

SALT LAKE LEGAL DEFENDER (LDA) AND SOCIAL SERVICES

Who we are, what we do, court
system and how LDA can assist in
working with the DSPD

LDA-Salt Lake City

- Established in 1965
- Provides indigent/court appointed criminal defense to SL County and contracted jurisdictions such as Justice Courts
- Felony including Aggravated Homicide
- Misdemeanor
- Appeals
- Investigative

Policing and the ADA

<http://www.ada.gov/policeinfo.htm>

http://www.ada.gov/qanda_law.pdf

How does the ADA affect my law enforcement duties?

A: Title II of the ADA prohibits discrimination against people with disabilities in State and local governments services, programs, and employment. Law enforcement agencies are covered because they are programs of State or local governments, regardless of whether they receive Federal grants or other Federal funds. The ADA affects virtually everything that officers and deputies do, for example:

- **receiving citizen complaints;**
- **interrogating witnesses;**
- **arresting, booking, and holding suspects;**
- **operating telephone (911) emergency centers;**
- **providing emergency medical services;**
- **enforcing laws;**
- **and other duties.**

Crisis Intervention

CIT Utah- Crisis Intervention Teams

<http://www.citutah.com/>

What is CIT?

Crisis Intervention Teams

- **“(CIT) include specially trained law enforcement officers. These officers are trained in tactics to effectively deal with a situation involving a person experiencing a mental health crisis.” In the event of a mental health crisis:**
- **Call your local law enforcement dispatch and request a CIT Officer.**
- **For further information regarding the CIT Utah Program:**

Salt Lake City Police Department

Crisis Intervention Team

PO Box 145497

Salt Lake City, Utah 84114-5497

Phone: (801) 799-3728

Email: CIT@slcgov.com

UNI CRISIS LINE

UNI MOBILE CRISIS OUTREACH TEAM

The University Neuropsychiatric Institute (UNI) Mobile Crisis Outreach Team is a partnership with Salt Lake County and OptumHealth Salt Lake County which provides crisis services to residents of Salt Lake County including:

- **Rapid response-face to face assessment and crisis intervention in the community**
- **Psychiatric emergency care**
- **Consultation and support to individuals, families, and treatment providers**
- **Crisis resolution and planning**
- **Follow up services when appropriate**

The Mobile Crisis Outreach Team is initiated by calling the 24 hour UNI crisis line at

801-587-3000

24 hour, 7 days a week phone crisis services staffed by mental health professionals providing emotional support, assistance, crisis intervention, and suicide prevention to individuals experiencing emotional distress or psychiatric crisis.

We called police and client was taken to jail. Now what?

- In custody at the jail-Fail to file vs. charges
- Level of offense (felony vs. misdemeanor)
- District Courts vs. Justice Courts
- Arraignment
- Appointed to Public Defender or LDA
- Defense counsel
- How long will they be in jail?
- “Well, it depends...”

District Court vs. Justice Court

- Justice Courts have jurisdiction over class B and class C misdemeanors and infractions
- District Courts have jurisdiction over class A misdemeanors and all felonies, as well as appeals from justice courts.
- <http://www.utcourts.gov/index.html>
- <http://www.utcourts.gov/knowcts/>

Salt Lake County Jail

- (385) 468-8500 Administration Metro Jail (ADC)
- <http://www.slsheriff.org/>
- <http://www.slsheriff.org/metro-jail/where-to-start>

Administration 385.468.9898

Metro Jail 385.468.8400

Jail Media Request 385.468.9824

Records Request -

(Tel) 385.468.8870

(Fax) 385.468.9760

Salt Lake County Jail (ADC)

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Who is defense counsel, prosecutor, and court, etc. and how do I work with them?

- Public defender vs. private defense
- Prosecutor
- Who is wearing what hat? What is their role?
- What is your agenda as an agency?
- Purpose of court and legal system?

LDA/Social Services

- 5 Social Services Coordinators
- 2 Substance Abuse Treatment Coordinators
- Alternatives to Incarceration (ATI Lynn)
- Assigned to felony attorney for referral
- Some misdemeanor cases
- Part of defense team /Attorney Client Privilege

Social Services Coordinators

- Screen for Competency to Proceed
- Screen/Investigate Diminished Mental Capacity
- Screen/Investigate Insanity
- Screen/Investigate Guilty and Mentally Ill
- Special Mitigation
- Capital Homicide –Mitigation
- Atkins Decision-No execution of Mental Retardation/DD
- Mental Health Court
- Sentencing Plans
- Sex Offender
- Referral Source for clients and attorneys, etc.
- Coordination with providers of services in the community

FORENSIC vs. CLINICAL

FORENSIC INTERVIEW

- Goal: to obtain information as reliable and accurate as possible
- Fact-finding focus – accurate recollection of events important
- Objectivity, neutrality, avoidance of biases
- Court or Attorney is the client
- Consent to obtain outside information and disclose information is obtained and understood prior to proceeding with the interview
- Interviews are formal and restrictive
- Confidentiality restricted
- Competency of client questioned
- Recorded

FORENSIC vs. CLINICAL

CLINICAL INTERVIEW

- Goal: to assess and provide treatment of symptoms
- Therapeutic focus – Attributions and perceptions of events important
- Empathy, therapeutic alliance, support of Client
- Person is the client
- Client's consent required to seek external verification of information and to provide information to outside sources
- Interviewing strategies are variable
- Traditional confidentiality
- Competency of client not the primary concern
- Private

Forensic Model

- Degree of Scrutiny

Collateral resources that may be able to validate or disconfirm the information provided in order to make a judgment about reliability.

Skeptical of everything that is self-reported.

Focus on more conservative report

Collateral information from numerous sources

The Nature and Method of Forensic Assessment: Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers

TIMELINE

Date of Event	Event	Record
2/19/2006 Wednesday 8:00 or 9:00 am	<p>" I then went to [address] and talked to homeowner, stated he became acquainted with our client back in September. Mr. K went on to say that Mr. L client noticed that he had a tractor with a blade on it and client asked him to help push some dirt around his yard. Mr. K agreed and spent perhaps seven days in September pushing dirt around his yard. Mr. K described Mr. L as an ordinary kind of guy, friendly, and outgoing. Mr. K also stated that Mr. L mentioned he had a wife and child and that he did exchange pleasantries with the wife a couple of times and never saw the child. They never discussed any particular problems with himself or his family and never discussed religion. Mr. K id state, and it is a different description than what the police listed in their reports after talking to and that is as follows: Mr. K indicated that on Wednesday, date approximately eight or nine in the morning, he noticed from his kitchen window, Mr. L out in his backyard, flat on his back, with a camera, taking pictures of the sky. I then asked Mr. K, Could Mr. L have been taking photos of the snow covered mountains as mentioned in the police reports and Mr. K stated, " No, the camera was pointed straight up into the sky." Mr. K further described that client moved to several areas in his back yard and each time. Client was flat on his back with a camera and appeared to be photographing the sky. Mr. K estimated that this went on for approximately thirty minutes. -</p>	Interview with neighbor dated

DEFINITIONS OF MR/DD UTAH

Utah Human Services Code-----Services for People with Disabilities

Utah Code 62A-5-101

<http://le.utah.gov/UtahCode/title.jsp>

- (8) (a) "Disability" means a severe, chronic disability that:
- (i) is attributable to:
 - (A) an intellectual disability;
 - (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;
 - (C) a physical disability; or
 - (D) a brain injury;
 - (ii) is likely to continue indefinitely;

DEFINITIONS

(iii) (A) for a condition described in Subsection (8)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:

- (I) self-care;
- (II) receptive and expressive language;
- (III) learning;
- (IV) mobility;
- (V) self-direction;
- (VI) capacity for independent living; or
- (VII) economic self-sufficiency; or

(B) for a condition described in Subsection (8)(a)(i)(D), results in a substantial limitation in three or more of the following areas:

- (I) memory or cognition;
- (II) activities of daily life;
- (III) judgment and self-protection;
- (IV) control of emotions;
- (V) communication;
- (VI) physical health; or
- (VII) employment; and

(iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:

- (A) may continue throughout life; and
- (B) must be individually planned and coordinated.

(b) "Disability" does not include a condition due solely to:

- (i) mental illness;
- (ii) personality disorder;
- (iii) hearing impairment;
- (iv) visual impairment;
- (v) learning disability;
- (vi) behavior disorder;
- (vii) substance abuse; or
- (viii) the aging process.

DEFINITIONS/ATKINS

State of Utah Statutorily Prohibits the Executions of Mentally Retarded Defendants.

- In response to Atkins the Utah State Legislature enacted section 77-15a-101, et. seq. in 2003 which allows a Utah defendant to seek exemption from the death penalty if that defendant meets the definition of mental retardation in this specific statutory context.
- The term “mentally retarded” is defined in section 77-15a-102 as a condition in which an individual has significant subaverage general intellectual functioning that results in and exists concurrently with significant deficiencies in adaptive functioning that exist primarily in the areas of reasoning or impulse control, or in both of these areas; and
- (2) the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning under Subsection (1) are both manifested prior to age 22.
- See Utah Code Ann. § 77-15a-102 (2003).

UTAH ATKINS RESPONSE

- Every state has a different definition of Atkins
- **77-15a-101. Mentally retarded defendant not subject to death penalty -- Defendant with subaverage functioning not subject to death penalty if confession not corroborated.**
 - (1) A defendant who is found by the court to be mentally retarded as defined in Section [77-15a-102](#) is not subject to the death penalty.
 - (2) A defendant who does not meet the definition of mental retardation under Section [77-15a-102](#) is not subject to the death penalty if:
 - (a) the defendant has significantly subaverage general intellectual functioning that exists concurrently with significant deficiencies in adaptive functioning;
 - (b) the functioning described in Subsection (2)(a) is manifested prior to age 22; and
 - (c) the state intends to introduce into evidence a confession by the defendant which is not supported by substantial evidence independent of the confession.
- Enacted by Chapter 11, 2003 General Session

Common denominator in EVERY IAC reversal: Cognitive Impairment

- Williams v. Taylor, 529 U.S. 362 (2000)
- Wiggins v. Smith, 539 U.S. 510 (2003)
- Rompilla v. Beard, 545 U.S. 374 (2005)
- Porter v. McCollum, 130 S. Ct. 447 (2009)
- Sears v. Upton, 130 S. Ct 3259 (2010)

Courts recognize importance as a “super-mitigator” but is frequently missed by lawyers and experts at trial (Russell Stetler, 2012)

Committee on Mental Retardation and the Death Penalty

“In 2005 Division 33 created an ad hoc CMRDP as the division’s response to the challenges brought about by the U.S. Supreme Court’s 2002 Atkins v. Virginia Decision.”

Dr. J Gregory Olley, PhD

University of North Carolina at Chapel Hill

Committee Chair

Competency To Proceed

- **77-15-2. "Incompetent to proceed" defined.**

For the purposes of this chapter, a person is incompetent to proceed if he is suffering from a mental disorder or mental retardation resulting either in:

(1) his inability to have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or

(2) his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding.

Amended by Chapter 162, 1994 General Session

Utah Code 77-15-5

- **77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report**
- (4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:
 - (a) the defendant's present capacity to:
 - (i) comprehend and appreciate the charges or allegations against the defendant;
 - (ii) disclose to counsel pertinent facts, events, and states of mind;
 - (iii) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
 - (iv) engage in reasoned choice of legal strategies and options;
 - (v) understand the adversary nature of the proceedings against the defendant;
 - (vi) manifest appropriate courtroom behavior; and
 - (vii) testify relevantly, if applicable;
 - (b) the impact of the mental disorder, or mental retardation, if any, on the nature and quality of the defendant's relationship with counsel;
 - (c) if psychoactive medication is currently being administered:
 - (i) whether the medication is necessary to maintain the defendant's competency; and
 - (ii) the effect of the medication, if any, on the defendant's demeanor and affect and ability to participate in the proceedings; and
 - (d) whether the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial.
- (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate in the report:
 - (a) which of the above factors contributes to the defendant's incompetency;
 - (b) the nature of the defendant's mental disorder or mental retardation and its relationship to the factors contributing to the defendant's incompetency;
 - (c) the treatment or treatments appropriate and available;
 - (d) the defendant's capacity to give informed consent to treatment to restore competency; and
 - (e) any diagnostic instruments, methods, and observations used by the expert to determine whether or not the defendant is exhibiting false or exaggerated physical or psychological symptoms relevant to the defendant's capacity to stand trial and the expert's opinion as to the significance of any false or exaggerated symptoms regarding the defendant's capacity.

Not Competent/Not restorable

Utah Code 77-15-5

Order for hearing -- Stay of other proceedings -- Examinations of defendant

- Scope of examination and report.

(10) (a) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing.

(b) An adjudication of incompetency to proceed does not operate as an adjudication of incompetency to give informed consent for medical treatment or for any other purpose, unless specifically set forth in the court order.

Not competent/Not restorable

Utah Code 77-15-6

Commitment on finding of incompetency to stand trial -- Subsequent hearings - - Notice to prosecuting attorneys.

- (4) Upon receipt of the full report, the court shall hold a hearing to determine the defendant's current status. At the hearing, the burden of proving that the defendant is competent is on the proponent of competency. Following the hearing, the court shall determine by a preponderance of evidence whether the defendant is:
 - (a) competent to stand trial;
 - (b) incompetent to stand trial with a substantial probability that the defendant may become competent in the foreseeable future; or
 - **(c) incompetent to stand trial without a substantial probability that the defendant may become competent in the foreseeable future.**
- (5) (a) If the court enters a finding pursuant to Subsection (4)(a), the court shall proceed with the trial or other procedures as may be necessary to adjudicate the charges.

Not Competent/Not restorable

Utah Code 77-15-6

Commitment on finding of incompetency to stand trial

Subsequent hearings -- Notice to prosecuting attorneys

- (b) If the court enters a finding pursuant to Subsection (4)(b), the court may order that the defendant remain committed to the custody of the executive director of the Department of Human Services or a designee for the purpose of treatment intended to restore the defendant to competency.
- **(c) If the court enters a finding pursuant to Subsection (4)(c), the court shall order the defendant released from the custody of the director unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings must be initiated within seven days after the court's order entering the finding in Subsection (4)(c), unless the court enlarges the time for good cause shown.** The defendant may be ordered to remain in the custody of the director until commitment proceedings have been concluded. If the defendant is committed, the court which entered the order pursuant to Subsection (4)(c), shall be notified by the director at least 10 days prior to any release of the committed person

Not competent/Not restorable

- (15) A defendant who is civilly committed pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, may still be adjudicated competent to stand trial under this chapter

THERAPEUTIC JUSTICE

- [Soc Sci Med](#). 1987;25(9):1027-32.
- **The criminal justice/mental health system and the mentally retarded, mentally ill defendant.**
- [Williams W](#)¹, [Spruill J](#).
- [Author information](#)
- ¹VA Medical Center, Houston, TX 77030.
- **Abstract**
- The mentally retarded, mentally ill defendant calls attention to problems in the relationship between the legal and the mental health systems. This study looks at what happens to a group of retarded offenders found incompetent to stand trial. The study examines differences in court processing and final disposition between mentally retarded and nonretarded defendants found incompetent to stand trial. Virtually all subjects were diagnosed as being psychotic. **The mentally ill, retarded defendants spend significantly more time in the hospital, more time in the hospital waiting to be returned to jail, and more total time incarcerated in the criminal justice/mental health system. At a final disposition hearing mentally ill, retarded defendants were significantly more likely to be rehospitized and less likely to be released to the community.** No mentally ill, retarded defendant in this study went to prison. The longer periods of incarceration may stem from an underlying lack of understanding about the ability of retarded defendants to achieve competency. Differences in court disposition may result from a court/mental health professional tendency to select dispositions which are thought to be more 'humane'.
- PMID: 3423842 [PubMed - indexed for MEDLINE]

THERAPEUTIC JURISPRUDENCE

- Journal of Law and Health Law Journals -1993
- Effectively Implementing Title 1 of the Americans with Disabilities Act for Mentally Disabled Persons: A Therapeutic Jurisprudence Analysis
- Deborah A. Dorfman
- *Legal Center for People with Disabilities*
- <http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1290&context=jlh>

Mental Health Court

Salt Lake County -Felony/Misd. Court

The Third District Mental Health Court (MHC) is a specialty court in Salt Lake County that brings criminal justice agencies and mental health professionals together to treat mentally ill participants. Mental Health Court provides a structured link for mentally ill participants to treatment, rehabilitation, medication management, social support services and criminal justice services. Mental Health Court helps participants receive mental health services in order to protect the public and effectively use all public resources available to help MHC participants.

Mental Health Court is a voluntary program. All participants in MHC must be competent to enter a guilty plea in a criminal case. Criteria are SPMI with diagnostic history of Schizophrenia and Bipolar Spectrum Disorder. Clients must be both clinically and legally approved for MHC. All participants in Mental Health Court must attend court weekly, check in with a probation agent weekly, attend mental health treatment, take all prescribed medications, and take weekly random drug tests

Mental Health Court

How participants enter Mental Health Court?

Referral:

Defense attorneys, prosecuting attorneys, judges, probation officers, jail staff, Criminal Justice Services or mental health professionals can make referrals to Mental Health Court, however, **the decision to ultimately enter into Mental Health Court is a legal decision that is made by the defendant in consultation with defense counsel.**

Community Supervision

- Vermont Best Practices Manual
- <http://ddas.vermont.gov/ddas-publications/publications-os/publications-os-documents/os-pub-supervision-treatment-sex-offenders-with-ds>
- Utah?

ADA...

¹ Developmental Disabilities Assistant and Bill of Rights Act (“DD Act”), 42 U.S.C. § 15041, *et seq.*, 45 C.F.R. § 1386; the Protection and Advocacy for Individuals with Mental Illness (“PAIMI”) Act, 42 U.S.C. § 10801, *et seq. as amended*, 42 C.F.R. § 51; the Protection and Advocacy for Individuals with Traumatic Brain Injury (“PATBI”) Act, 42 U.S.C. § 300d-52; and the Protection and Advocacy for Individual Rights (“PAIR”) Act, 29 U.S.C. § 794e.

² The term facilities includes, but is not limited to, hospitals, nursing homes, community living arrangements (group homes, board and care homes, individual residences and apartments), day programs, juvenile detention centers, homeless shelters, and jails and prisons (including both general areas and special mental health or forensic units), “half-way houses” and other treatment facilities. *See* 45 C.F.R. § 1386.19 (PADD: “Facility includes any setting that provides care, treatment, services and habilitation, even if only ‘as needed’ or under a contractual arrangement.”); 42 U.S.C. § 10802(3) (PAIMI definition); 42 C.F.R. § 51.2 (PAIMI: “Facility includes any public or private residential setting that provides overnight care accompanied by treatment services.”).

Disability Law Center

Disability Law Center At the Community Legal Center
205 North 400 West,
Salt Lake City, Utah 84103
(801) 363-1347
<http://disabilitylawcenter.org/>

The Disability Law Center (DLC) is the only state wide disability agency in Utah that provides self-advocacy assistance, legal services, disability rights education and public policy advocacy. The DLC has broad statutory powers to safeguard the rights of people with disabilities. Some of the legal services provided to individuals with disabilities by the DLC are in the areas of:

- Abuse and neglect investigations
- Accessibility
- Housing discrimination
- Voting access
- Medicaid or insurance denial of assistive technology
- Education issues (Individuals with Disabilities Education Act)
- Clients and applicants of Vocational Rehabilitation

Coordination

LDA Social Services Contact list:

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