

## **Legal questions**

### **These questions should be asked if the person has intellectual disability**

#### **What are my rights?**

Individuals with developmental disabilities have the same rights as any other American citizen under the Constitution. This includes the 6<sup>th</sup> amendment right to counsel, the Fifth Amendment right to remain silent, and the 8<sup>th</sup> amendment right which is protection against cruel or unusual punishment. A person with intellectual disabilities is also entitled to a competency hearing if there is evidence to show some sort of intellectual disability. A person with an intellectual disability cannot be held more than the maximum period of time of the offense. An example is if a person steals something say that the maximum penalty for that is 5 years in prison than a person with intellectual disabilities cannot be held more than 5 years in prison without being released to a state hospital or released into the general public. The reason competency comes into play when a person has been convicted of a crime a person must be able to understand his actions mentally in order to be convicted of a crime. So if the person cannot understand his actions than the person should not be convicted of the crime in most cases.

#### **How do you prove incompetency?**

Arizona's standard of proof to prove incompetency is by the preponderance of the evidence. Simply put in most cases there has to be multiple things indicating that the person is incompetent. Examples; 1 the doctor's report and school records 2 IQ test and records of previous commitment to a mental health treatment facility. On rare occasions the court can use one piece of evidence in determining whether the individual is incompetent. The individuals IQ level has to be below 65.

#### **-What is a public defender?**

There is a Public Defender, appointed by the General Counsel as needed. The Public Defender shall serve at the pleasure of the General Counsel. The Public Defender represents any person charged with an offense that requires the person to spent time in jail and who is not able to afford his own legal representation.( 32 C.F.R. § 935.63). Most counties across the US have a public defender’s office whose job it is to appoint capable public defenders.

### **What are the public defender’s duties?**

The public defender shall, on order of the court, defend, advice and counsel any person who is entitled to counsel as a matter of law and who is not financially able to employ counsel.( A.R.S. § 11-584). With regards to individuals suffering from intellectual disabilities the public defender shall represent the defendant if the court finds reasonable cause to believe that he or she “is, as a result of a mental disorder, a danger to self or others, [and] has a persistent or acute disability or a grave disability. The Public defender should be present a competency hearings, commitment hearings, and the release hearings.

### **How often can I change my public defender?**

The first step is to determine whether there is a misunderstanding or a genuine conflict between defendant and attorney. If there is a genuine conflict than you can proceed to the second step which is informing the court of the genuine conflict elaborating in writing about the conflict. After that the judge will set a date for a hearing where the defendant again elaborates the reasons why he or she wants to fire the existing attorney.

Be prepared to inform the court as to whether the defendant is requesting appointment of a replacement attorney, or is requesting to represent himself. Be aware

that in many jurisdictions, the courts will only replace a public defender once or twice, after which they will make no further substitutions. This decision is either at the hearing or very shortly thereafter in order to expedite progress on the case.