

## GUIDELINES WHEN A DEFENDANT'S VERSION CANNOT BE OBTAINED IN A CR EVALUATION

The DFP Training and Certification Committee has been asked to provide guidance regarding situations in which a Criminal Responsibility evaluation has been ordered but the evaluator cannot obtain the defendant's version of the alleged offense (either due to denial on the part of the defendant, the defendant's refusal to discuss the alleged offense, the defendant's report of no memory for alleged offense, or because the defendant is so impaired that he/she cannot provide an account). In such situations, evaluators must decide whether to submit a report based on other sources of data, offering an opinion on relevant issues to the extent possible (e.g. mental state at the time of the offense), or to write a letter to the court, stating that the evaluator cannot complete or conduct the evaluation. The Committee agreed that each case needs to be assessed individually, with the following guidelines offered:

1. The defendant's ability or unwillingness to provide an account of the alleged offense does not per se prevent an evaluator from submitting a report, although it may often result in a qualified or limited opinion.

A. If there is adequate information from other sources (including collateral sources, records, and the defendant's clinical presentation) to address the presence/absence of mental illness at the time of the alleged offense, the evaluator could aid the court by providing the relevant data and analysis (even if a full analysis of the defendant's abilities to appreciate wrongfulness and conform conduct cannot be offered). The evaluator should make clear in the report the limits due to lack of information from the defendant and qualify the opinion accordingly.

B. in some cases, it may be possible for the evaluator to render an opinion based on available data even without a full account by the defendant.

C. if there is no meaningful information relevant to the presence or absence of mental illness at the time of the alleged offense, a letter rather than a report would be appropriate.

2. On a related issue, there are ethical and legal concerns when a defendant does not comprehend the "Lamb" warning. In such circumstances, the evaluator should contact the defense attorney. The defense attorney may consent to the evaluation on behalf of his or her client, and this should be noted in the report. If the attorney objects to the evaluation, the attorney should be asked to contact the court directly and have the order vacated. If the attorney does not follow through on having the order vacated, the evaluator can exercise either one of the following options:

A. Communicate with the court, apprising of the situation and asking for guidance.

1) if the court orders that the evaluation proceed, the report should include detailed information about the defendant's capacities related to comprehension of the "Lamb" warning, the substance of the communication with the defense attorney and the court, and the court's response.

B. Proceed with the evaluation, documenting in detail information regarding the defendant's capacities related to comprehension of the "Lamb" warning as well as the substance of the communication with the defense attorney.

3. Similarly, in the case of a defendant who does not understand the "Lamb" warning but the defense attorney communicates to the evaluator that he/she does not want the Criminal Responsibility evaluation to proceed, the evaluator should recommend that the attorney contact the court and have the order vacated. If the attorney does not follow through on having the order vacated, the evaluator can exercise either of the options above (2.A. or 2.B.)