



Mental Illness and the Law: A Guide for Legal Professionals



Virginia Department of Behavioral Health & Developmental Services
(DBHDS)

Module 7:

Working with Adolescents



Mental Health Problems in Adolescence

1. Developmental influences on mental health problems
 - A. Age of onset
 - B. Different symptoms / different disorders
 - C. Limited capacities
 - D. Normative developmental tasks

1A. Age of onset

- Although children and adolescents may have significant mental health problems, some of the most serious disturbances (i.e., psychotic disorders) more commonly emerge after childhood
 - For example, average age of onset for Schizophrenia is late teens to early 20s
 - Earlier onset is infrequent, though does occur
- Florid psychosis (hallucinations, delusions, very disorganized thinking) less likely in adolescence than adulthood, relatively rare in childhood

1B. Different Symptoms

- Nevertheless, children and adolescents can have severe mental health problems
- Adolescents' expression of distress may vary from that of adults (and be harder to recognize)
 - For example, anger and irritability may mask serious depression; apparent boredom or disengagement may mask anxiety; oppositional behavior may be a cover for lack of understanding
- Many clinicians have a broad conceptualization of child/adolescent Bipolar Disorder that does not involve typical manic symptoms – though this is a source of some disagreement within the field

Different Symptoms

- Problems such as anxiety may lead to different types of functional problems (e.g., school refusal) that can easily be misunderstood as oppositional in intent

Different Disorders

- Behavior disorders such as Oppositional Defiant Disorder, Conduct Disorder identify severe behavior problems, but describe the behaviors and not their causes
- Attention Deficit Hyperactivity Disorder (ADHD) more likely to be a focus of clinical concern in childhood/adolescence given contextual demands and the additive influence of normative adolescent impulsivity

1C. Limited Capacities

- Adolescents younger than 16, as well as some of those older than 16, are likely to have deficits in their comprehension and information processing abilities as compared with adults, but their deficits may not be obvious (they may even try to hide them)

Limited Capacities

- Even when adolescents' cognitive capacities are relatively well-developed, their ways of thinking are often different in key ways from adults'. Adolescents trend to be
 - More focused on the present
 - Less risk-averse
 - More heavily influenced by emotion
- It is important to recognize that these differences are linked to developmental status and can be expected to change with time

1D. Normative Developmental Tasks...

- In adolescence, changes are occurring in
 - Identity development
 - Peer relationships
 - Perspective-taking abilities
 - Hypothetical reasoning abilities
 - Moral reasoning/values clarification

...influence adolescent behavior

- Learning by doing (experimentation)
- Heavy role of peer influence
- Risk-taking
- Poor reasoning, judgment, particularly when emotionally activated...

...Are all part of normal and expected adolescent behavior and not necessarily indicators of major problems

Persistence of behavior problems

- Research tells us that most adolescents with behavior problems do not show persistence of those problems into adulthood
- This is true even when behavior problems are serious
- So assumptions about an individual adolescent based on his/her behavior that do not consider developmental context can easily be inaccurate

Recognition of the meaning of developmental differences in the law

- The existence of separate juvenile courts
- Specific procedures governing the transfer of juveniles into the adult system
- Recent US Supreme Court decisions
 - Roper (2005): death penalty for juveniles unconstitutional
 - Graham and Sullivan (2010): LWOP for non-homicide offenses for juveniles unconstitutional
 - Jackson and Miller (2012): Mandatory LWOP for juveniles unconstitutional

Mental Health & Juvenile Justice

1. In Juvenile Court
 - A. Competency to Stand Trial
 - B. Transfer
 - C. Mental health evaluation
2. In Circuit Court
 - A. Competency to Stand Trial
 - B. Sanity
3. Other Juvenile Issues

1A. Competency to Stand Trial - JDR

- Evaluation (VA§ 16.1-356)
 - Despite different mission of JDR courts, defendants' trial competency is required
 - Standard for competency the same as for adults (VA§ 19.2-161.9)
 - However, competency is contextual and the demands in juvenile court may be reduced (e.g., complexity of process, decision-making requirements)
 - Certain issues (e.g., role of jury) do not need to be considered if transfer not a possibility

Competency to Stand Trial (Cont'd)

- Who conducts the evaluation
 - In addition to qualified psychiatrists and clinical psychologists, VA law allows certain masters-level clinicians with appropriate training to conduct juvenile CST evaluations
- Location
 - As with adults, should be in the least restrictive setting (outpatient or the juvenile's location, e.g., JDC, residential placement)
 - Hospitalization for CST evaluation may only occur if an outpatient CST evaluator first recommends and the judge specifically orders inpatient assessment

Competency to Stand Trial (Cont'd)

- Disposition of the incompetent juvenile defendant
 - Competency restoration services are provided through the DBHDS Juvenile Competency Services office (Director: Jeanette DuVal, LCSW, ph: 804-786-1725, fax 804-786-0197)
 - That office provides services directly and contracts with CSBs and others to provide restoration and post-restoration evaluation
 - By code, restoration must occur in a nonsecure community setting or secure facility (i.e., detention center)

Competency to Stand Trial (Cont'd)

- Disposition of the incompetent juvenile defendant (cont'd)
 - Restoration is typically ordered for 3-month periods, with decisions about renewing efforts made at these intervals, presuming a continued finding of incompetent but restorable in the foreseeable future
 - If at any point the restoring agent believes that the juvenile is restored, the agent will notify the court and provide an updated evaluation
 - As with adults, options include findings of Competent to Stand Trial, Incompetent to Stand Trial but restorable, or Unrestorably Incompetent to Stand Trial

Competency to Stand Trial (Cont'd)

- Disposition of the unrestorably incompetent juvenile defendant
 - VA§16.1-358 provides four options:
 1. Civil commitment, presuming commitment criteria are met
 2. Certification (though this is not an option for those under 18 since juveniles cannot be admitted to training centers)
 3. Filing of a Child In Need of Services (CHINS) petition
 4. Release

1B. Transfer to Circuit Court

- VA§ 16.1-269.1 provides for the transfer or waiver of certain juvenile defendants to Circuit Court, if the juvenile is determined “not a proper person to remain within the jurisdiction of the juvenile court”
- The decision-maker is to consider factors that include
 - Age
 - Seriousness of offense
 - Possibility of treatment/rehabilitation
 - Prior legal involvement
 - Mental retardation/mental illness
 - School record
 - Mental, physical and emotional maturity

Transfer to Circuit Court (cont'd)

- Transfer requires a finding of probable cause and that the defendant be
 - at least 14 years of age
 - considered competent to stand trial (though only explicitly considered if the question is raised)
- Procedural differences include
 - Jury trial option (though judge sentences)
 - Open proceedings
 - Adult or juvenile sentencing
- Demands in adult court may be increased
 - Greater stress
 - More complex legal issues to consider
 - Reasoning about long-term outcomes

Transfer to Circuit Court (cont'd)

- In VA, three classes of transferable offenses
 - Most serious violent offenses (e.g., murder, aggravated malicious wounding); automatic transfer to adult court [Section B]
 - Other violent offenses (e.g., rape, carjacking, abduction, forcible sodomy); transfer to adult court on motion of prosecutor [Section C]
 - Other serious offenses (felonies); waiver at judicial discretion [Section A], presuming motion of CW

Transfer Evaluation

- Not provided for or directly funded through code
- Evaluations addressing mental health status, developmental maturity, psychological status, treatment/change amenability, etc. may be considered relevant
- Prior evaluations may offer guidance; a new evaluation may specifically address issues related to the transfer decision

Transfer Outcomes

- Research on effects of transfer (as currently practiced) finds, with regard to specific deterrence:
 - In general, transferred youth recidivate more and faster than non transferred youth, even when controlling for relevant offense- and non-offense related variables
 - Most dramatic differences for violent offenders
 - Less clear picture for property and drug offenses
- These data are from multiple sites and include various state approaches to transfer, but are not specific to Virginia

1C. Mental Health Evaluation

- VA § 16.1-275 provides mechanisms for the JDR court to obtain mental health evaluation to assist in determining appropriate responses to and supports for a juvenile defendant
- Options include evaluation at a local mental health center, another mental health center designated by the DBHDS Commissioner if a local option is not available, or, if needed, on an inpatient basis at a state psychiatric hospital
- Inpatient evaluation shall not exceed 10 days

2A. Competency to Stand Trial Circuit Court

- For a juvenile defendant transferred to Circuit Court, the provisions of evaluating and restoring Competency to Stand Trial are identical to those for adult defendants, and fall under the provisions of VA §19.2-169.1 (evaluation), VA §19.2-169.2 (disposition when incompetent), and VA §19.2-169.3 (disposition when unrestorably incompetent)

2B. Sanity – Circuit Court

- An insanity defense is not available to defendants in Juvenile & Domestic Relations Court
- Adolescents transferred to criminal court pursuant to VA §16.1-275 may assert an insanity defense, under the same provisions as other Circuit Court defendants

3. Other Juvenile Issues

- Adolescent defendants' developmental status is associated with deficits and differences when adolescents are compared with their adult counterparts
- Relevant areas include
 - Social Development
 - Emotional Development
 - Cognitive Development
 - Moral Development
 - Biological (including brain) Development

Other Juvenile Issues (cont'd)

- These deficits and differences may have relevance to a number of legal issues in juvenile and criminal courts beyond those described above. They include
 - Confession evidence (voluntariness and reliability)
 - Sentencing decisions (related to amenability to change and degree of culpability)
 - Other competencies (e.g., to waive counsel, to waive Miranda rights, to plead guilty)
 - Reasonable responses to sexual offending behaviors