

Competency Referral Checklist for Defense Counsel
Ogeechee Judicial Circuit

1. Determine if your client should be evaluated for competency to stand trial or criminal responsibility (competency at the time of the act) or BOTH.
2. Acquire the indictment/accusation, police reports, past psychiatric records (if available), and criminal history (if available) of your client. (Note: Do not submit GCIC records to the Court or to DBHDD. If your client has a criminal history, summarize it in your referral form or in your presentation to the Court.)
3. Complete the DBHDD Referral Form.
 - a. Include personal observations that explain your competency concerns.
 - b. Be as detailed as possible. Include any specific behavior your client exhibited in court, meetings, etc.
 - c. Include your observations, if any, that your client may not understand his surroundings or the legal process.
 - d. Attach an addendum, if necessary.
 - e. Make sure you put all of your contact information- especially your email address.
 - f. If your client is not incarcerated or if there is a possibility he/she will be released from custody for any reason while the evaluation is pending, make sure to get their contact information. **This is very**

important because the evaluator will have to contact your client to schedule the evaluation.

4. Using the appropriate templates provided by the Court, prepare a *Motion for Evaluation for Criminal Responsibility* or *Motion for Evaluation of Competency to Stand Trial* or **both**. Include all your client's pending case numbers, even if they are not all indicted. You can supplement the referral later down the road, if necessary.
5. Submit the motion(s) for filing and submit a proposed Rule Nisi for an *Ex Parte* hearing.
6. Prepare a proposed *Order for Competency Evaluation* or *Order for Evaluation of Criminal Responsibility (Competency at the Time of The Act)* or **both**. Include all your client's pending case numbers.
7. At the *ex parte* hearing, have the proposed order(s) as well as the following documents available for presentation to the Court:
 - a. DBHDD Referral Form
 - b. Indictment/Accusation
 - c. Police Reports
 - d. Past Medical Records
 - e. Summary of Defendant's criminal history (if any)
 - f. Any other documents that may be helpful, including but not limited to school IEP/504 plan records, social security/disability documents, and/or statements from family members or guardians.
8. Within 10 days of the signing of the Order, you must submit the entire packet to the Department of Behavioral Health and Developmental Disabilities. The packet includes the signed, stamped/filed order(s). You may submit the packet by fax to 770.359.5238 or by email to courtservices@dbhdd.ga.gov.

9. Within 3 days of submission of the packet to DBHDD, file your Certification of Counsel showing that you submitted the requisite documents.
10. An evaluator will conduct their evaluation, write a report with their findings, and submit it to the Court. If you have kept your email address updated with them, you will most likely get an email from DBHDD simply stating that the report was submitted to the Court.
11. If you know the report was submitted to the Court, ASK FOR THE REPORT. DO NOT WAIT FOR THE COURT TO DISSEMINATE IT TO YOU.
12. The Court will give the report to defense counsel, but not to the prosecuting attorney at this point.
 - a. § 17-7-130(b)(1): “The department’s evaluation shall be submitted to the court, and the court shall submit such evaluation to the attorney for the accused or if *pro se*, to the accused, but otherwise, the evaluation shall be under seal and shall not be released to any other person absent a court order.”
13. If the defense chooses to raise the issue of incompetence further and files a special plea of incompetency, the Court shall submit the department’s evaluation to the prosecuting attorney. (§ 17-7-130(b)(2))

[Legal Standards on Next Page]

Don't Forget the Legal Standards!

Competency to Stand Trial:

Whether the defendant is capable of understanding the nature and object of the proceedings; whether the defendant comprehends his or her own condition in reference to such proceedings; and, whether the defendant is capable of rendering to counsel assistance in providing a proper defense.

Ga. R. Super. Ct. 31.4

Criminal Responsibility (Competency at Time of the Act):

§ 16-3-2; Mental Capacity; Insanity:

A person shall not be found guilty of a crime if, at the time of the act, omission, or negligence constituting the crime, the person did not have mental capacity to distinguish between right and wrong in relation to such act, omission, or negligence.

§ 16-3-3; Delusional Compulsion:

A person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime.