide for lawmakers*. Chicago, IL: John D. and Catherine T. MacArthur Foundation.

17 Warren, J.I., Jackson, S.L., & Jones Coburn, J. (2016). Evaluation and restoration of competency to stand trial. In Heilbrun, K., DeMatteo, D. & Goldstein, N.E.S. (Eds.), *APA handbook of psychology and juvenile justice* (pp. 489-514). Washington, DC: American Psychological Association.

A second reason arguing against remediation counselors performing re-evaluations is that it mixes the roles of treatment and evaluation. They assume the helping role of remediation counselor, which requires developing some empathy and a relationship with the youth in order to promote the remediation training process. The helping professions have long recognized a conflict between playing this “helper” role in combination with the role of objective examiner.¹⁸ Instead of relying on competency opinions provided by remediation counselors, we advise that mechanisms are developed to have eligible JCST examiners conduct full re-evaluations that are informed by the opinions of the remediation counselors.

Making Post-Remediation Re-Evaluation Assignments

When re-evaluations are conducted by qualified examiners, there still may be questions about who will conduct the evaluation. In some systems, evaluations are conducted by an examiner internal to the remediation program, while in others the examiner is selected from the same pool of examiners that conduct typical JCST evaluations. Ideally, examiners should function independently from the remediation program. Internal examiners may be subjected to subtle or even overt pressures to find certain youth competent (e.g., the program census is too high for staffing) or incompetent (e.g., to keep slots in the remediation program filled). Internal examiners may have the benefit of easy access to information from the remediation trainer. However, all examiners conducting re-evaluations should have such access so that the examiner is clear about what was addressed in remediation training and how, as well as how the youth responded to those efforts. Among other issues, these records will assist evaluators in differentiating youth who are merely parroting back what they were told in remediation sessions and youth who have more adequately developed their capacities.

When re-evaluation examiners are selected from the general JCST examiner pool, attempts can be made to have the re-evaluation conducted by an examiner who evaluated the youth prior to the order for remediation (i.e., an experienced examiner). Having a re-evaluation conducted by the same examiner who performed the original JCST evaluation facilitates the comparison of the pre-remediation and post-remediation evaluations. One could argue that “fresh eyes” might be preferable, to avoid possible bias. Overall, though, we believe that the advantage of direct comparison is preferable. Sometimes, of course, the pre-remediation examiner will not be available to conduct a post-remediation evaluation. When this is the case, providing the re-evaluation examiner access to the pre-remediation evaluation best approximates the direct comparisons an experienced examiner can make.

Module 1 Summary

In this module we have discussed issues a coordination committee will need to address when developing a JCST service delivery system. We described models used across the states for organizing forensic juvenile

¹⁸ See Greenberg, S., & Shuman, D.W. (2007). When worlds collide: Therapeutic and forensic roles. *Professional Psychology: Research and Practice*, 38, 129-132.

evaluations generally and offered suggestions for selecting among them to arrive at a basic service delivery model for JCST evaluations. We then described things to consider when developing a referral process, as well as various possible arrangements for payment methods and pay scales. Finally, we offered suggestions for managing post-remediation re-evaluations when youth are found incompetent.

The next two modules address questions that must be answered to ensure that the evaluations provided by the service delivery model meet standards for quality. Module 2 describes the development of those standards, and Module 3 offers guidance for selecting and assisting examiners who will be expected to meet those standards.

MODULE 2:

CREATING EVALUATION STANDARDS

An essential part of establishing a system to offer good quality JCST evaluations is developing a set of standards for conducting them. The standards should then be described in a document that communicates them to examiners, as well as to legal professionals who will use JCST evaluations. This Module is intended to guide a committee's development of JCST evaluation standards and a *Standards and Procedures* document, which we will abbreviate as an *S&P document*. After introducing some basic guidance for the process, we offer an outline for a set of standards, identifying categories for organizing them. Then for each category we discuss important things to consider when setting standards within each part of the document. Specifically, we recommend what should be required of examiners for each category.

Developing Formal Standards for Conducting JCST Evaluations and Reports

A jurisdiction's formal S&P document offers examiners guidelines on how evaluations are to be conducted. These documents typically describe what examiners are required to do when receiving a referral, collecting data for the evaluation, arriving at opinions, and writing reports for the court. An S&P document provides these requirements in ways that are consistent with statutory requirements for evaluations, other local requirements articulated in administrative codes or court rules, professional practice standards and ethical guidelines,¹ and focused evaluation practice standards and guidelines.² The document assures that examiners

1 American Psychological Association (2013). Specialty guidelines for forensic psychology. *American Psychologist*, 68, 7-19; Glancy, G.D., Ash, P. Bath, E.P.J., Buchanan, A., Fedoroff, P., Frierson, R.L., Harris, V.L., Hatters Friedman, S.J., Hauser, M.J., Knoll, J., Norko, M., Pinals, D., Price, M., Recupero, P. Scott, C.L. and Zonana, H.V. (2015). AAPL Practice Guideline for the Forensic Assessment. *Journal of the American Academy of Psychiatry and the Law* 43, S3-S53.

2 For example: Mossman, D., Noffsinger, S.G., Ash, P., Frierson, R.L., Gerbasi, J., Hackett, M., Lewis, C.F., Pinals, D.A., Scott, C.L., Sieg, K.G., Wall, B.W., & Zonana, H.V. (2007). AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial. *Journal of the American Academy of Psychiatry and the Law*, 35, S3-S72.

know the local Forensic Evaluation System's (FES's) definition of what is acceptable practice when performing JCST evaluations in the jurisdiction. Some jurisdictions have published their S&P documents online.³

Objectives of a Standards and Procedures Document

S&P documents have four primary objectives. *First*, they offer initial clarity to new examiners about how to conduct their JCST evaluations, acting as a helpful guide to answer questions that may arise while working on cases. *Second*, they assist administrators in holding examiners accountable for appropriate practices. That is, they set clear expectations about how evaluations should be conducted and the criteria by which evaluations and reports will be judged in ongoing quality assurance efforts (which will be discussed in Module 3). As such, these documents support both efficiency and good quality practice across examiners.

Third, S&P documents clarify examiner practice expectations for judges and lawyers, helping them to understand and know what to expect in JCST evaluations. This clarification is important not only for communication purposes, but also because it creates a dynamic that can improve examiners' practice. Representatives from several juvenile CST FESs told us that clear standards often improved attorneys' abilities to question examiners during expert testimony, which in turn holds examiners more accountable to the standards.

Finally, S&P documents provide a mechanism for interested parties to give feedback to FES decision makers and to seek practice changes. In this way, for example, written documents can help assure appropriate protection of the rights of examinees.⁴

Who Develops Standards and Procedures

Standards, and the S&P documents that define them, are best developed by a special *ad hoc* group set up for this purpose, which we will call the *standards subcommittee*. Often this will be a different and smaller group from the overall coordination committee described in this Guide's Introduction, which had representatives from many different agencies and departments for whom the FES is relevant. In contrast, the smaller standards subcommittee is tasked specifically with developing the standards, drafting the S&P document and reporting out to the broader FES coordination committee for refinement and approval of the standards.

A typical standards subcommittee might include a few administrators from the larger coordination committee. It will be essential, however, to include (a) one or more legal professionals thoroughly familiar with JCST laws in the jurisdiction, and (b) one or more mental health professionals who know national professional standards for performing evaluations for courts. Some jurisdictions might not have professionals with experience in standards for forensic evaluations. An alternative can be found if one's jurisdiction has a local university-based

3 For example: <http://www.bhc.state.nm.us/pdf/99499%20-%20Forensic%20Juvenile.pdf>.

4 Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford.

forensic mental health program or policy institute with persons who can join the subcommittee. Another alternative, especially when standards are being written for use throughout a state, is to contract with national experts who can contribute on a consultant basis.

Thinking about “Calibrating” the Standards

When standards and procedures are established, they become the base requirement for all JCST evaluations by the jurisdiction’s examiners. By setting the standard, the FES is indicating that evaluations performed below those standards will be defined as unacceptable. But how does a standards subcommittee define what is “acceptable?”

For example, as we note later in this Module, the standards should define whether and how JCST examiners will use structured assessment tools as part of their evaluations. In doing so, will the standards allow examiners to decide whether structured tools are needed on a case by case basis? Alternatively, will the standards require structured tools be used in every case? Or even more demanding, will the standards require that any opinion (e.g., the youth’s intelligence) be based on the results of a structured tool as well as another corroborating piece of information (e.g., school performance)? The first standard seems less precise, the second more so, and the third is the highest level of evidence for an examiner’s opinion. How “good” does a procedure have to be to meet the system’s requirements? How high or low should the subcommittee set the standard?

When considering this, it is helpful to know that fields in which mental health examiners work have recognized three kinds of standards, which are most easily thought of as *essential*, *recommended*, and *ideal*. *Essential* practices, sometimes called “minimum acceptable practice” (or in medical procedures, “standard of care”) are those that would be required to avoid censure. Anything below this would violate the field’s consensus regarding acceptable practice. *Recommended* practices, sometimes called the “industry standard” or the “standard of practice,” are those that represent the practice of the majority of competent examiners, which is above the minimum and is preferred in many circumstances. *Ideal* practices, sometimes called “best-practices,” are those to which examiners can aspire but often would be more demanding than is feasible when applied to all of the components of a forensic assessment.

Imagine that one were applying these levels of standards to a clerical office’s policy for catching typos in an office’s documents. We might describe “use spellcheck” as *essential* (to do less is incompetent), “after spellcheck, read over the document” might be *recommended* (because most clerical staff do this), and “then have someone else read it as well” as *ideal* (rarely done, but represents the highest level of caution, perhaps to be used in special cases).

In the next section, we will describe nine critical issues for which Standards for JCST evaluations need to be determined. In theory, an FES’s decision about the standards to be adopted for these nine issues could be set at any of the three levels we have described. Moreover, different levels can be used for various areas, so that

standards for one issue area might correspond to what the field of forensic evaluation considers “essential” while in another the jurisdiction might decide on a standard that is “recommended.”

In any case, when the standard is set by a standards subcommittee and the FES, it becomes that jurisdiction’s definition of what is “required” for every JCST evaluation. It may have been considered “essential” or “recommended” by some national standard. But whichever is the case, anything below that is “unacceptable” in the present jurisdiction once it is codified in an S&P document. Thus there is no need for the S&P document to explicitly describe a standard as “essential” or “recommended” or “ideal.” The terms simply are helpful when the standards subcommittee is deciding how to set the standards that the S&P document will describe.

In our later recommendations about what standard to set, we will never advise that a standard subcommittee calibrate the local standard at an “ideal” level. The standard sets the requirements for every JCST evaluation, and typically such a level would not be feasible across all JCST evaluations in all situations. Obviously we will always recommend at least what the field of forensic evaluation considers “essential.” At times, though, we will opt for the level above—that is, the “recommended” level—representing a sense of what the field recognizes as good practice beyond the bare necessity. Whatever we advise, however, the standards subcommittee should not accept our advice automatically. Sometimes there will be local requirements, such as a state’s JCST statute, that might explicitly require practice at a level that is more consistent with what is “ideal.” For example, we are aware of a statute that requires examiners to use specific “best practices” assessment tools in their evaluations. And some clinical experts on the subcommittee might argue for something greater as well.

Before proceeding to describe the categories within which the standards are set, it is worth noting that any S&P document should be considered a “living document.” It will require periodic review and modification. Legal requirements for JCST can change, and practice standards can evolve. The FES should provide for some periodic review of the standards, perhaps every 3 to 5 years.

Outline of a Standards and Procedures Document

In this section we offer an outline structure for the S&P document. It suggests nine categories of information and requirements that the document will provide to JCST examiners and legal professionals. In this Section we simply introduce each category of information with a brief description. Then, in the final section, we offer guidance regarding how to decide on the specific standards and recommendations to include within each category in this outline.

1. Legal Context for JCST Evaluations

The standards should require that JCST examiners understand, be able to articulate, and conduct their evaluations within the legal foundation for the jurisdiction in which they work. Therefore, the S&P document should acknowledge this and provide the state’s legal definition for JCST. It should also provide citations

and annotations for the major state appellate cases that further define it. If the state has a specific statute regarding JCST, this should be cited with an indication that the examiner is responsible for conducting the evaluation according to that statute. Examiners must be aware of other elements of the juvenile justice context within which they conduct their evaluations. For example, they need to appreciate the dispositions available to juveniles found incompetent to stand trial (IST) so that they can reach sound opinions about the likelihood of successful remediation.

2. Objectives of a JCST Evaluation

The standards should identify the proper objectives of a JCST evaluation and should require that examiners understand them and conduct their JCST evaluations accordingly. These objectives include (a) a description of the youth's strengths and deficits in competency-related abilities, (b) an explanation for the causes of any deficits in competency-related abilities, (c) in some jurisdictions, a conclusion about whether the youth is competent or incompetent to stand trial, and (d) if the youth appears not to be competent to stand trial, a description of the likelihood and means by which the youth's incompetency to stand trial can be remediated.

3. Notification of Youth's Legal Counsel

This section should require that examiners, after receiving a referral for a JCST evaluation, must notify the youth's attorney that the examiner intends to evaluate the youth on a specified date.

4. Obtaining Relevant Collateral Information from Records and Interviews

This section highlights the importance of collateral information in JCST evaluations to both corroborate and supplement the information provided by the youth. There is no single list of collateral information sources that is necessary or even appropriate in every evaluation case. However, there are some sources of information needed in every case (e.g., official charging documents) and additional key information sources that should be considered by examiners in every case. S&P documents should indicate that certain *collateral records* should be considered: (a) educational records, (b) general health and mental health records, (c) social welfare records, and (d) legal records. *Collateral informants* that should be considered for interviews include (a) parents and caregivers, (b) attorneys and probation officers, and (c) educators and other professionals.

5. Informing Parties about the Evaluation

In this section, the S&P document describes the information that should be provided to the youth and the youth's caregivers before initiating the evaluation interviews. This information allows for the youth and caregivers to make an informed decision about their level of participation in the evaluation. Common areas of notification include (a) the purpose of the evaluation, (b) the limits of confidentiality under which the evaluation is conducted, (c) the ways the information from the evaluation might be used in the youth's case, and (d) the rights of the youth in limiting his or her participation in the evaluation.

6. Obtaining Data on Competency-Related Abilities (Interviews and Forensic CST Instruments)

Every JCST evaluation should include an examination and description of the youth's functional abilities as related to the local requirements to be a competent juvenile defendant. Common approaches to this component of the evaluation include any of several methods: (a) an interview devised by the individual examiner, (b) use of a published semi-structured interview designed for this purpose in JCST evaluations, or (c) the use with modified interpretation of measures designed to assess CST in adult defendants. In this section, the S&P document sets expectations for acceptable approaches to this step in the evaluation.

7. Obtaining Relevant Clinical and Developmental Data to Explain Competency Deficits

When a youth has deficits in competency-related abilities (identified in #6 above), examiners must describe the reasons for those deficits. Legally-recognized reasons for such deficits typically include mental disorders, intellectual disabilities, and/or developmental immaturity. However, the evidence for a youth's poor performance might involve other factors, such as feigning incapacities or poor effort during the evaluation. Likewise, areas of true deficit might be obscured by the youth's efforts to appear more capable than is actually true. In this section, the S&P document sets expectations for what is considered adequate clinical and developmental information to consider explanations for the youth's deficits in competency-related abilities. Expectations should be set for (a) the clinical and developmental history to be obtained, (b) ways for current clinical and developmental functioning to be assessed, and (c) attention to the fact that apparent deficits in competency-related abilities might be due to feigning or lack of effort.

8. Formulating and Offering Opinions and Recommendations

This section should provide standards for forming opinions based on the data derived from the evaluation. Specifically, examiners should be required to (a) provide opinions that address each of the objectives of the evaluation, (b) base those opinions on data that is provided to the reader and on appropriate reasoning, and (c) assure that matters of developmental immaturity have been considered.

9. Requirements for Outlining and Drafting Written Reports

Some level of standardization of JCST reports across a Forensic Evaluation System enhances efficiency for examiners and report users alike. This section of the S&P document sets the expectations for written reports that will allow for that standardization. This can be accomplished through lists of required elements and/or a report outline to which all examiners must adhere.

Content for a Standards and Procedures Document

This section offers comments and discussions regarding each of the subsections in the previous Section that outlined the standards and the S&P document. Much of the guidance offered here can be found in more detail in two published guides⁵ for conducting JCST evaluations. They provide more comprehensive information than we can offer in this Guide on the various types of requirements that the S&P document should include.

1. Legal Context for JCST Evaluations

Examiners usually are not trained in law. A key function of the S&P document is to describe for examiners the legal standards and requirements for the JCST evaluations they conduct. This section of the standards should explicitly require that examiners know how the law defines CST in juvenile cases and how the law directs the conduct of JCST evaluations. Moreover, examiners must be able to describe and explain these matters of law, occasionally in their reports and always when testifying about their evaluations.

This section of the standards should include, of course, the state's legal definition of CST in juvenile cases. Many states will have a brief and broad conceptual definition, but also may include specific requirements qualifying that definition. For example, often they provide that the incompetence must be due to mental disorder, intellectual disability, and/or developmental immaturity. In addition, some states spell out the specific things that juvenile defendants must be able to know, understand, believe or do to be competent to stand trial. Some state statutes describe what examiners must do to acquire and provide data to the court on those conditions. All of these legal definitions must be described in the document.

When a state's juvenile-specific CST statute has been enacted, much of the legal authority for the evaluation will be contained within it. In jurisdictions that have not passed a juvenile-specific statute, clarifying the legal issues is often more complex. Even when there is juvenile-specific CST legislation, there are often laws outside of the focused statute that impact JCST evaluations. For example, most states also have case law—decisions by state appellate courts—that clarify legal definitions and requirements. Case law can be as important as statutory law. In some situations, the case law will be *binding* and necessary to integrate into evaluation practices. In other situations, the case law will be *persuasive* in that it is likely to be applied by judges considering the issue. This might occur, for example, when case law has clarified the meaning of a given term used in an *adult* CST statute and that same term is used without clarification in the *juvenile* CST statute. Even so, representatives of the different legal parties may have different views on legal issues that are not yet fully resolved.

⁵ Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press; Kruh, I. & Grisso, T. (2009). *Evaluation of juveniles' competence to stand trial*. New York: Oxford University Press.

Therefore, the gathering of this legal information and assessment of its applicability to JCST evaluation practices requires the assistance of local attorneys and/or judges with the appropriate legal expertise. Once the key legal issues are identified and applicability is clarified, it is necessary to explain the issues within the S&P document in a manner that avoids “legalese” so that it can be understood by examiners.

In addition to fundamental definitional aspects of JCST, the S&P document should provide information about other relevant aspects of the legal context for evaluations. For example, the legally mandated timeline for completion of the evaluation should be specified, as should any steps required of examiners when they are unable to meet those timelines. Of particular importance, the possible dispositions of youth found incompetent should be specified in the S&P document. Without clarity about the types of services available to youth found incompetent and the locations in which they can be provided (e.g., hospital vs. community), examiners are unable to offer adequately informed opinions about the likelihood of successful remediation.

2. Objectives of a JCST Evaluation

The S&P document should identify the proper objectives of a JCST evaluation, and the examiner must be accountable for understanding those objectives. Another way of thinking about these objectives is to consider them as the final opinions that examiners must offer in their reports and testimony in JCST cases. These objectives also help to identify the need for various types of data that will (and will not) be required, as described in later parts of the standards.

Understanding the examiner’s objectives begins with a consideration of the court’s task in a JCST case. There are two primary conclusions that a court must reach in addressing cases in which JCST is raised. First it must determine whether the youth meets the statutory definition for being competent to stand trial. If the youth does not, the court must determine whether and how efforts to assist the youth to become competent will be successful.

To assist the court in reaching those conclusions, examiners must collect data to reach several professional (expert) opinions:

- They must determine strengths and weaknesses in the youth’s actual abilities to know, understand, learn, believe and do that which is required of a defendant in a juvenile court proceeding. This is called the *functional objective* of CST evaluations.
- They must provide reasons for any deficits identified in those abilities. This is called the *causal objective* of CST evaluations.
- As explained later, jurisdictions vary in their requirements for examiners to conclude and testify that they believe the youth is competent or incompetent to stand trial. This is the *conclusory objective*.

- If there are serious deficits in the youth’s functional competency-related abilities, examiners must assist the court in determining the prospects for remediation of those deficits and the types of services most likely to yield successful remediation. This is called the *remediation objective*.

These four objectives drive a number of requirements for data collection and formation of expert opinions described later in other parts of an S&P document. So let us describe the objectives in a little more detail.

(a) Functional Objective: Describing the Youth’s Competency-Related Abilities

As an element of each JCST evaluation, examiners must aim to describe the adequacy of the youth’s abilities within functional domains relevant to competency. A number of functional models relevant to JCST are described in the professional literature.⁶ They spell out the abilities that are generally accepted as necessary to be a competent juvenile defendant. In some jurisdictions, local statute identifies clusters of competency-related abilities that must be considered in each case. For example, Florida’s juvenile competency statute (Fla. Stat. 985.19(f)) requires that six types of functional capacities must be assessed and considered, including the youth’s capacities to (a) appreciate the charges or allegations against the child; (b) appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable; (c) understand the adversarial nature of the legal process; (d) disclose to counsel facts pertinent to the proceedings at issue; (e) display appropriate courtroom behavior; and (f) testify relevantly. In examiners’ practice, these broad capacities are broken down into more specific abilities, an example of which is provided in Appendix A.

(b) Causal Objective: Describing Reasons for Deficits in Competency-Related Abilities

Examiners must aim to explain the reasons for any deficits they identify in a youth’s competency-related abilities. As we have noted earlier, the primary reasons typically must be related to clinical conditions (e.g., mental disorder, intellectual disability) and/or to developmental immaturity. Moreover, the examiner must be able not merely to identify these conditions, but to describe the connection, if any, between them and deficits in the youth’s competency-related abilities.

This objective necessarily will require that the examiner obtain sufficient data on the youth’s clinical history and current clinical status. In addition, it will require sufficient data on the youth’s developmental history and current developmental status. A key set of causal considerations in every JCST case is the immature development of cognitive, interpersonal and psychosocial abilities, whether due to *delayed development* (because a youth’s skills are less well-developed than age-peers) or *incomplete development* (because a youth’s skills are age-appropriate but not matured sufficiently to manage competency-related abilities). Finally, this

⁶ See Kruh, I., & Grisso, T. (2009). *Evaluation of juveniles’ competence to stand trial* (pp. 34-38). New York: Oxford University Press.

objective will require that the examiner consider and assess whether the deficits observed in competency-related abilities might be due to the youth's attempt to appear less capable, or the youth's lack of effort to perform during the evaluation. Methods that are required to meet this objective are described in a later section.

(c) The Conclusory Objective: Offering an Opinion on Competency

Jurisdictions differ in their requirements for a JCST examiner to offer an opinion about whether, on the basis of functional and causal data, the youth is competent to stand trial. Whether examiners should offer "ultimate issue opinions" (i.e., offering a conclusion as to whether the youth "is competent" or "is incompetent" to stand trial) has been a controversy in the larger field of forensic mental health assessment. In some jurisdictions ultimate issue opinions in JCST cases are required by statute and in others they are forbidden; the S&P document should highlight one or the other, depending on local requirements and practice norms.

The pros and cons regarding expert testimony on the "ultimate legal question" (the decision the court has to make) can be found in other sources.⁷ Some authorities assert that this is perfectly appropriate, indeed necessary, to assist the court in arriving at a judgment. Others claim that whether the evidence meets the law's standard regarding a defendant's rights is entirely a legal and moral interpretation, for which mental health professionals have no special expertise. When local law is silent on this issue, drafters of the S&P document should take care in setting the local standard of practice, considering the advice of knowledgeable judges and attorneys.

(d) Remediation Objective: Formulating Remediation Plans

When examiners identify significant competency-related incapacities that are the result of legally recognized causes (such as mental disorder, developmental disability or immaturity), they assist the court to determine if available interventions (e.g., education, psychotherapy or medications) are reasonably likely to resolve the incapacities so that the youth eventually can proceed with his or her case. To do this, evaluators will need to know how the youth has responded to past interventions, the nature of local competency remediation services, what is typically needed to treat the youth's disorder, and where those treatment services are available. This Remediation Objective warrants special consideration in any S&P document, but especially in jurisdictions implementing new JCST legislation. According to the representatives of many Forensic

7 Fulero, S.M., & Finkel, N.J. (1991). Barring ultimate issue testimony: An "insane" rule? *Law and Human Behavior*, 15, 495-504; Grisso, T. (2013). *Forensic evaluation of juveniles* (2nd ed.). Sarasota, FL: Professional Resource Press; Heilbrun, K. (2001). *Principles of forensic mental health assessment*. New York: Kluwer/Plenum; Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford.; Redding, R.E., Floyd, M.Y., & Hawk, G.L. (2001). What judges and lawyers think about the testimony of mental health experts: A survey of courts and bar. *Behavioral Sciences and the Law*, 19, 583-594; Rogers, R. & Shuman, D. (2005). *Fundamentals of forensic practice: Mental health and criminal law*. New York: Springer.

Evaluation Systems (FESs), prior to juvenile-specific CST legislation, jurisdictions had little if any programming available for youth found incompetent, and most youth receiving that designation simply had their charges dismissed. As such, forming remediation opinions was a non-issue. Most new JCST legislation, however, does create a requirement to deliver JCST remediation services in appropriate cases. This sometimes places a new responsibility on examiners to offer remediation opinions.

3. Notification of Youth’s Legal Counsel

The S&P document should require that when examiners receive a referral for a JCST evaluation and have arranged a time to meet with the youth, they must notify the youth’s defense attorney. Typically, the youth’s attorney will be assigned prior to the order for a JCST evaluation and will know it is happening. In fact, in most cases the defense attorney will have petitioned the court to conduct the evaluation and will be aware that one is going to occur. Nevertheless, defendants have a right to consult with their attorney prior to any events related to their adjudication, and attorneys have an obligation to advise their clients throughout their adjudication. Notifying the attorney assures that the attorney has the opportunity to meet with the youth prior to the evaluation.

Notification of the attorney can be as simple as leaving a phone message or sending an email to the attorney indicating the date and place of the evaluation. In most jurisdictions, examiners need not be concerned about whether the attorney actually meets with the youth prior to the evaluation—merely that the examiner notified the attorney so that the opportunity was provided. This point of notification, however, can also provide an opportunity for the examiner to talk to the attorney about the attorney’s concerns about the youth’s competency, a point we will discuss in the next subsection on *collateral interviews*.

4. Obtaining Relevant Collateral Information from Records and Interviews

As noted earlier, the professional disciplines in which forensic examiners work use the term *collateral data* or *collateral information* (or, sometimes, *third-party information*) to refer to any information that does not come from the examiner’s direct observation of the person being evaluated. Collateral data in forensic evaluations usually comes from the review of records or from interviewing others with some relevant knowledge about the youth.

One reason for the value of collateral information is to avoid making assumptions that information obtained from any single source is accurate or complete. Examiners should seek to corroborate information by consulting multiple sources. Another reason for collateral information is that youth may present differently in different contexts, so different informants or sources offer a different lens through which to see the youth. Finally, because youth are developing cognitively and socially, they may be less able than most adults to provide accurate and detailed information. For all of these reasons, JCST examiners should access information that goes beyond the self-report of the youth being evaluated. S&P documents should require examiners to consider collateral information. The S&P document also should require that examiners appropriately

document all of the collateral information used in the evaluation, as the court should have a clear sense of exactly what was relied on in reaching the evaluation opinions.

Below we describe several types of collateral information, so that those who are developing the S&P document are familiar with their nature and importance. As we proceed, we will note that certain sources of data should be required. However, we recommend that the S&P document *should not be written to require all of the types of collateral sources that we describe below*, because not every JCST case requires all types of collateral information and in some cases certain collateral information is unavailable. One exception to that rule of thumb, though, is that examiners conducting Post-Remediation Re-Evaluations should always have access to the competency evaluations that led to the youth being found incompetent and in need of remediation services and access to information (either through records or interviews) about the types of remediation services provided to the youth and his or her response to those efforts.

(a) Obtaining Collateral Information from Records

What types of records should the JCST examiner seek to obtain? One is tempted to make the requirement comprehensive, but there are reasons not to do so. JCST evaluations usually do not require the range and type of records that one might wish to obtain in general psychiatric or clinical practice. The JCST examiner is not required to offer a comprehensive psychological description of the child, to advise about long-range treatment, or even to explain the youth's delinquency. The purpose of a JCST evaluation is limited to identifying a youth's capacity to understand the trial process and participate in it, explaining the clinical and/or developmental reasons for deficits in those abilities, and offering recommendations for modifying deficits if they rise to the level that they arguably render the juvenile incompetent to move forward with the legal process. Therefore, JCST examiners should be expected to obtain collateral records only of a type that would meet those objectives. In this light, there are several types of records that are appropriately sought by JCST examiners and should be considered on a case by case basis.

Educational Records. School records can provide information relevant to JCST, especially when the youth has received special education services (which is not uncommon among youth referred for JCST evaluations). The records may describe challenges that interfere with academic success and, as such, identify possible areas of court-related weaknesses as well as inform diagnostic conclusions. The records may contain the results of past testing that assessed general intelligence, specific cognitive abilities, and/or learning abilities that help clarify the youth's developmental trajectory. These records may contain descriptions of the youth's general learning style and/or the typical educational supports used with the youth and the efficacy of those services. Whether or not the youth has been in special education, the records may help the examiner consider the youth's daily functioning in a setting, like court, with significant verbal demands.

Health and Mental Health Records. Health-related records can provide information about physical and mental disabilities identified by providers in the past. They can clarify how those disabilities were identified and their

impact on the youth. They can offer information about treatments offered to the youth in the past and the efficacy of those treatments.

Social Welfare Records. Social welfare records may identify potentially relevant neglect or trauma. They also may describe the general functioning of the family and/or specific struggles the family has faced.

Legal Records. Examiners should always have access to the official charging documents in the instant case since the JCST evaluation focuses on the juvenile defendant's ability to face those specific charges and be aware of the possible dispositions related to those specific charges. These records also may include documents that describe the youth's past record of arrests, juvenile probation's contacts with the youth, and past court documents. The purpose for obtaining the past records is not to offer a review of the youth's past criminal behavior (which is not relevant for JCST evaluations). Their value is for clarifying the degree of experience the youth has had with the justice system, as this might help explain strengths and weaknesses in the youth's understanding of the legal process. Sometimes youth referred for JCST evaluations have been evaluated for JCST before, on earlier charges, offering important information for the current JCST examiner.

(b) Obtaining Collateral Information through Interviews

S&P documents also should require appropriate attention to obtaining collateral information through interviews with people who have past and current contact with the youth. These include parents and/or other caregivers, attorneys and probation officers, and educators or healthcare professionals. Among these, we recommend a requirement that interviews with parents/caregivers should be sought for all JCST evaluations except under unusual circumstances. Exceptions might include evaluations of older adolescents who have been living independently or evaluations of youths who were removed from parental care long ago and have resided in facilities from which collateral records are available. On the other hand, interviews with legal professionals and educational or healthcare professionals should be encouraged but not required in all cases.

Parents and Caregivers. Parents or other types of caregivers (step-parents; non-parent guardians; foster parents; case managers; etc.) serve as critical informants in JCST evaluations. Caregiver input is almost always obtained in child mental health evaluations, and a national survey indicated that a majority of examiners interview caregivers in JCST evaluations.⁸ Adults often have useful information and insights that augment the information otherwise available about a youth. Caregivers often can provide information about historical issues the youth cannot (e.g., early developmental history) and provide a critical method of corroboration of the information the youth can offer. Caregivers often can provide observations of the youth's current day-to-day functioning (e.g., ability to present narrative information), allowing the examiner to compare what is seen in the interview room with what happens at home. Further, interaction with caregivers provides examiners

⁸ Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.

some insights into the often highly influential home-life of the youth which can be critical to understanding the youth and the ways important adults may influence the youth during the adjudication of the case.

Youth and caregivers sometimes are interviewed together and sometimes separately. There are a balance of advantages and disadvantages to both approaches.⁹ Interviewing them together to obtain historical, clinical and developmental information offers some degree of sufficiency, but may reduce the examiner's opportunity to determine what the youth is capable of managing independently. Thus the S&P document should leave this to the examiner's discretion for the most part. The document should require, however, that when the interview focuses on the independent abilities of the youth (e.g., mental status exam; interview of competency-related abilities), the youth should be interviewed alone.

Attorneys and Probation Officers. The youth's defense attorney often has directly observed the youth's behavior during consultation meetings or prior court hearings, and in many cases those observations led to the JCST evaluation referral. The observations of defense counsel can help examiners generate evaluation hypotheses and focus the evaluation process. We recommend that the standards require examiners to contact defense attorneys to obtain this information whenever possible. After all, competency requires the ability to assist one's defense attorney and the defense attorney will already have made observations related to the youth's ability to do so. This is not to say that examiners blindly accept the descriptions of defense counsel. As is true of all evaluation data, examiners must carefully consider the veracity of this information. But to fail to pursue the input and insights of the defense attorney opens examiners to the risk of missing critical concerns. Additionally, the prosecutor on the case should be invited to provide any insights that are relevant to the youth's competency-related functioning, even if it is common that they have minimal information to offer. Despite our recommendations here, the standards subcommittee should carefully consult both the juvenile defense and juvenile prosecution bars in their jurisdiction while considering these steps. We are familiar with several jurisdictions in which these recommendations initially raised objections by prosecutors and required special discussion before it was accepted as appropriate.

Juvenile Probation Officers can provide helpful collateral information because of their past case management role with young defendants. They may have collected useful historical, clinical and developmental information about the youth, and they may have been present at court hearings and be able to offer observations of the youth's functioning there.

Educators and Other Professionals. Many youth who are referred for JCST evaluations will have a history of contact with teachers, other school officials, medical providers, mental health providers, and/or social service workers. The records produced from those contacts can have a wealth of information. However, they sometimes have shortcomings, so that examiners will want to speak directly with these professionals to gather

⁹ Readers interested in a full discussion of these advantages and disadvantages may refer to Kruh, I. & Grisso, T. (2009). *Evaluation of Juveniles' Competence to Stand Trial* (pp. 120-131). New York: Oxford University Press.

information. Except under unusual circumstances, these interviews are typically brief and focused on specific relevant matters.

The S&P document should encourage such interviews on an *as needed basis* but should not require them. It should require, however, that all potential interviewees be made aware that the evaluation is being conducted for court-related purposes and may be shared with others involved in the case. However, the level of detail in the explanation must be balanced with appropriate respect for the privacy or confidentiality of the youth. Details of the legal case should not be shared with the interviewee. And the examiner should limit the process to collecting information rather than sharing information or even “discussing” the youth with interviewees.

5. Informing Parties about the Evaluation

The S&P document should require that examiners provide certain types of information to the youth and caregiver about the evaluation. It should explain that this ideally occurs with both the youth and caregiver before the evaluation contact begins. However, it should recognize that there are certain circumstances in which the youth will be interviewed before the caregiver can be contacted (e.g., when the youth is in detention).

We recommend that the S&P document include a list of the things that youth and caregiver must be told, and the remaining comments in this subsection describe four elements about which they should be told. Some S&P documents include a *Notification Script* for examiners that addresses all of the areas of concern.¹⁰

The process for informing youth and caregivers is called the *forensic notification*. The S&P document should *not* describe this process as *informed consent*. Informed consent is a legal concept that (a) requires a decision maker who is fully informed and competent to decide and (b) stops any further intervention (in this case, an evaluation) if the decision maker decides to refuse the intervention. Obviously some JCST examinees will not be competent to decide. Instead, the primary goal is to meet an ethical (and sometimes legal) requirement to assist the youth and caregiver to understand the evaluation and appreciate its potential consequences.

As we describe these categories of information about which youth need to be informed, we cannot offer detailed prescriptions because states differ in the rights provided to defendants in JCST evaluations. For example, some states protect any information in a JCST evaluation from being used in any future hearings on the youth’s guilt or innocence, while other states do not have such clear protections. The following are four main categories of information that should be explained to youths, but their specifics must conform to what your state actually allows.

¹⁰ See Kruh, I., & Grisso, T. (2009). *Evaluation of juveniles’ competence to stand trial* (Appendix A). New York: Oxford University Press, for a sample notification script.

(a) The Nature and Purpose of the Evaluation

Examiners must inform the youth that his or her competency to stand trial has been questioned and the court has ordered an evaluation. Explaining this will typically require offering a non-legalese explanation of JCST. For example, an examiner might explain, “The judge wants to know if you understand what is happening with your court case and whether you can help your lawyer to defend yourself against the charges.” Typically, the examiner also will provide some basic information about the evaluation process. Because some youth will have had no experience with mental health assessments or will not remember past experiences, they will benefit from a basic outline of the steps involved in the evaluation (e.g., “I will talk to you and talk to your mom about your past, about how you are thinking and feeling right now, and about what you understand about court. I will look at records from your school and from your therapist. Then I will be helping the judge decide whether you understand what is happening in your case.”).

Two additional things can help young people to distinguish the JCST evaluation purpose from other evaluations. First, if youths have had experience with clinical evaluations in mental health settings, they will benefit from an explanation of how the forensic evaluation is different (e.g., “The other psychologists you have worked with were doing everything they could to help you. My job is different. My job is to help the judge in your case as much as I can.”). Second, they can be told that the examiner will not be helping the judge decide whether the youth is *guilty* or *not guilty*, merely whether the youth is able to understand what is happening at court.

(b) The Limits of Confidentiality

The youth and caregiver should be told who will see the evaluation report that will be written based upon information from the evaluation. At a minimum, this will include the judge and the attorneys in the case. In some jurisdictions it may include others (e.g., probation officers; officials from the local mental health system, etc.). This discussion should anticipate legal mandates that exceed the CST context. For example, in many jurisdictions mental health professionals are mandated to report suspected abuse or neglect and to take steps to manage imminent risk of harm to self or others. In jurisdictions in which this is the case, even in JCST evaluations, this should also be explained (e.g., “If I learn from the evaluation that you or another child might be in danger of being abused or neglected by someone, I do have to report that to people who will try to help.”).

(c) Uses of the Information

The youth should be told that the judge will be using the findings from the evaluation to decide whether the youth is capable of participating in this trial or whether the youth has particular needs that require attention before doing that. For example, “If the judge decides you are able to understand the trial and work with your lawyer, the court will continue with your case. If the judge decides you will have difficulty doing those things, you may have to take part in services to help you better understand your case and how to help your lawyer.”

Examiners also should explain the possibility that the examiner may be called to court to testify about the findings of the evaluation. Such an outcome can be stressful or embarrassing for young defendants and the forewarning may enhance coping if that eventually occurs.

In some jurisdictions, the examiner can and should tell the youth that anything they say about the offense with which they are charged will not be used in future hearings about their charges. In some jurisdictions this protection is based in statute while in others it is developed through policy agreements (e.g., the prosecutor's office agrees not to ask examiners what the youth said about the alleged offense and examiners agree to omit that information from reports). As noted earlier, though, such protections are lacking in some jurisdictions, so this information must be tailored to the jurisdiction's actual laws. When potentially self-incriminating statements made in the JCST evaluation are not protected from use by the prosecutor and agreements cannot be reached, examiners need to be instructed about appropriate practice. In some such jurisdictions, for example, examiners do not ask about the alleged incident and extrapolate about the youth's capacity to explain the incident to counsel based on his or her ability to provide narrative descriptions of unrelated events.

(d) Rights of the Juvenile Defendant

Once the nature and potential consequences of the evaluation are explained, examiners should explain the youth's options for participating in the evaluation. The standards subcommittee should seek local legal advice for this aspect of the forensic notification. States vary in their explicit provision of a "right to refuse to participate" in a court-ordered evaluation, but we are aware of no states that have penalties for a defendant's refusal to participate. If the youth chooses to participate, local law might also provide the youth the right to refuse to answer any specific questions that he or she prefers not to answer. The examiner can explain that if the youth chooses not to participate, the examiner will still perform the evaluation (because the court has ordered it), but will have to rely on other information. The S&P document also should provide any instructions examiners should follow in cases in which a youth refuses to participate (e.g., contact defense counsel).

Despite the fact that "competent informed consent" is not needed in JCST evaluations, courts may sometimes want to know how well the youth comprehended what they were told about the evaluation. As a result, the S&P document should require that examiners briefly check on the youth's understanding of the things the youth has been told. This may be done through some combination of asking the youth to paraphrase the warning, open-ended questions about the contents of the warning, or forced-choice questions about that content.

The S&P document also should guide examiners regarding appropriate forensic notification of the youth's parent(s) or other caregivers. In many cases, these caregivers will accompany the youth to the evaluation interview and the warning can be provided to the youth and caregiver(s) together. When this is done, however, any assessment of the youth's comprehension of the notification should be conducted without support or input from the caregiver(s). When caregivers are not present for the interview of the youth, a

separate notification of similar content and detail to that provided to the youth should be provided to the caregiver(s) prior to interviewing him or her.

6. Obtaining Data on Competency-Related Abilities (Interviews and Forensic CST Instruments)

The S&P document should require that the examiner obtain data on a youth's specific abilities to know, understand, believe or do that which the JCST standard defines as relevant for a defendant's participation in the legal process. In addition, the document should describe approved ways for the examiner to obtain that information.

The information the examiner is seeking when examining competency-related abilities pertains to the youth's understanding of various aspects of trials (often called *Factual Understanding*), the youth's beliefs and perceptions about the process (often called *Rational Understanding* or *Appreciation*), how the youth manages hypothetical decisions a defendant might have to make (*Legal Decision-Making*), and matters related to working with an attorney (*Assisting Counsel*). Appendix A in this Guide offers a typical list of those things on which an examiner focuses in this type of a competency interview.

The standards subcommittee can consider whether to allow examiners complete discretion regarding how these data on competency-related abilities will be obtained, or whether to require the use of certain methods. There are three broad methods available:

Individualized Interview Method: Typically data regarding a youth's competency-related abilities are obtained with an interview for which examiners use their own "outlines" and questions about the abilities to be assessed, while applying it in a flexible way so that the youth's answers can be explored in an individualized manner. While all examiners using this approach might be fairly consistent in gaining information about the same abilities, they sometimes differ considerably in their ways of asking questions and the detail they obtain.

Semi-Standardized Interview. One published tool, the *Juvenile Adjudicative Competence Interview (JACI)*,¹¹ guides examiners to ask a standardized (uniform) set of questions, and to do so in ways that are tailored developmentally for adolescents. The JACI is not a test (it is not scored), but simply assures greater consistency between examiners in their interviewing procedures and the types of data that are collected.

Standardized and Normed Tools. A number of very structured methods, using scores or ratings, have been developed for assessing CST abilities for adults.¹² Four of these are sometimes used with juveniles: the *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)*, the *MacArthur*

11 Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.

12 See Zapf, P.A. & Roesch, R. (2009) *Evaluation of competence to stand trial* (pp. 60-74). New York: Oxford University Press, for a review.

Competency Assessment Tool-Criminal Adjudication (MacCAT-CA), the *Evaluation of Competency to Stand Trial-Revised* (ECST-R), and the *Fitness Interview Test – Revised* (FIT-R).¹³ They have the advantage of minimizing error when assessing adults for CST. They can be used with adolescents if applied with care,¹⁴ but the value in doing so is entirely to provide a structured interview, in that they have no norms for adolescents and must be interpreted qualitatively.

Most jurisdictions allow examiners to use any of these three methods. A standards subcommittee might consider requiring the use of at least one semi-standardized or standardized tool, in that the field of forensic evaluations clearly favors the consistency that this provides across examiners. Specifically requiring use of any of the tools that have been standardized for adults is not advised, because their lack of norms for adolescents makes their advantage questionable. Of course, requirements might need to be changed as additional research is conducted on existing tools and as new tools are developed.

7. Obtaining Relevant Clinical and Developmental Data to Explain Competency Deficits

Examiners must obtain data on youths' clinical and developmental history, as well as their current clinical and developmental status. This is essential for explaining the reasons for any deficits in the youth's competency-related abilities (see the causal objective in subsection 2 above). Those reasons that are of most interest for determining incompetency typically involve explanations about the effects on any of three types of conditions on competency capacities—mental disorder, developmental disability, and developmental immaturity, or some combination of them. Often the acquisition of educational and mental health records, together with the examiner's own diagnostic observations of the youth, can contribute to reasonable explanations for those deficits. But the key information for addressing clinical and developmental reasons for youths' competency ability deficits typically will come from the examiner's direct assessment of the youth's current mental and developmental status. The S&P document, therefore, should describe what the FES expects by way of clinical and developmental assessment of the youth. Typically, this will involve: (a) interview data regarding mental health and developmental history, (b) assessment of current functioning and, when needed, (c) psychological testing.

13 Everington, C., & Luckasson, R. (1992). *Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST*MR): Test manual*. Worthington, OH: IDS Publishing Corporation; Poythress, N.G., Nicholson, R., Otto, R.K., Edens, J.F., Bonnie, R.J., Monahan, J., & Hoge, S.K. (1999). *The MacArthur Competence Assessment Tool – Criminal Adjudication: Professional manual*. Odessa, FL: Psychological Assessment Resources; Rogers, R., Tillbrook, C.E., & Sewell, K. (2004). *Evaluation of Competency to Stand Trial – Revised: Professional manual*. Lutz, FL: Psychological Assessment Resources; Roesch, R., Zapf, P., & Eaves, D. (2006). *Fitness Interview Test – Revised: A structured interview for assessing competency to stand trial*. Sarasota, FL: Professional Resource Press.

14 For guidance, see Kruh, I., & Grisso, T. (2009). *Evaluation of juveniles' competence to stand trial* (pp. 142-158). New York: Oxford University Press.

(a) Clinical and Developmental History

The S&P document should require that the evaluation include data collection and description of the youth's clinical and developmental history. Basic information about a youth's historical experiences provides critical context with which to understand current functioning, current developmental status, and the current symptoms of mental disorders. This will require that examiners gather information about major life experiences, such as any medical, mental health or other conditions that have been identified by professionals in the past. In addition, all of a youth's development occurs within a family context of some kind, so the characteristics and impacts of that family context should be understood.

When examining a youth's clinical and developmental history, the following are some of the key historical domains that should be considered in most cases:

- Family History and Relevant Cultural Considerations
- Birth and Early Developmental History
- Trauma History
- Medical History
- Academic History
- Social/Relationship History
- Substance Use History
- History of Conduct Problems and Juvenile Offenses
- Mental Health History

A guide to conducting such interviews in JCST evaluations has been published.¹⁵ Corroborative information may be gained from reviewing collateral records and conducting collateral interviews, and, in some cases, through the results of past psychological testing.

(b) Current Clinical and Developmental Status

JCST is a current mental state question (focused on present ability and probable future ability). Observation of current status is integrated with the historical information to offer explanations for the youth's competency deficits. When evaluating current status, the examiner seeks a "snapshot" of the youth's characteristics at the time of the evaluation. The following are key domains that should be considered when examiners look at a

¹⁵ See Appendix B in Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.

youth's current functioning. Examiners should be required to obtain information on each of them in all cases, although the degree of detail needed within any domain will vary considerably across cases:

- General Presentation
- Psychomotor Activity and Speech Behavior
- Mood, Emotions and Affect
- Thought Processes and Perceptual Status
- Cognition and Intelligence
- Insight and Judgment
- Recent and Current Symptoms of Mental Disorders
- Impact on Functioning of any Current Medications
- Youth's Motivation, Attitude and Potential for Feigning Deficits or Exaggerating Abilities

Much of this information is gathered through observations of the youth made throughout the evaluation contact and using a focused period of "mental status" interviewing. A published guide is available for interviewing the youth about these issues for purposes of a JCST evaluation.¹⁶ It is best when the information from that interview is supplemented with information gained from interviewing caregiver(s) about recent and current functioning, information gained from recent collateral records and collateral interviews, and, in some cases, the administration of psychological testing to the youth, caregiver(s) and/or other collateral informants (e.g., teachers).

(c) Psychological Testing

Psychological testing often is helpful, and sometimes very important, in determining a youth's reasons for deficits in competency-related abilities. Psychological testing can help reduce examiner-based errors in clarifying cognitive abilities, psychological traits, mental health symptoms, and clinical conditions. Psychological tests frequently are used in JCST evaluations to assess intelligence or academic achievement, verbal comprehension, memory or other specific cognitive functions, social maturity, and various mental disorders and psychiatric diagnostic conditions.

The S&P document should not require psychological testing. Whether it is used should be left to the examiner's case-by-case discretion, which generally is the standard in the professional fields in which

¹⁶ See Appendix B in Grisso, T. (2005). *Evaluating juveniles' adjudicative competence: A guide for clinical practice*. Sarasota, FL: Professional Resource Press.

examiners work. Instead, S&P documents should encourage and allow it, and the document should offer guidance for examiners when they are making decisions about (a) when and how to use psychological tests and (b) selecting appropriate tests. One way to do this is to offer *principles* that examiners are required to apply when making those decisions. We recommend the following principles:

Relevance: Any psychological testing administered within a JCST evaluation should be relevant for addressing the basic objectives and questions within a JCST evaluation. For example, a test that seeks to identify risk of recidivism or antisocial tendencies in a youth would be inappropriate because it addresses nothing that is relevant for JCST.

Compliance with professional and ethical standards: Any psychological testing administered within a JCST evaluation should be commercially available and have been successfully peer reviewed. Tests should have a manual that specifies the manner in which it was developed and the standardized manner in which it must be administered.

Appropriate for use with the given examinee: Any psychological tests used in a JCST evaluation should be appropriate for use with persons like the juvenile defendant. No test is valid for all types of people. Every test has been designed for particular age groups and genders (usually both genders, but not always). Tests that have been validated are only valid for the populations that were in their validation research, which limits their proper use by way of age, gender, race/ethnicity, the individual's primary language, and sometimes reading ability. A test should not be used with persons outside the demographic boundaries on which the test was validated. Moreover, some tests are known to under- or over-estimate the target traits or abilities for members of certain cultural groups.¹⁷

8. Formulating and Offering Opinions and Recommendations

When all data are collected, examiners engage in a process of interpreting their data in a manner that can assist the court in its JCST decisions. The S&P document should require that examiners adhere to three principles when they are engaged in this process. We describe those principles below. Note that when describing these principles, we emphasize that the examiner seeks to formulate an opinion but is not required to arrive at one in every case. Sometimes the data simply do not allow an examiner to form an opinion with confidence. When that is so, the examiner may appropriately “have no opinion” about the matter at hand. The S&P document, therefore, should require examiners to use these principles to seek an expert opinion, recognizing that this search sometimes will not lead to a confident conclusion because the data do not allow it.

17 Reynolds, C.R. & Suzuki, L.A. (2013). Bias in psychological assessment: An empirical review and recommendations. In J. Graham, J. Naglieri, & I. Weiner (eds.) *Handbook of psychology*, volume 10. New York: Wiley.

(a) Opinions must be formed to address each evaluation objective.

Examiners should be required to seek expert opinions to address each of the objectives discussed in subsection 2. Recall that these objectives were Functional (opinions about the youth's competency-related abilities), Causal (opinions about the causes for any of the youth's deficits in competency-related abilities), Conclusory (whether the youth should be considered competent or incompetent to stand trial), and Remediation (if incompetent, then the likelihood and method for remediating deficits in competency-related abilities).

Recall that our earlier discussion of these objectives indicated an exception to this rule when applied to the Conclusory opinion—that is, whether or not the youth is competent to stand trial. We explained that some jurisdictions will choose to require a Conclusory opinion, while other jurisdictions will leave this to the examiner's discretion or will expressly exclude this as an examiner's objective.

Note that requiring examiners to offer an opinion on each of these objectives does not mean that they must offer each with certainty. For example, after diligent data collection and analysis, an examiner might still be uncertain about the causes of a youth's deficits in functional abilities. If so, testifying to that uncertainty, and offering alternative possible causes, fully satisfies the examiner's responsibility to offer an opinion on the Causal question.

(b) Examiners must offer explanations for their opinions.

The S&P document should require examiners to be able to offer the factual bases and explain the reasons for their opinions. This principle follows from the fact that a JCST evaluation is intended to inform the court and the legal process involved in arriving at its decision. All parties in the legal process (defense and prosecution) must be provided sufficient information to understand the basis for the expert's opinions, and to be able to challenge the evidence, including the data and logic that the examiner believes support the opinion. This obligation extends to the examiner's testimony as well as the written report. The report should offer explicit explanations for each opinion.

The examiner's explanations will focus on the data that support the opinion, as well as the logic (reasoning) that leads from the data to the opinion. Often that logic will require descriptions of how scientific or clinical literature guided the examiner's reasoning. Examiners should be encouraged to see their role as one of assisting the court to "reason along" with the examiner so that the strengths and weaknesses of each opinion can be considered.

This does not mean the examiner must be able to reach a firm opinion in every case. Some cases offer conflicting data, missing data, or other problems that do not allow an examiner to reach a firm opinion. As long as the examiner can explain the data that were considered and the reasoning that was applied to them, the court is equipped to reach reasonable legal determinations.

(c) Examiners must employ developmental reasoning.

Examiners should be required to interpret their data and reason about it with attention to the developmental qualities of adolescence. As noted several times in this Guide, JCST evaluations differ from adult competency evaluations in important ways. In both, deficits in competence abilities may be due to symptoms of mental disorder or intellectual disability. But the developmental status of adolescents creates a third reason for such deficits, because of their developmental immaturity—cognitively, emotionally, and socially. Even when symptoms of a mental disorder could explain a youth’s deficits, that explanation is not complete without considering the alternative possibility of the effects of developmental immaturity, or the possibility that both sources are contributing to compromised competency-related abilities.

9. Requirements for Outlining and Drafting Written Reports

Generally, all court-ordered evaluations result in a written report of the evaluation findings. Reports provide a professional and legal record that the evaluation occurred, how it occurred, and what was found. Reports must contain useful information that can be readily understood by legal professionals so that sound JCST decisions are reached.

We recommend that the S&P document require that examiners’ reports adhere to a standard structure or outline that will be used in all JCST reports. This does not mean that examiners should be overly restricted in their individual writing styles, or that all reports must “look exactly alike.” For example, a common way to set such standards is to require that all reports have four or five main headings that categorize types of information, while allowing examiners to organize the information within those headings as they wish. One main-heading structure for JCST evaluations that works for many jurisdictions looks like this:

- **Referral Information:** Describing the source of the referral, reasons for the referral, and the legal definitions applied
- **Evaluation Method:** Describing when and where the interview of the juvenile defendant was performed, all persons interviewed, and listing all methods (e.g., testing) employed
- **Clinical and Developmental Information:** Describing all data about clinical and developmental history and status that were acquired
- **Competency-Related Abilities:** Describing the examiner’s observations of the youth’s competency-related abilities
- **Opinions and Recommendations:** Describing and explaining the examiner’s interpretations of the data to arrive at opinions regarding the Functional, Causal, Conclusory (if appropriate) and Remediation objectives.

Within these headings, the standards can allow examiners leeway to employ sub-headings that suit their own style. An example of a report outline offering both major headings and sub-headings, has been published as a resource.¹⁸ The standards subcommittee can also consider providing examiners with a word-processing report template that includes the major headings and sub-headings of the proposed report structure and into which examiners can add the contents of each individual report. Some jurisdictions have published these templates online.¹⁹

Requiring a certain level of uniformity in a jurisdiction's JCST reports has a number of advantages and benefits:

- Some degree of required structure typically increases the clarity of examiners' reports and often is welcomed by them as an aid to clear communication
- Judges and attorneys can more easily find information in a report when reports have some degree of uniformity
- Professionals who are tasked with evaluating the quality of examiners' reports (a process we describe in Module 3) can evaluate the reports more fairly and with greater ease

As with all of the issues discussed in this module, the S&P document must seek to integrate national-level report writing guidelines with local report requirements. JCST statutes increasingly specify information that must be provided and/or issues that must be addressed in the JCST report.²⁰

Module 2 Summary

In this module we have described the development of standards for JCST evaluations, intended to be codified in a Standards and Procedures document that provides requirements binding on JCST examiners in one's jurisdiction. After discussing the reasons for such standards and how to think about the "levels" of standards, we outlined nine categories for organizing the standards. Then we offered details regarding what to require, and how to think about those choices, for each of the categories.

18 See Kruh, I., & Grisso, T. (2009). *Evaluation of juveniles' competence to stand trial* (Appendix A). New York: Oxford University Press.

19 See, for example, www.scscourt.org/forms_and_filing/forms/ForensicEvaluationReportTemplate.doc.

20 For example, Utah's JCST statute (UT Code § 78A-6-1302 (2015)) requires that examiners (a) identify the specific matters referred for evaluation; (b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each; (c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion; (d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and (e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

Standards alone, of course, will not assure that a jurisdiction's JCST evaluations will be improved by those requirements. The quality of JCST evaluations ultimately will depend on the examiners who perform them, educating them to the standards, and employing some method for assuring that they apply the standards. Those matters are the focus of Module 3.

MODULE 3

QUALITY CONTROL: DEVELOPING A PROCESS TO APPLY THE STANDARDS

Module 2 described the development of standards to guide how JCST evaluations should be conducted. We noted that developing those standards is one important part of an effort to assure the quality of JCST evaluations because the standards establish what is expected of those who will conduct the JCST evaluations. The quality of a Forensic Evaluation System's (FES's) JCST evaluations, however, will depend also on the training and skills of those who conduct them and how well they adhere to the standards. Therefore, a second important part of such a plan is *quality control*.

Quality control refers to *a systematic program of oversight that is designed to assure that JCST evaluations as conducted meet the standards for JCST evaluations on which the FES has agreed*. Quality control has three main features that will be discussed in this Module:

- A. *Selecting a workforce*—engaging professionals competent to meet the standards.
- B. *Training activities*—assuring assure that professionals know what the standards require and that they possess the skills to adhere to them.
- C. *Monitoring professionals' application of the standards*—assuring that the quality that the standards are intended to provide actually is provided.

After describing these features of a quality control program, we offer suggestions for:

- D. *Constructing a Quality Control Subcommittee*—to implement the above features of a quality control plan.

The ultimate purpose of a quality control plan is to obtain compliance. The plan must seek to develop a set of professionals whose conduct of JCST evaluations produces evaluations that meet the system's standard. The term "compliance" has a coercive connotation, and to some degree a quality control plan must have "teeth"—consequences for failing to meet the standard. As Wettstein²¹ noted, there is a tendency for practitioners "to be satisfied with the quality of their evaluations, believe that little improvement is needed, and fail to undertake self-assessment or quality improvement unless externally mandated."

On the other hand, the best quality control systems provide positive benefits, being constructed to contribute to professionals' development and improvement of their practice. Many professionals are interested in improving their skills and being regarded by their peers as competent. This may be motivated by a sincere desire for self-improvement or by an interest in financial gain, reputation, and positive social regard associated with competent practice. In either case, a quality control plan that is rewarding to practitioners is likely to have greater success than one that simply demands compliance and offers negative consequences for non-compliance.

Developing a Qualified Workforce of JCST Examiners

The first step in a quality control plan is to identify a workforce of JCST examiners who meet basic eligibility requirements. This threshold condition for the future quality of JCST evaluations focuses on whether a professional meets the minimum by way of professional background and specialization to conduct JCST evaluations. Part of this eligibility pertains to the professional academic degree (e.g., M.D., Ph.D., M.A.) of the examiner and the training that it signifies. But, as we will explain later, additional requirements for basic eligibility should be applied. In this section, we offer recommendations regarding eligibility for JCST evaluations with regard to specific professions. Then we discuss what degree of specialization within the examiner's profession should be required.

Basic eligibility requirements for JCST examiners seek to assure that they enter the Forensic Evaluation System (FES) with the kinds of experience and training that are more likely to support the quality standards that the FES has set for evaluations. Many states specify these professional requirements in statute, administrative codes, or other state-wide regulations. Other states allow local courts to develop their own eligibility requirements. In our estimation, the latter practice is not recommended as it may foster inconsistency in the quality of evaluations across jurisdictions within a state. Although complete consistency is unlikely within any FES, we recommend that policies that support inconsistency should be avoided whenever possible.

²¹ Wettstein, R.M. (2005). Quality and quality improvement in forensic mental health evaluations. *Journal of the American Academy of Psychiatry and the Law*, 33, 158-75, at p. 172.

In preparation for this section, it is helpful to know the meaning of professional degrees. “M.D.” degrees are awarded to medical doctors,²² but doctors specialize in various areas of medicine (e.g., dermatology, genetics, surgery), one of which is psychiatry. Thus not all M.D.s will be qualified to make psychiatric diagnoses. Likewise, the advanced degree for psychologists is a Ph.D. (Doctor of Philosophy) with specializations in various areas (e.g., social psychology, physiological psychology), one of which is clinical psychology, qualifying the psychologist to provide clinical psychological services. The Psy.D. (Doctor of Psychology) typically is trained to practice clinical psychology. Some clinical psychologists have an M.A. (Master’s) degree only, and in most states they are restricted from performing many of the clinical functions of Ph.D./Psy.D clinical psychologists. Some educational and counseling psychologists have Ed. D. (education) degrees, yet may be fully qualified to diagnose mental disorders, depending on the nature of their training. The Ph.D. is rare among social workers, with the great majority of practicing social workers having an M.S.W. degree.

From this perhaps unexpectedly complex description, there is one simple message. The professional’s degree is a threshold requirement for providing clinical services, but the degree alone will not assure appropriate clinical expertise for conducting evaluations for the courts. Further evidence of appropriate clinical training will be required.

A second matter to understand regarding the expertise of professionals for JCST evaluations is the nature of the child-relevant and forensic expertise that is necessary. Typically, a JCST evaluation will require the ability to: (a) understand children from a developmental perspective; (b) diagnose children’s mental disorders, including intellectual disabilities and other cognitive disorders; (c) understand the law’s definitions and concepts associated with CST; (d) understand the manner in which children’s abilities and disorders relate to those legal concepts, as well as (e) conduct the evaluation in a manner consistent with general forensic evaluation practice standards.²³

Eligible Professions

Many jurisdictions specify the professions (and sometimes the professional degrees) that can conduct and testify about forensic mental health evaluations for the courts. If your state does not offer this specification, then this will be an important initial consideration. Psychiatrists, clinical and counseling psychologists, and clinical social workers all may have training in diagnosing mental disorders. But they will differ in other ways: for example, psychiatrists generally possess greater knowledge of psychopharmacology, psychologists have greater training in psychological testing, and social workers are trained with a model that emphasizes evaluating youths in a social context.

²² Some medical doctors receive the “D.O.” degree, Doctor of Osteopathic Medicine. They are as fully eligible as M.D.’s to practice medicine, but specialize in certain ways not relevant for our discussion here. Rarely are D.O.s involved in forensic work. Nevertheless, all of our later references to M.D.s will apply to D.O.s as well.

²³ Kruh, I., & Grisso, T. (2009). *Evaluations of juveniles’ competence to stand trial*. New York: Oxford University Press.

Most states allow Ph.D./Psy.D./Ed.D. clinical psychologists and M.D. psychiatrists to conduct JCST evaluations. Some explicitly or implicitly allow a broader array of professionals with master's degrees in social work, counseling, or psychology,²⁴ while other states explicitly do not allow persons with M.A.s to perform JCST evaluations. Whether or not social workers or other masters-level clinicians should be considered eligible to conduct JCST evaluations seems to be controversial. These decisions are often influenced by the lobbying of various professional organizations. A representative from one state where social workers have been permitted to perform JCST evaluations for many years reported that they have not encountered notable problems resulting from this policy. Perhaps this is because that state has many other strong quality assurance mechanisms in place. Given cultural and ethnic variations in the workforce composition of different professions, allowing a broader array of professionals to conduct JCST evaluations may also enhance the availability of linguistically and culturally competent examiners.²⁵

Additional Training and Experience Requirements

Beyond professional credentials and appropriate clinical training and experience, many states require examiners to have two additional types of training and/or experience,²⁶ both of which are especially relevant for JCST evaluations: expertise in *forensic mental health* applications, and expertise in *child and adolescent development and mental health*.

(a) Forensic Mental Health Training/Experience

Conducting JCST evaluations for courts requires certain types of knowledge and skills that are not needed in general clinical practice. They include knowledge of the role of CST in the criminal or juvenile justice system, the laws that define CST, the legal process by which CST is determined, and the special restrictions and obligations of the examiner who performs evaluations for use in legal proceedings.²⁷ A primary cause for problems with forensic evaluation reports, in general, is a lack of adequate training to recognize special

24 Warren, J.I., Jackson, S.L., & Jones Coburn, J. (2016). Evaluation and restoration of competency to stand trial. In Heilbrun, K., DeMatteo, D. & Goldstein, N.E.S. (Eds.), *APA handbook of psychology and juvenile justice* (pp. 489-514). Washington, DC: American Psychological Association.

25 Frost, L.E., de Camara, R.L., & Earl, T.R. (2006). Training, Certification, and Regulation of Forensic Examiners. *Journal of Forensic Psychology Practice*, 6, 77-91.

26 Frost, L.E., de Camara, R.L., & Earl, T.R. (2006). Training, Certification, and Regulation of Forensic Examiners. *Journal of Forensic Psychology Practice*, 6, 77-91.

27 Kruh, I., & Grisso, T. (2009). *Evaluations of juveniles' competence to stand trial*. New York: Oxford University Press.

requirements when communicating clinical information in legal settings.²⁸ We have mentioned many of these requirements in Module 2, and many guides to these practice standards have been written.²⁹

Clinicians vary in their past exposure to forensic mental health and evaluations for the courts. The majority of psychiatrists, clinical psychologists, and social workers have had little training or experience regarding the forensic demands of CST evaluations (adult or juvenile). However, some clinicians will have had some exposure in their training, such as through coursework in graduate programs that have a specialized forensic training track or have faculty with forensic expertise. Other clinicians may have greater exposure to forensic evaluations, having completed clinical rotations in forensic settings within clinical placements, internships, residencies, or fellowships. After their formal training, some clinicians will have accessed forensic training through continuing education.

A more highly specialized set of forensic clinicians have gone on to obtain national certification in forensic practice, such as Certification in Forensic Psychiatry by the American Board of Psychiatry and Neurology or Certification in Forensic Psychology by the American Board of Forensic Psychology (ABFP). Completion of ABFP requires, for example, 1000 hours of forensic experience within five years, passing a written and oral examination, and expert review of work samples. These credentials signify the achievement of a high level of skill in forensic practice and an ability to be a leader in the field. It would not be practical, however, to require this level of specialization for JCST examiners; there are simply too few board-certified forensic professionals in any given state to meet the needs for forensic evaluations.

So there is the potential for a great deal of diversity among clinicians in the depth and quality of forensic clinical training. Having completed a few supervised forensic evaluations as a part of a summer-long clinical placement is a different experience than obtaining rigorous board certification. Yet some locations require only that JCST examiners have had “forensic training” or “forensic experience” without clarifying what that means. JCST FES representatives have told us that examiners use a wide variety of experiences to represent themselves as meeting the requirements, some of which seem adequate and some of which do not.

FESs will need to develop eligibility requirements associated with forensic knowledge and experience for selecting clinicians prepared to conduct JCST evaluations from the larger pool of clinicians interested in doing the work. It is best to identify specific content areas about which examiners must be able to demonstrate

28 Packer, I.K. (2008). *Postdoctoral Residencies in Forensic Psychology*. *Encyclopedia of Psychology and Law*. Thousand Oaks, CA: SAGE Publications.

29 Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd ed.). New York: Kluwer/Plenum; Heilbrun, K. (2001). *Principles of forensic mental health assessment*. New York: Kluwer/Plenum; Heilbrun, K., Grisso, T., & Goldstein, A.M. (2009). *Foundations of forensic mental health assessment*. New York: Oxford University Press; Melton, G.B., Petrila, J., Poythress, N., Slobogin, C., Lyons, P., & Otto, R. K. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd edition). New York: Guilford; Rogers, R. & Shuman, D. (2005). *Fundamentals of forensic practice: Mental health and criminal law*. New York: Springer.

experience and/or knowledge. What type of knowledge should they be able to demonstrate? The curricula of some academic forensic training programs offer some guidance:³⁰

- Knowledge of the broad differences between criminal justice and juvenile justice in the United States, as well as basic principles of the state’s juvenile legal system.
- Knowledge of specialized methods used in forensic psychological evaluations in the issue in question (in this case, JCST evaluations).
- Knowledge and abilities consistent with relevant ethical guidelines when performing evaluations in forensic settings.
- Knowledge of rules, procedures and techniques related to expert witness testimony.
- Ability to analyze research and appropriately apply it to forensic practice.

It is important to note that even some examiners specialized in juvenile forensic evaluations will lack the types or extent of forensic training that should be required for JCST evaluations. For example, the most common evaluation conducted in juvenile justice contexts is the rehabilitation planning evaluation (sometimes called a dispositional evaluation). These evaluations seek to identify key needs of youth who have been adjudicated in hopes of reducing the likelihood of future court involvement. These evaluations are often not so different from general clinical evaluations. Rehabilitation planning examiners may perform their jobs well with minimal specialized forensic training. Yet if a state’s juvenile forensic examiners have not been faced with JCST evaluations, and therefore have little experience with them, they are not necessarily ready to perform such evaluations merely because they have been performing these more clinical types of juvenile forensic evaluations. The additional abilities that are relevant for JCST evaluations are as follows:

- Use and interpretation of structured assessment instruments for JCST evaluations.
- Use and interpretation of various types of data (e.g., collateral data) with relevance to JCST evaluations.
- Integration and formulation of opinions that are consistent with JCST legal and forensic concepts.
- Report writing and testimony that clearly addresses JCST concepts.

(b) Child and Adolescent Development and Mental Health

Beyond the two training questions we have discussed—mental health training and forensic training—JCST examiners will need specialized training for work with children and adolescents. Virtually all mental health professions have long recognized that their professionals must be child-trained to work with children. There

30 Packer, I.K. and Grisso, T. (2011). *Specialty Competencies in Forensic Psychology*. New York: Oxford University Press.

are several reasons that they do so, and each reason is highly relevant for performing CST evaluations with juveniles.

First, mental disorders and developmental disabilities of children and adolescents are considerably different from those of adults. Some disorders are more commonly diagnosed in youth whereas others are rarely diagnosed in youth. Some disorders tend to manifest differently in youth than in adults. Differential diagnosis tends to be more complex with youth than with adults. And JCST evaluations, of course, often require accurate diagnosis when explaining a youth's deficits in competency-related abilities.

Second, recognizing developmental status requires knowledge of normal development of children and adolescents at various ages, as well as developmental factors that may delay a youth's development. Most jurisdictions explicitly recognize that some juveniles may be incompetent based on their developmental immaturity, even if they have no mental disorder. And there is a growing scientific literature on ways that normal childhood cognitive and psychosocial development are relevant for legal decisions about their competence.

Third, evaluation of child and adolescent clinical and developmental conditions requires a much different set of tests and tools than are used with adults. Moreover, not all mental health professionals are trained in interviewing children and adolescents, which requires different strategies than with adults.

The need for child and adolescent training creates difficulties for some jurisdictions when identifying qualified JCST examiners because, in most jurisdictions, there are fewer of them among the community's otherwise qualified examiners. Our conversations with representatives from a number of states with new JCST legislation suggest that jurisdictions sometimes try to recruit examiners from the pool of available adult CST examiners, because they have CST evaluation experience. Yet if they do not have child training, we must advise that this be done with extreme care to assure JCST evaluations are conducted competently. Lacking adequate developmental training greatly elevates the risk of making critical evaluation errors, as the ethical standards of the examiners recognize.

What constitutes "adequate" training for child and adolescent work? We can start by creating a way to think about "levels" of training:

- *Level 1:* It is very common for medical and mental health professionals at least to have "exposure" to children and adolescents during their formal training, no matter their eventual specialty. Often, though, this amounts to no more than a few cases or a brief training experience (e.g., three months). This level is far below the profession's standard for practicing regularly with children and adolescents.
- *Level 2:* Some professionals will have obtained some substantive child, adolescent and developmental training. They may have completed focused child and adolescent training through graduate coursework, extended clinical training rotations (e.g., one year) and/or specialized continuing education

programming after their formal training years. These routes can lead to ethical and competent practice with children and adolescents, but only if the training is of a sufficient amount and type.

- **Level 3:** Some professionals will have had enhanced child and adolescent training during their medical or graduate school years, fully qualifying them ethically to specialize in child mental health services. Some clinical psychologists will have graduated from accredited Child-Clinical training programs and some psychiatrists will have completed accredited Child and Adolescent Psychiatry residency programs. And some of those will have gone on to achieve certification in child practice by national boards.

State statutes often are vague about the type of developmental training that is necessary to qualify for conducting JCST evaluations. The juvenile competency statute in Utah, for example, requires that JCST examiners possess “experience in... juvenile brain development,” without specifying the quality of the experience that is needed. The juvenile competency statute in Michigan requires JCST examiners to have “clinical understanding of child and adolescent development,” without specifying what qualifies for adequate understanding.

We recommend that the FES build into its qualifications a level of developmental experience and training that excludes what we have called “level 1,” largely because the examiners’ professions recognize that level as inadequate. “Level 3” examiners are ideal, but many jurisdictions may have difficulty finding enough of them, especially when need for forensic qualifications is added. Therefore, much of the attention to child-training qualifications will focus on “level 2” candidates, where screening for the amount and type of training and experience becomes especially important. We will return to this matter of weighing the degree of developmental training of examiners in the following subsection (“Balancing the Requirements”).

A Model for Selection Requirements to Build a JCST Workforce

What, then, should the FES require by way of training and experience for eligibility of professionals to perform the FES’s JCST evaluations? The following guidelines are offered:

- **Degree:** In most states, FESs that manage JCST evaluations require as a threshold condition possession of an M.D., D.O., Ph.D., Psy.D, or Ed.D. degree. A few states allow professionals with master’s degrees in social work or counseling to perform them as well.
- **Clinical Training and Experience:** Almost all FESs that manage JCST evaluations require specialization in psychiatric medical practice, clinical or counseling psychology, or clinical social work. These specializations may have been acquired during one’s formal training or through sufficient experience in practice after formal training. One rule of thumb is that the professional must be licensed in the state to offer psychiatric, psychological or social work services to the community.
- **Child Clinical Experience:** Most FESs that manage JCST evaluations require at least some evidence that the professional has clinical expertise specifically in child clinical services or evaluations. Ideally the

professional has had formal training to do this, although some clinicians have gained such experience (sometimes with continued education training) after their formal training.

- **Forensic Experience:** Some forensic experience (in either criminal or juvenile court contexts) is preferred. However, professionals that meet the previous three requirements but have had little or no forensic experience need not be excluded, under certain conditions that we will explain in the next subsection.

Of course, setting standards that restrict professionals from being eligible for certain types of practice can meet with resistance from their professional associations. Psychiatric, psychological and social work associations (state and national) operate in part to promote their professionals' employment opportunities. Sometimes, therefore, an FES's restrictions on their practice may meet organized resistance.

We recommend two precautions to avoid such complaints. First, assure that professional associations' concerns are addressed during the planning phase (through the FES coordinating committee or the standards subcommittee process.) Proposed eligibility requirements, for example, can be sent to local professional associations for review. Second, if resistance is encountered, ask the associations to demonstrate their complaint based on the ethical standards published by their own association. Virtually all such standards limit their own professionals' practice to areas of specialization, and the recommendations offered in this Guide typically will be supported by professional ethical standards to practice only in one's area of competency.

Balancing the Requirements

Some jurisdictions might have few examiners who can meet all four of the degree/experience requirements we have described above. As noted earlier, the requirements should be set to a point that maximizes the potential for good JCST evaluations, yet not so restrictive that it seriously limits the FES's access to examiners. What if some available examiners can meet only some of the above requirements but not all of them?

We recommend that the first two requirements—degree and clinical training—are basic and cannot be flexed. But what if a potential examiner has either child clinical or forensic experience, but not both? As noted in the next section, we recommend that FESs responsible for JCST evaluations provide its JCST professionals with continuing education (CE) of two kinds: initial eligibility for entry into the FES, and ongoing continuing growth training. Knowledge of juvenile courts, JCST legal requirements, and the courtroom skills we described earlier can be learned with relatively modest continuing education training.

Child developmental and clinical knowledge and skills, however, are much more complex and are less teachable in a CE format. For this reason, *child training and experience is of greater necessity as a basic eligibility requirement than forensic experience*. The child training requirement should be flexed only with regard to the *amount* of child clinical experience of the professional, requiring less of it if the jurisdiction has few child clinical professionals. The requirement for some child clinical experience must be maintained. Any

examiners brought into an FES without such experience must obtain adequate child clinical training to function competently and ethically.³¹ Further, the quality and depth of an applicant's training in child and adolescent mental health should be heavily weighted in hiring and/or contracting decision making. And substantive child and adolescent mental health coursework with clinically supervised child and adolescent evaluation experience should be the ideal.

Training and Supervision within the Forensic Evaluation System

In the Section above, we discussed basic eligibility requirements for selecting professionals to conduct JCST evaluations. But given the unique combination of knowledge and skill required for JCST evaluations, even clinicians who meet these eligibility requirements are likely to have training needs. Ideally, JCST Forensic Evaluation Systems (FESs) will offer ongoing continuing education training that examiners must complete and address potential needs for supervision or consultation. This section describes the purposes and implementation of an FES's JCST CE training and supervision activities.

The purpose of FES CE training and supervision focuses on both the FES's needs for quality assurance and the growth and development of its examiners. Considering these needs together, we recommend that CE training be of two types: (a) *Initial Eligibility Training*, and (b) *Continued Growth Training*. We recommend that both types of training be required as part of the professional's initial eligibility and as a condition for their continued participation in JCST evaluations within the FES. We then review (c) potentials for offering on-going supervision and consultation to JCST examiners, and finally, we describe (d) the value of such training efforts.

Initial Eligibility Training

Many jurisdictions have found it helpful to require that professionals who are qualified (selected) to perform an FES's JCST evaluations undergo an initial training session before they can accept JCST cases on referral from the court. Initial eligibility trainings may be between 1 and 5 days, depending on the resources of the FES. Such initial eligibility trainings have several primary purposes.

First, they seek to assure that all JCST examiners know the standards that the FES requires for JCST evaluations in service to the court. Typically, this part of the training will be guided by the Standards and Procedures document (see Module 2). Even new examiners with ideal training and experience in their background will need to learn the local requirements and expectations for conducting JCST evaluations.

³¹ See, for example, Standard 2.01(b) of American Psychological Association (2010). *Ethical Principles of Psychologists and Code of Conduct* (2002, Amended June 1, 2010). Retrieved from <http://www.apa.org/ethics/code/index.aspx>

Second, initial eligibility trainings often focus on the legal context for JCST evaluations. This aspect of the training can be especially important for examiners who have had little forensic experience, either generally or in juvenile justice systems. Initial eligibility training might include:

- A review of the differences between forensic and general clinical assessment, and of the specialized ethical responsibilities in forensic work
- A review of the local juvenile court and its legal missions and policies
- A review of federal constitutional requirements, and their legal logic, relevant for JCST
- A review of the basic state statutes and case law that control JCST in the FES's jurisdiction
- A review of how CST is defined legally and of the defendant abilities that it involves
- A description of the actual process of juvenile cases in which CST has been raised, including the referral process, the adjudication of competence/incompetence, remediation of incompetence, and post-remediation re-evaluation of competence
- The legal and administrative responsibilities of JCST examiners in the above contexts, including matters of expert testimony

Third, such trainings often include discussion and demonstration of special assessment methods and tools that have been proven to be of value in JCST cases. Some of these methods assess clinical features of the child, while other forensically-specialized tools have been developed for assessing the youth's specific abilities directly related to the legal concept of CST.

Finally, initial eligibility trainings often provide some discussion of how developmental and clinical reasoning are applied to JCST cases. Often this aspect of training will involve intensive case studies, amplified by descriptions of research regarding the relevance of developmental and clinical knowledge for thinking about JCST cases.

At start-up, an FES will want to require this initial training of all professionals who have been selected as *eligible* to conduct evaluations. Depending on turn-over, the initial training may be provided periodically for professionals who enter the FES in subsequent years as a condition of their eligibility. This initial eligibility training can be capped with a written or oral examination to assure that information has been retained and integrated.

It can be helpful to invite attorneys and judges to portions of or even the entirety of these initial trainings, as well. This is especially true during key system transition points, such as the implementation of new JCST legislation. Cross-profession trainings can help legal professionals to be more discerning consumers and help an entire system to synchronize expectations about evaluation practices. Further, informed legal professionals

are more equipped to hold examiners to higher quality practice within individual evaluation cases through cross-examination and judicial questioning. Ideally, both mental health and legal professionals conduct these cross-profession trainings to reflect multiple perspectives and support participants' understanding of views coming from professions other than their own.

Continuing Growth Training

We recommend that FESs conduct annual trainings required for continuance of professionals' participation in the FES's referral process. The purpose of these *continuing growth* trainings is to assure that examiners continue to develop their skills commensurate with FES needs and changes in the field of juvenile forensic assessment, broadly, and JCST assessment, specifically. Often these annual trainings focus on:

- Periodic review of basic principles presented in Initial Eligibility Trainings
- Any new developments in JCST law (locally and/or nationally)
- Any changes to policy and procedure instituted by the FES
- Any changes in the local courts related to JCST
- Any developments in the research, assessment tools and techniques, or resources relevant to JCST.
- Any difficulties or issues that the FES and the courts have been experiencing regarding the nature or quality of JCST evaluations
- Case studies and advanced learning opportunities (such as mock testimony)

Rather than offering their own trainings, some FESs address continuing growth training by requiring JCST examiners to complete commercially available continuing education programs. While high-quality national-level training programs are increasingly available, there are good reasons for FESs to provide this training directly. In this way the FES can assure the quality and consistency of the training examiners are receiving, fostering cohesion and uniform practices. Also, topics and content can be focused on areas of local need identified through monitoring of evaluation practices (which is discussed in the next Section). These annual trainings also provide a venue for examiner interaction and networking which can foster a sense of community and enhance commitment to the work. This sense of belonging to a larger community can be particularly valuable in FESs that are not centralized, such as those using a Private Practice model (see Module 1). Attorneys and judges can also participate in some or all elements of these local annual trainings, reinforcing the benefits of legal professionals participating in the initial eligibility trainings.

The Value of JCST Training Efforts

Studies that have examined the types of training efforts we have described have found that participation in them generally improves forensic evaluation practices.³² And at least one study found that participation in an intensive six-day forensic training can lift knowledge of relevant issues close to that of nationally recognized forensic experts.³³ As might be intuitively expected, longer and more comprehensive trainings tend to yield better results. Many of the better programs seem to offer one to two weeks of Initial Eligibility training. Not surprisingly, representatives from locations without Initial Eligibility training report that many examiners commit basic errors in their evaluations even when they seek to conduct high quality evaluations.

Supervision and Consultation

Some FESs also employ a process of case supervision or consultation for enhancing the skills and expertise of JCST examiners. This can take two forms, similar to the two types of training we have just discussed, focusing on assistance for the examiner who is in the initial stages of learning JCST evaluations, and/or on consultation on difficult cases as a continuing growth feature of the program. Another use of supervision or consultation is to assist examiners with remediation needs as identified through monitoring of their evaluations (as will be discussed in the next Section).

The role of a clinical supervisor (as opposed to an administrative supervisor who is the person in the agency's chain of command that an examiner "reports to") is to use expertise to review a case with the examiner while it is still ongoing to provide confirmation that an evaluation is being conducted in a manner that meets all standards. It is not uncommon for clinical supervision to focus on the examiner's written report. However, whenever possible, it is best for supervisors to reflect on the process of the supervisee's evaluation as well—for example, observing the interview of the youth and/or collaterals, and/or reviewing collateral records and testing relied on by the examiner. Legal parties involved in a particular evaluation case may become concerned when the evaluation is supervised as they may need to know if the examiner or the supervisor holds ultimate responsibility for the evaluation and its findings so as to decide, for example, who to call to testify if court testimony about the evaluation is needed. It is best for the FES to develop policy around this question so there is clarity about this responsibility.

32 Otto, R., & Peters, R. (1990, March). *The Florida forensic examiner training program*. Paper presented at the Biennial Meeting of the American Psychology-Law Society, Williamsburg, VA; Poythress, N. (1990, March). *The Alabama forensic examiner training program*. Paper presented at the Biennial Meeting of the American Psychology--Law Society, Williamsburg, VA; Robinson, R., & Acklin, M. (2010). Fitness in paradise: Quality of forensic reports submitted to the Hawaii judiciary. *International Journal of Law and Psychiatry*, 33, 131-137; though see Skeem, J.L., Golding, S.L., Cohn, N.B., & Berge, G. (1998). Logic and reliability of evaluations of competence to stand trial. *Law and Human Behavior*, 22, 519-547, for a finding that training did not improve practice.

33 Melton, G.B., Weithorn, L.A., & Slobogin, C. (1985). *Community mental health centers and the courts: An evaluation of community-based forensic services*. Lincoln, NE: University of Nebraska Press.

An alternative to supervising examiners that avoids the complexities of responsibility for the evaluation is making professional consultation available to examiners. In this case, examiners are aware that when focused questions arise about how to conduct or interpret an aspect of the evaluation they have an expert with whom to consult to consider their options. Typically, consultation is not binding upon the examiner. The examiner can choose to accept or reject the guidance of the consultant. Therefore, consultation (unlike clinical supervision) does not raise questions about who is ultimately responsible for the content of the report and the findings of the evaluation. It is the examiner.

Monitoring Professionals' Application of the Standards

The third component in a quality control program for JCST evaluations is a process of monitoring evaluations to assure that they are meeting the Forensic Evaluation System's (FES's) standards. How does an FES determine whether the examiners who have been selected actually apply the required standards and produce evaluations that meet those standards?

FESs that have developed quality control mechanisms sometimes have employed two primary ways to address this question: Product Reviews, and Consumer Satisfaction indicators. *Product review* refers to a process of reviewing examiners' reports, sometimes called *work samples* or *products*—that is, examiners' JCST reports summarizing their evaluations. Alternatively or in addition, one can gather data from consumers (judges and attorneys) regarding examiners' performance. (Later in this Module we describe how to develop a process to accomplish these types of monitoring.)

Product Reviews

Some FESs employ a process for reviewing examiners' JCST reports.³⁴ This can be done in two contexts which parallel the initial eligibility and ongoing growth training discussed in the previous Section. One context might be called the *initial review*, in which eligible JCST examiners submit one or two JCST reports for review soon after they begin performing such evaluations in the FES. The second context can be called the *on-going review* of randomly selected reports, perhaps every year or every two years. In both cases, the reports are reviewed for their quality and their compliance with the FES's standards as described in the Standards and Procedures document.

The purpose of these reviews is to further develop the skills of the examiners and maintain the quality of JCST evaluations for the courts. This requires two outcomes of the reviews. One is written feedback for the examiners. Each review aims to provide evaluative encouragement and correction. Feedback typically will offer commendation in areas in which an examiner's report meets the standards, as well as guidance in those

³⁴ See, as examples, Massachusetts' Designated Forensic Professional process (<http://www.mass.gov/eohhs/gov/departments/dmh/designated-forensic-professional-procedures-manual.html>) and Virginia's Basic Forensic Evaluation training (<http://www.ilppp.virginia.edu/OREM/AdultPrograms/Course/59>).

areas in which they do not. The second outcome pertains to any consequences that failure in compliance might have. In some FESs, feedback is simply provided to encourage improvement. In others, however, continued eligibility for JCST referrals might be contingent upon demonstration of improvement if feedback has indicated failure to meet the FES's standards. This might require submission of additional reports for review after a period of time to correct one's practice, for example.

Reviews of JCST reports typically will follow a standardized protocol that must be developed by the FES to be applied by the reviewers (whom we will describe in the next Section). A sample of a protocol for reviewing JCST reports is offered in Appendix B). Those aspects of quality and compliance that can best be examined by report reviews are:

- Organization of the report and clarity of writing
- Completeness and relevance of the data for the forensic and clinical questions
- Clarity of the logic and explanation for interpretations and opinions

Within these broad categories, review protocols can include many checklist items that can be rated for their presence or quality. These ratings become the basis for the quality review. Note that once the items are identified, examiners can use the protocols themselves, on a regular or periodic basis, to examine their own practices and work-products.

The purpose of product reviews is to assure that reports are meeting practice standards in the concrete written product that the courts receive. This approach allows for considerable variability in clinical practice as long as the final product is well organized, the data are complete and relevant for the forensic question, and the examiner's logic is clearly explained. Examiners whose reports meet these minimum requirements may still vary considerably in other aspects of their performance. Product reviews cannot, for example, fully analyze an examiner's interviewing, tool interpretation, and clinical diagnostic skills; her ability to identify and integrate key information from collateral records; or his ability to form scientifically accurate opinions and adhere to ethical guidelines in practice. We are aware of at least one state that conducts evaluation reviews that include the original data sources used by the examiner to examine how that information was used in the final report. We also are aware of at least one state that conducts structured observations of examiner interviews. These can be useful mechanisms for obtaining information about the more nuanced process by which examiners conduct evaluations. More commonly, though, that information is gained through a supervision process, as was described in the previous Section.

Consumer Satisfaction

Another way for an FES to control the quality of its evaluation products is to obtain information from the consumers of the reports, including judges, attorneys and sometimes others (e.g., mental health system

workers when reports are regularly or are required to be provided to them). This information can be gathered through *consumer satisfaction surveys* and/or *ongoing feedback channels*.

(a) Consumer Feedback Surveys

The most commonly used consumer feedback mechanism involves surveying report consumers regarding the quality and utility of reports. Respondents may be asked about a specific evaluation or the body of evaluations conducted by a given examiner. The functioning of the larger FES can be considered by pooling the results about individual examiners and/or asking respondents about the body of evaluations provided across the FES. The following are examples of information that consumers might provide related to the quality and utility of JCST evaluations:

- Clarity and understandability of the report
- Timeliness of the report
- Accuracy of the data
- Sufficient data to cover the needs of the attorney/judge
- Clarity, relevance, explanation and usefulness of the examiner's conclusions/recommendations
- Suggestions for making the evaluation/report more useful

Feedback surveys can be used in various ways. They could be an ordinary part of the initial training for eligible JCST examiners. They can also be performed periodically for all JCST examiners, individually or as a whole. A sample consumer feedback survey used in one state is provided in Appendix C.³⁵ Online survey websites make conducting these surveys much easier than in the past.

Consumer feedback surveys have at least one important limitation. Sometimes consumers are not clear about what constitutes an adequate evaluation. Judges, for example, may be satisfied with evaluations that meet basic legal requirements but fall short of an FES's practice standards. Judges also may show disfavor toward evaluations that use new methods with which they are unfamiliar even if those methods are supported in the forensic mental health profession. Attorneys, on the other hand, may tend to favor evaluations that support their positions and be less focused on the quality of the methods that led to the examiner's opinions. In short, unless legal system consumers are well-trained in what constitutes a good evaluation, they may well express

35 The survey was used in the early 1980s to compare the quality of evaluations completed within Virginia's new community mental health center-based forensic evaluation system for the criminal courts and the hospital-based criminal court forensic evaluation system that had been in place for many years. As rated by judges, defense attorneys and prosecutors, the results differentiated meaningfully between the two types of reports. For more information, see Melton, G.B., Weithorn, L.A., & Slobogin, C. (1985). *Community mental health centers and the courts: An evaluation of community-based forensic services*. Lincoln, NE: University of Nebraska Press.

satisfaction with inadequate work and/or dissatisfaction with good work. The results of such surveys must always be interpreted with careful attention to that possibility.

(b) Ongoing Feedback Channels

As we explained in our Module 1 discussion of an FES's referral process, some judges and attorneys may seek to have evaluations conducted by certain examiners and/or to avoid having them done by others. We discussed some of the problems that arise when judges and attorneys favor certain examiners while avoiding others because they find their work less satisfactory. It is better for judges and attorneys to have a way to communicate their concerns about specific examiners to the FES, which can then use this information to improve examiner practice.

One way for this to happen is to provide clear channels by which consumers can provide feedback. For example, in an FES that is coordinated by a multi-agency, multi-disciplinary coordination committee (as was discussed in the Introduction), attorneys and judges may have representatives who they can contact to have issues raised at committee meetings. In jurisdictions with a JCST Coordinator position, that person might invite feedback contacts from consumers that can be addressed internally by the FES. The key is that attorneys and judges who are particularly satisfied or dissatisfied with the quality of a particular evaluation or the body of evaluations completed by a certain examiner have clarity about what steps to take so that the feedback is considered. One ideal paradigm is for the FES to have a designated Quality Control Subcommittee to receive this feedback, among other responsibilities. Such a subcommittee is a potential method for organizing quality control, a topic we now turn our attention toward.

Organizing Quality Control

There is evidence that forensic examiners form more reliable opinions and provide higher quality forensic evaluation reports when quality control efforts are well-coordinated.³⁶ One key mechanism for accomplishing this is the development of a *Quality Control Subcommittee*. A related approach used in some jurisdictions is the use of *Formal Forensic Examiner Certification*. We will examine both of these approaches for organizing the quality control effort.

Constructing a Quality Control Subcommittee

Selection of examiners eligible for JCST referrals, meeting their training needs, and monitoring their performance requires a body of professionals to implement these quality control mechanisms. We refer to this as the *Quality Control Subcommittee*. The subcommittee may be structured in a variety of ways. In some

³⁶ Gowensmith, W. N., Sledd, M., & Sessarego, S. (2014, August). *The Impact of Stringent Certification Standards on Forensic Examiner Reliability*. Paper presentation at the 122nd annual meeting of the American Psychological Association, Washington, DC.

Forensic Evaluation Systems (FESs) they will be committees of between 3 and 5 professionals, while in small FESs the subcommittee might be only 2 people. Typically, the subcommittee will have as its organizer one of the key people in the SDS, such as the JCST Coordinator we discussed in the Introduction.

The work of the quality control subcommittee parallels the various quality control activities described earlier in this Module. Among those efforts are:

- Review of new applicants for eligibility as JCST examiners, determining that they meet the entry requirements
- Planning and sometimes conducting the FES's initial and continued growth training activities and experiences
- Performing the quality control report reviews described in the previous Section, using a review protocol, and summarizing the review feedback to examiners, as well as managing consumer feedback

The FES, therefore, should seek quality control subcommittee members who are recognized as having special expertise regarding JCST evaluations and are thoroughly familiar with the local juvenile justice system. They may be the same professionals who assisted in the development of the FES's standards for JCST evaluations (Module 2), but they can also include people from among the group involved in the initial development and overall coordination of the FES. Typically, such subcommittees meet regularly (e.g., once every month or two months) to engage in their quality control efforts.

FESs with JCST quality control programs have assembled quality control subcommittees in various ways. One way is to identify and select a small core of professionals from within the FES whose JCST practices best meet the FES's standards for JCST evaluations. Typically, they should be professionals whom their peers respect and trust. This can be difficult in small communities where professionals may have developed competitive relationships or have conflicting interests. It is somewhat less difficult when the FES serves a whole state, offering a greater pool from which to select potential subcommittee members and decreasing the risks of local tensions. Sometimes this problem can be dealt with by contracting with someone outside the FES—for example, a university's specialized forensic mental health program, or a few highly experienced JCST examiners in adjoining states.

Involving professionals to participate in a quality control subcommittee may or may not require compensating them for their time, depending on the financial arrangements under which JCST examiners work in one's own jurisdiction. If professionals are paid hourly or per case for JCST evaluations in the FES, then compensation is probably necessary. In some jurisdictions, though (e.g., Massachusetts), JCST professionals are salaried employees of the state's FES system and are expected to participate in such programs as part of their employment. Note, however, that being part of an FES's quality control subcommittee often is perceived as recognition of the professional's advanced expertise, and this itself can be an incentive for many professionals to participate in quality control activities *pro bono* or for a very modest compensation.

Formal Forensic Examiner Certification

Some FESs organize their quality control system into a formal forensic examiner certification process. In these programs, when a clinician meets the local requirements to be eligible to be a public-sector forensic examiner they are *certified*. They then must meet ongoing requirements to maintain the certification and to accept evaluation cases. Massachusetts, for example, has maintained a rigorous forensic examiner certification process for many years,³⁷ and Oregon has recently added a certification program.³⁸ Typically, these certification programs address both broad forensic practice as well as specific types of evaluations. These programs will have additional requirements to conduct juvenile forensic evaluations, such as JCST. A formal certification program may be a particularly helpful way to coordinate quality control efforts in jurisdictions with an *integrated forensic service delivery system* that provides multiple types of evaluations, including JCST. However, a certification program can also be developed for a specific type of forensic evaluation, like JCST.³⁹ Whether formal certification is used or not, the key issue is that FESs have an organized system to adequately conduct examiner selection, examiner training and experience, and monitor evaluations on the basis of FES standards.

Summary of Module 3

In Module 3 we discussed ways that a JCST Forensic Evaluation System (FES) can consistently offer JCST evaluations that meet the standards developed for the system. A front-end step is selecting examiners for the FES that possesses or can readily gain the skills and expertise to conduct evaluations that meet the standards. Further, we recommend that an FES provide (a) initial eligibility training to support examiners in conducting appropriate evaluations and (b) ongoing training to cultivate growth. This training can include traditional didactic lectures, training activities (like workshops, case reviews, and mock trials), and/or case supervision or consultation. We explained how including legal professionals in these trainings can enhance cohesion and create consistent expectations throughout the juvenile justice system. We explained ways the FES can monitor the extent to which actual evaluations are meeting standards. These include structured reviews of the reports based upon the FES's standards and/or the collection of consumer satisfaction data through surveys or ongoing feedback channels. Finally, we discussed ways that an FES can organize its quality control efforts. It is our strong expectation that consistency of adequate JCST evaluations will follow if the FES (a) carefully selects and develops its Service Delivery System, (b) thoughtfully drafts standards and procedures for examiners to follow, and (c) creates mechanisms by which to assure that standards are being met.

37 For more information, see <http://www.mass.gov/eohhs/docs/dmh/publications/dfp-manual.pdf>.

38 For more information, see <http://www.oregon.gov/oha/amh/forensic-eval/pages/index.aspx>.

39 We are not aware of any jurisdictions that currently have a certification program specific to JCST evaluations, but Georgia and Nevada have certification programs specific to adult CST evaluations. For a discussion, see Frost, L.E., de Camara, R.L., & Earl, T.R. (2006). Training, certification, and regulation of forensic examiners. *Journal of Forensic Psychology Practice*, 6, 77-91.

GOING FORWARD WITH THE GUIDE: A CHECKLIST

The purpose of this Guide is to provide a fairly comprehensive description of the matters that states or counties will want to consider when developing a forensic evaluation system (FES) for providing courts evaluations of JCST. The three modules break this down into broad categories: (a) the development of a “service delivery system,” (b) creating evaluation standards, and (c) creating a process for applying those standards to control the quality of JCST evaluations. Considering all of these matter piece by piece, in the detail the Guide describes, the process may seem daunting. Yet it has been done by a number of states, and it is manageable.

In this conclusion to the Guide, it may be helpful for us to rise above the trees to get an overview of the forest. What follows is a checklist of the primary steps to accomplish the task that this Guide recommends.

Module 1, “The JCST Evaluation Service Delivery System (SDS),” focused on development of an organizational structure and procedures within which JCST evaluations are provided to the courts. Basic steps for getting started include:

1. Forming a coordinating committee, constituted as described in the Introduction
2. Establishing the committee’s agenda, identified by the focus of the three Modules
3. Assigning the Guide for study by the coordinating committee members

When the committee convenes, it generally requires several meetings to consider the various matters that need to be decided for development of a service delivery model, as outlined in Module 1:

1. Using the Guide to discover what service delivery model seems best for one’s own jurisdiction
2. Deciding how cases will be referred
3. Deciding on how examiners will be paid
4. Dealing with special issues of re-evaluation of juveniles found incompetent

5. Deciding on a smaller sub-group, as described in Module 2, that can manage the task of developing standards

The process of “Creating Evaluation Standards” for JCST evaluation standards, as described in Module 2, should aim for a final Standards and Procedures Document. The following steps will lead to that objective:

1. Naming the four or five members of the “JCST evaluation standards sub-group,” following the guidance offered early in Module 2 for the types of persons most suitable for this task
2. Tasking the standards sub-group with arriving at appropriate JCST evaluation standards, and offering them the guidance in Module 2
3. Allowing them time to arrive at a “Recommended Standards and Procedures Document” that covers the 9 categories for standards outlined in Module 2
4. The standards sub-group reports back to the coordinating committee which, after review and modifications, arrives at a final “Standards and Procedures Document” for local JCST evaluations

The final set of tasks involves decisions about “Developing a Process to Apply the Standards” which focuses on implementing the standards so that they control the quality of JCST evaluations in your jurisdiction. Following Module 3, these are the tasks for the coordination committee (perhaps assisted by the standards sub-group) associated with this planning step:

1. Decide on the composition of a Quality Control Sub-committee that will review and select JCST examiners and implement the quality control plans
2. Decide on the training qualifications that will be required for JCST examiners
3. Decide how qualified JCST examiners will be educated to the local quality control requirements for JCST evaluations
4. Using the suggestions in Module 3, determine how JCST examiners’ products will be reviewed for their compliance with local JCST Standards and Procedures
5. Decide whether and how to conduct consumer satisfaction reviews

The overall process of developing a forensic evaluation system for JCST evaluations requires a commitment of time and effort. Yet we have seen it evolve successfully, without undue cost in terms of finances and time. The result is well worth the effort, considering the interests of youth and courts’ commitment to fairness in the process of adjudicating youth including those with developmental and mental health disabilities.

Appendix A

Functional Domains and Specific Functional Abilities Typically Considered in a JCST Evaluation

<p>Factual Understanding – <i>The basic, concrete knowledge of the legal process.</i></p> <ul style="list-style-type: none"> • Understands he or she is accused of a crime • Understands what the alleged crime is • Understands the court will decide guilt/innocence • Understands adjudication could result in punishment • Understands the punishments that are possible • Understands the various ways one may plead • Understands the roles of various case participants • Understands the basic process of a trial 	<p>Rational Appreciation – <i>Accurate “beliefs” about what is factually understood about court.</i></p> <ul style="list-style-type: none"> • Able to manipulate information that is factually understood • Able to contemplate the implications and significance of what is understood • Able to rationally apply that knowledge in one’s actual case-related situations
<p>Assisting Counsel – <i>Ability to participate with and meaningfully aid counsel in developing and presenting the defense.</i></p> <ul style="list-style-type: none"> • Able to understand and adequately respond to counsel’s questions and provide relevant information for defense • Able to provide a coherent account of the facts of the alleged crime • Able to help identify potential sources of relevant evidence and witnesses • Able to help identify reasons for confronting opposing witnesses • Able to manage the stresses and demands of trial • Able to follow and comprehend the testimony of other witnesses so to be able to alert counsel to any distortions of the facts • Able to provide testimony with relevance, coherence, and independence of judgment 	<p>Legal Decision Making – <i>Ability to consider, process, & weigh legal alternatives, and ability to reach and communicate legal choices.</i></p> <ul style="list-style-type: none"> • Able to rationally decide how to plead • Able to rationally decide about going to trial • Able to rationally decide about accepting plea offers • Able to rationally decide about testifying • Able to rationally decide about calling certain witnesses • Able to rationally decide about pursuing certain defenses

Appendix B

A Sample Product Review Form

COMPETENCY TO PROCEED EVALUATION REVIEW TOOL Juvenile Evaluations

Examiner: _____

Examinee (Initials only): _____ Date of Report: _____

Reviewer: _____ Date of Review: _____

0	=	missing
1	=	partially adequate
2	=	adequate
n/a	=	not applicable

Domain Score = % of points obtained based on possible points

I. Timeliness _____%

___ Evaluation completed within 30 days of assignment to the examiner (or 60 days, if authorized)

II. Identifying Information _____%

___ Examiner's name
___ Name of juvenile defendant
___ Date of birth of juvenile defendant
___ Case number
___ Date of report

Suggestions: _____

III.	Referral Information	_____ %
	<input type="checkbox"/> Date of Court Order <input type="checkbox"/> District Court/Juvenile Court that ordered the evaluation <input type="checkbox"/> Documentation that evaluation is pursuant to the guiding statute <input type="checkbox"/> Competency concerns that elicited evaluation (e.g., from Court Petition; information from defense counsel) <input type="checkbox"/> Nature of pending charges <input type="checkbox"/> Basic description of alleged facts in instant offense <input type="checkbox"/> Juvenile's placement at the time of the interview	
Suggestions: _____		

IV.	Explanation of the Evaluation Procedures and Process	_____ %
	Description of Defendant Interview Procedures <input type="checkbox"/> Date, location, & duration of defendant interview(s) Identification of Additional Data Sources <input type="checkbox"/> Complete list of reviewed records (type, dates) <input type="checkbox"/> Complete list of collateral interviews (interviewee; date; duration) <input type="checkbox"/> Complete list of psychological testing (test; date administered) <input type="checkbox"/> Complete list of forensic assessment instruments (name; date used) Missing information <input type="checkbox"/> Identified	
Suggestions: _____		

V. Adequacy of Collateral Information _____%

Each of the following domains is adequately addressed through record review or relevant interview – or a documented effort was made to do one or both unsuccessfully.

- ___ Parent/Caregiver (or available proxy)
- ___ Police Reports/Charging Documents
- ___ Juvenile Justice (Court; Probation; Detention)
- ___ Academic
- ___ Mental Health and/or Medical (if relevant)
- ___ Social Services (if relevant)
- ___ Other (unique to the case) _____

Suggestions: _____

VI. Notification (to juvenile and parent/guardian) _____%

- ___ Explanation of Evaluation Purpose and Process
- ___ Explanation of Limits of Confidentiality
- ___ Explanation of Juvenile's Rights
- ___ Explanation of Uses of Evaluation Information
- ___ Comprehension of Notification Assessed

Suggestions: _____

VII. Brief Pertinent Developmental and Clinical History _____%

Each of the following domains is adequately addressed.

- ___ Family History & Functioning
- ___ Early Developmental History
- ___ Trauma History
- ___ Medical History
- ___ Academic History
- ___ Social History
- ___ Substance Use History
- ___ History of Conduct Problems and/or History of Juvenile Justice Involvement
- ___ Mental Health History

Suggestions: _____

VIII. Current Mental Status	____%
Each of the following domains is adequately addressed	
<input type="checkbox"/>	General Presentation
<input type="checkbox"/>	Psychomotor Activity and Speech Behavior
<input type="checkbox"/>	Mood, Emotions, Affect
<input type="checkbox"/>	Thought Process/Perceptual Issues
<input type="checkbox"/>	Suicidal/Violent Ideation
<input type="checkbox"/>	Cognition and Intelligence
<input type="checkbox"/>	Recent/Current Clinical Symptoms
<input type="checkbox"/>	Current Medications and Impact on Functioning
Suggestions: _____	

IX. Psychological Testing & Forensic Assessment Tools	____%
<input type="checkbox"/>	Any testing used is appropriately explained
<input type="checkbox"/>	Any testing conducted is relevant and appropriate for examinee
<input type="checkbox"/>	Any testing conducted is used and interpreted appropriately
<input type="checkbox"/>	Any Forensic Assessment Tools used are appropriately explained
<input type="checkbox"/>	Any Forensic Assessment Tools used are relevant and appropriate for examinee (or appropriate caveats/qualifying statements are offered)
<input type="checkbox"/>	Any Forensic Assessment Tools used are used and interpreted appropriately
Suggestions: _____	

X. Diagnosis	____%
<input type="checkbox"/>	Diagnoses identified
<input type="checkbox"/>	Support for diagnoses is adequate and accurate
Suggestions: _____	

XI. Competency – Functional Abilities (Per interview & other sources) _____%

Adequately describes each of the following* so that abilities and deficits are clear

- ___ Ability to comprehend and appreciate the charges or allegations
- ___ Ability to disclose to counsel pertinent facts, events and states of mind
- ___ Ability to comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.
- ___ Ability to engage in reasoned choice of legal strategies and options
- ___ Ability to understand the adversarial nature of the proceedings
- ___ Ability to manifest appropriate courtroom behavior
- ___ Ability to testify relevantly, if applicable

Suggestions: _____

XII. Competency – Causal Explanations _____%

- ___ A causal explanation is offered for areas of functional deficit
- ___ Causal explanations are consistent with clinical history, mental status exam, clinical conceptualization, and diagnoses

Suggestions: _____

XIII. Competency – Conclusory Opinions _____%

- ___ Opinion is offered.
- ___ Opinion is substantiated/ follows logically from earlier data and analysis
- ___ Opinion is tied to and consistent with the statutory definition of Incompetent

Suggestions: _____

* In many cases, all functional capacities should be addressed. In certain cases, the functional deficits in one or more areas are so profound that the other areas either cannot or need not be assessed and certain capacities may receive an "n/a."

XV. Competency – Probability of Remediation _____%

For the primary functional deficits that contributed to competency concerns (see XI) the following is provided:

___ Appropriate and accurate identification of the intervention(s) most likely to yield improvement in functioning

___ Opinion is offered about overall potential for successful remediation in one year that flows logically and reasonably from areas of functional deficit and recommended interventions

Suggestions: _____

XVI. Quality of Forensic Report Writing _____%

___ Logical - Report flows in a coherent, digestible manner

___ Understandable - Report can be understood by legal professionals (e.g., lacks unexplained jargon)

___ Concise - Report omits irrelevant information/discussion, and statements are brief, direct, and to the point.

___ Objective – Language conveys a tone and attitude absent of bias or speculation.

___ Substantiated – Opinions and formulations are supported by available data

___ Precision – Lacks typographical errors; lacks grammatical mistakes; lacks inconsistencies

___ Culturally Competent – Evaluation discusses relevant cultural issues and appropriately considers role of cultural issues in evaluation opinions.

Suggestions: _____

XVII. Overall Quality of Report			
1-2 Unacceptable	3-4 Gaining Competency	5-6 Competent	7-8 Advanced
Tasks not completed	Many tasks done but	Adequate	Exceptional
Important deficiencies	needs improvement	Ready for independent	Best practices
	Some deficiencies	practice	
Overall Rating	Approaching Competency		Achieved Competency
Overall Quality of Report	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4		<input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8

Appendix C

Sample Consumer Satisfaction Survey**

Please circle the number on each rating scale (from 1 to 9) which best reflects your assessment of the quality of the report according to each question (A through G).

A. How understandable is this report in terms of clear language versus mental health jargon?

Unclear, too much jargon							Report clear, easily understood		
1	2	3	4	5	6	7	8	9	

B. How familiar does the clinician appear to be with the appropriate legal criteria and issues?

Clinician unfamiliar, used inappropriate criteria							Clinician familiar, used appropriate criteria		
1	2	3	4	5	6	7	8	9	

C. How clearly does the report characterize the defendant's capacity to understand the proceedings against him (her)?

Defendant's understanding of the proceedings not described clearly							Defendant's understanding of the proceedings described clearly		
1	2	3	4	5	6	7	8	9	

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D. How clearly does the report characterize the defendant’s capacity to assist in his (her) own defense?

Defendant’s capacity to assist in own defense not described clearly						Defendant’s capacity to assist in own defense described clearly		
1	2	3	4	5	6	7	8	9

E. How adequately does the report explain the factual basis of the clinician’s conclusions about the defendant’s capacity to understand the proceedings and assist in own defense?

Factual basis not presented or unclear						Ample facts presented clearly		
1	2	3	4	5	6	7	8	9

F. To what extent does this report provide the necessary information to assist the court in making a decision regarding the defendant’s competency to stand trial?

Insufficient and/or inappropriate information provided						Sufficient and appropriate information provided		
1	2	3	4	5	6	7	8	9

G. Please rate your impression of the overall quality of the report.

Poor report						Excellent report		
1	2	3	4	5	6	7	8	9