

# Checklist to Assist with Competency Expert Selection

Name of Potential Expert/Witness: \_\_\_\_\_ Date: \_\_\_\_\_

## I. Choosing a Potential Expert Witness

Provide the potential expert with a brief description of the case including what gave rise to concerns about your client’s competency as well as the nature of the legal case.

<b>A. Ask About:</b>	<b>Response was adequate?</b>	
	<b>YES</b>	<b>NO</b>
1. The clinician’s experience evaluating adolescents?	<input type="checkbox"/>	<input type="checkbox"/>
2. The clinician’s experience conducting forensic evaluations?	<input type="checkbox"/>	<input type="checkbox"/>
3. The clinician’s knowledge of the difference between a clinical and forensic evaluation?	<input type="checkbox"/>	<input type="checkbox"/>
4. The clinician’s experience testifying in court?	<input type="checkbox"/>	<input type="checkbox"/>
5. The legal standard. If applicable did the response mention:		
a. Need to give an opinion about treatment	<input type="checkbox"/>	<input type="checkbox"/>
b. How long the statute requires that an unfit youth has to regain competency and what is required to achieve that goal	<input type="checkbox"/>	<input type="checkbox"/>
6. What (s)he would do if you client discloses potentially self-incriminating information related to the case during the evaluation (some jurisdictions specifically indicate that such information should not be included in the report).	<input type="checkbox"/>	<input type="checkbox"/>

<b>B. Ask the clinician to describe how (s)he will conduct the evaluation. Did the response include:</b>	<b>Response was adequate?</b>	
	<b>YES</b>	<b>NO</b>
1. Reviewing relevant records (e.g. records related to the current case, academic, mental health and substance abuse records)	<input type="checkbox"/>	<input type="checkbox"/>
2. Interviewing the youth’s parent or guardian to, at a minimum, obtain a developmental history	<input type="checkbox"/>	<input type="checkbox"/>
3. Interviewing the youth RE:		
a. Developmental history (academic, mental health, substance use, trauma, medical history and prior experience with the legal system)	<input type="checkbox"/>	<input type="checkbox"/>

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	Response was adequate?	
	YES	NO
b. Fitness abilities e.g.:		
i. Explain the current case	<input type="checkbox"/>	<input type="checkbox"/>
ii. Explain the potential outcomes	<input type="checkbox"/>	<input type="checkbox"/>
iii. Explain the role of the judge, defense attorney, ASA and jury	<input type="checkbox"/>	<input type="checkbox"/>
iv. Explain terms such as guilty, not guilty and plea bargain	<input type="checkbox"/>	<input type="checkbox"/>
v. Explain how the youth would reason about potential plea bargain	<input type="checkbox"/>	<input type="checkbox"/>
vi. Understanding of the attorney/client relationship	<input type="checkbox"/>	<input type="checkbox"/>
vii. Understanding of the youth's role in the defense	<input type="checkbox"/>	<input type="checkbox"/>
viii. Youth's ability to provide coherent details regarding what they were doing on the day of the alleged offense	<input type="checkbox"/>	<input type="checkbox"/>
c. Interviewing of collateral resources – ask them to explain why or why not	<input type="checkbox"/>	<input type="checkbox"/>
d. If they mention testing:		
i. For each test, ask why? How would the data aid the clinician in answering the referral question?	<input type="checkbox"/>	<input type="checkbox"/>
ii. Ask them to describe the normative sample (you don't want the clinician to use tests that have not been normed on those similar to your client in terms of age, education and culture <sup>1</sup> )	<input type="checkbox"/>	<input type="checkbox"/>
iii. If they don't mention testing, ask them why not?	<input type="checkbox"/>	<input type="checkbox"/>
e. Ask them to explain how developmental or psycho-social immaturity might impact fitness abilities.	<input type="checkbox"/>	<input type="checkbox"/>

**C. Information you need to provide the clinician includes:**

1. Mental health, academic and substance abuse records	<input type="checkbox"/>	<input type="checkbox"/>
2. Legal and police records related to the current case	<input type="checkbox"/>	<input type="checkbox"/>
3. Relevant prior court records	<input type="checkbox"/>	<input type="checkbox"/>
4. Contact information for the youth's parent/guardian	<input type="checkbox"/>	<input type="checkbox"/>

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<sup>1</sup> The following are publishers for many of the test clinician's use, the publishers provide descriptions of the tests:

- Professional Resource Press: [http://www.prpress.com/Assessment-Instruments\\_c\\_9.html](http://www.prpress.com/Assessment-Instruments_c_9.html)
- PAR: <http://www4.parinc.com/products/ProductListByCategory.aspx?Category=FORENSIC>
- Pearson Clinical: <http://www.pearsonclinical.com>

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<b>D. Reviewing the Report (from your expert or theirs):</b>	<b>Response was adequate?</b>	
	<b>YES</b>	<b>NO</b>
1. Does the report indicate:		
a. The reason for the referral?	<input type="checkbox"/>	<input type="checkbox"/>
b. Which records were relied upon in forming the clinical opinion?	<input type="checkbox"/>	<input type="checkbox"/>
i. Do you have those records and agree with how the information was described?	<input type="checkbox"/>	<input type="checkbox"/>
c. Which tests were conducted and when?	<input type="checkbox"/>	<input type="checkbox"/>
d. Who was interviewed, when and for how long?	<input type="checkbox"/>	<input type="checkbox"/>
e. A section containing background information and clearly indicating who provided the information?	<input type="checkbox"/>	<input type="checkbox"/>
f. If tests were administered, an explanation of the purpose of the test and of the results?	<input type="checkbox"/>	<input type="checkbox"/>
g. Mental status and behavioral observation sections?	<input type="checkbox"/>	<input type="checkbox"/>
h. Data, separate from the opinion, regarding the defendant's fitness abilities including the defendant's:		
i. Explanation of the current case	<input type="checkbox"/>	<input type="checkbox"/>
ii. Explanation of the potential outcomes	<input type="checkbox"/>	<input type="checkbox"/>
iii. Explanation of the role of the judge, defense attorney, ASA and jury	<input type="checkbox"/>	<input type="checkbox"/>
iv. Explanation of terms such as guilty, not guilty and plea bargain	<input type="checkbox"/>	<input type="checkbox"/>
v. Explanation of how the youth would reason about a potential plea bargain	<input type="checkbox"/>	<input type="checkbox"/>
vi. Understanding of the attorney/client relationship	<input type="checkbox"/>	<input type="checkbox"/>
vii. Understanding of the youth's role in the defense	<input type="checkbox"/>	<input type="checkbox"/>
i. A clinical opinion section	<input type="checkbox"/>	<input type="checkbox"/>
i. Does it include a clear explanation of the data used to support the clinical opinion?	<input type="checkbox"/>	<input type="checkbox"/>
ii. If applicable, does it include an opinion and data RE:	<input type="checkbox"/>	<input type="checkbox"/>
– Likelihood of obtaining fitness within the required time	<input type="checkbox"/>	<input type="checkbox"/>
– Need for treatment	<input type="checkbox"/>	<input type="checkbox"/>

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<b>E. Preparing for Trial</b>	<b>Response was adequate?</b>	
	<b>YES</b>	<b>NO</b>
1. Do you have a copy of the expert's: CV, raw data and notes?	<input type="checkbox"/>	<input type="checkbox"/>
2. Have you reviewed literature regarding juvenile fitness evaluations (see bibliography)	<input type="checkbox"/>	<input type="checkbox"/>
3. Have you prepped with your expert?	<input type="checkbox"/>	<input type="checkbox"/>
a. Has your expert identified potential weaknesses in his/her report?	<input type="checkbox"/>	<input type="checkbox"/>
b. Has your expert reviewed the opposing expert's CV, raw data, notes and report?	<input type="checkbox"/>	<input type="checkbox"/>