

When And How to File For Competency in Juvenile Court

Sariah Donnahoo, LCSW
Forensic Clinical Social Worker
Utah Juvenile Defender Attorneys

Jackie Keel, M.Ed., CSW
Juvenile Competency Attainment Program Administrator



Overview

- I. Identifying when to screen for competency
- II. What to do when you believe there's a concern for competency
- III. Interview for screening youth for competency concerns
- IV. Why do defense attorney's need to obtain a release of information
- V. How to Obtain a release of information
- VI. How to request records
- VII. Motion for Inquiry into Competency



How do I know when to raise it?

Read the police report

- Is the behavior or statement unusual?
- Did the incident happen in a facility?
- Did parents make statements about developmental delays to the police?

Has someone mentioned possible concerns about their level of functioning?

i.e. “he acts more like a 6 year old...”

Trust your gut



What do I do when I believe there's a bona fide concern?

- Review 80-6-401
- Interview parent, see if they have concerns about youth's level of functioning
- Obtain ROI
- Obtain List of places where there may be relevant records
- Client Interview



Client Interview

Develop rapport, ask questions about their life, family and schooling

IEP/504

Mental health diagnoses

Medications



Screening their understanding of court process

What are your charges?

Simple definitions of common court terms (ie. "witness," "trial")

Use Visuals



How to Screen Youth for Competency

Go over who all the people are in the courtroom and their roles


Different types of charges in Utah, where their charges are.

How charges are resolved: plea vs trial

- Rights at trial, rights given up in plea, different types of evidence

Give an example of a case with evidence favoring them or not favoring them, discuss which way would be in their favor to resolve the case.

Explain possible consequences. Are they able to weigh pros and cons?



Why Should I obtain a Release of Information (ROI)?

➤ **Section 6 of statute 80-6-402:**

- The minor shall cooperate, by executing a release of information when necessary, in providing the relevant information and materials to the forensic evaluator regarding records of diagnosis or treatment of a substance abuse disorder.



Why should I request records?

- ▶ In order for a minor to be found NOT COMPETENT, the evaluator first has to affirm that incompetency is due to:
 - ▶ A mental illness
 - ▶ An intellectual disability, or other related disorder or,
 - ▶ Developmental immaturity
 - ▶ 80-6-401 (3)
- ▶ Records from different periods of life and functioning are necessary to provide the collateral information for the evaluator to be able to make any of those diagnoses.



Why should I request records?

Provides history of development or other diagnosed mental health or cognitive disorders.



Provides collateral/corroborating information to evaluators for current testing and history of development.



How a youth presents in one setting, may not be how they have presented in other settings.

How do I collect records?

- ▶ Obtain a Release of Information (ROI)
 - ▶ Use a cover letter to explain your relationship to the client and your need to obtain records.
 - ▶ Many places require the release to be notarized.
 - ▶ Use a notary when possible (banks/credit unions have one on staff almost at all times)
 - ▶ In the alternative to notary, use the declaration ROI.
- ▶ Find out what services the client has received in the past:
 - ▶ Special education? Disciplinary documents at school? Head Start?
 - ▶ Mental health evaluations, therapy or inpatient treatment?
 - ▶ Medical records/hospitalizations?

Have the parent sign the bottom; don't have them fill out the top part.

I understand that authorizing the disclosure of this health information is voluntary. I understand that any disclosure of information, carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules. If I have any questions about disclosure of my health information, I can contact the authorized individual or organization making the disclosure. I understand that the information authorized for release may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, or the human immunodeficiency virus, also known as acquired immune deficiency syndrome (AIDS). This document specifically authorizes the release of mental health, substance abuse, psychological, and psychiatric information and records. With this knowledge, I give my consent to the release of all information in my medical and other records as indicated above, including any information concerning my identity, and release the above agency / health provider, its affiliates, agents and employees, from any liability in connection with the release of the information contained herein. I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization I must do so in writing and present my written revocation to the Medical Record Department and /or Privacy Officer. I understand that the revocation will not apply to information that has already been released in response to this authorization. The medical provider to whom this authorization is furnished may not condition treatment on whether or not I sign the authorization. I understand that the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire 180 days from the date signed. Notarized photocopies of this authorization are to be given the same effect as the original.

DATE: _____ X _____ (parent/guardian)

STATE OF UTAH) X _____ (Client/juvenile)
:SS

COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me, the signer of the foregoing instrument, who duly acknowledged to me that executed the same.]

My Commission Expires:

NOTARY PUBLIC
State of Utah

HIPAA COMPLIANT

AUTHORIZATION FOR RELEASE OF INFORMATION

TO: Granite School District NAME: Jane Doe DOB: 08/24/2005 SSN:	This instrument authorizes you to furnish and release to: Utah Juvenile Defender Attorneys 8 East Broadway, Suite 500 Salt Lake City, Utah 84111 (801) 521-522
--	---

This instrument authorizes you to furnish and release to Utah Juvenile Defender Attorneys or a representative thereof, **for the purpose of legal representation**, all of my records, including those normally considered private, privileged, confidential, controlled and protected, including but not limited to: medical, psychiatric, and hospital records; psychological, mental health, and substance abuse records; court records or any records incidental thereto; military testing reports or medical evaluations and reports; and medical, psychiatric, psychological testing, assessments, evaluations, diagnoses, findings, treatments, care plans and reviews, referrals, admissions and discharges, and opinions in your records on the following:

<input type="checkbox"/> HOSPITAL / ER / CRISIS EVALUATIONS	<input type="checkbox"/> MEDICATION / PRESCRIPTION HISTORY
<input type="checkbox"/> MEDICAL DIAGNOSTIC / TREATMENT	<input type="checkbox"/> LAB / DRUG TESTING RECORDS
<input checked="" type="checkbox"/> PSYCHOLOGICAL / PSYCHIATRIC	<input checked="" type="checkbox"/> GROUP THERAPY / PSYCHOEDUCATIONAL
<input type="checkbox"/> DRUG & ALCOHOL ABUSE / TREATMENT	<input checked="" type="checkbox"/> CASE MANAGEMENT / TREATMENT PLANS & REVIEWS
<input checked="" type="checkbox"/> EDUCATIONAL / TRANSCRIPT / IEP	<input type="checkbox"/> EMPLOYMENT RECORDS
<input checked="" type="checkbox"/> VERBAL COMMUNICATION	<input type="checkbox"/> CIVIL / CRIMINAL COURT RECORDS
<input type="checkbox"/> OTHER: _____	

Date(s) of service requested: 2009-present

PROHIBITION ON REDISCLOSURE: Alcohol and Drug Abuse Medical Records are protected by Federal confidentiality rules (42 CFR Chap. 1, Part 2, Subpart C § 2.32) The Federal Rules prohibit further disclosure of this information unless further disclosure is expressly permitted by written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Chap. 1, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal Rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.



How Do I Collect Records?

- ▶ Send the ROI directly to the record keeping entities at the sources.
 - ▶ Special Ed records are federally regulated and are kept at the district offices in the special education departments. Call the district offices to get the contact info.
 - ▶ Cumulative School files (behavior/discipline, grades, other educational notes) are at the individual school. Contact school registrar.
- ▶ Ask for records to be sent to you electronically, if possible (included in cover letter). If large amount, may ask you to pick them up.
- ▶ There may be a fee for requesting the records.
 - ▶ UJDA gets billed on average \$15-50, if a fee is assessed.
- ▶ Review records you receive
 - ▶ You should know what the evaluator, and possibly other parties will find out about your client in the records that may be included in the competency report.

Do defense attorneys have an obligation to review the records obtained before the information is sent to DHHS for competency evaluation?





Motion for Inquiry Into Competency

What Should my Motion Include?

- Controlled by Utah Code 80-6-401
- the defendant's present ability to:
 - rationally and factually understand the criminal proceedings against the defendant;
 - consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense;
 - understand the charges or allegations against the defendant;
 - communicate facts, events, and states of mind;
 - understand the range of possible penalties associated with the charges or allegations against the defendant;
 - engage in reasoned choice of legal strategies and options;
 - (understand the adversarial nature of the proceedings against the defendant;
 - manifest behavior sufficient to allow the court to proceed; and
 - testify relevantly, if applicable
- Include all the factors that concern you and examples where appropriate
- Be mindful of confidentiality



Sample motion



Stipulation



- The standard is good faith
- A stipulation from the prosecutor helps keep the process moving along

Questions?





Presenters:

Sariah Donnahoo, LCSW
Forensic Clinical Social Worker
Utah Juvenile Defender Attorneys (UJDA)
801-521-5225

sdonnahoo@ujda.org

Jackie Keel, M.Ed., CSW
DHHS

Juvenile Competency Program Administrator
385.245.5406

jackiekeel@utah.gov