
By: **Delegate Dumais**

Introduced and read first time: February 12, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law - Competency**

3 FOR the purpose of requiring the juvenile court to order a certain evaluation of a
4 certain child under certain circumstances; requiring a certain evaluation to be
5 performed by a qualified expert; providing for the construction of a certain
6 provision of this Act; requiring certain legal pleadings to be served on certain
7 individuals and agencies; specifying certain procedures and conditions under
8 which an examination is to be conducted; requiring a qualified expert to
9 examine a certain child and prepare a certain report; requiring the qualified
10 expert to review certain records and consider certain factors; specifying the
11 contents of a certain report; specifying certain procedures for the filing of certain
12 reports; establishing that a failure to file a certain report may not be, in and of
13 itself, grounds for dismissal of a certain petition; authorizing counsel for the
14 child to be present during an examination of the child; requiring the
15 Department of Health and Mental Hygiene to take certain actions; specifying
16 certain procedures for a competency hearing; requiring the court to take certain
17 actions after the court makes a certain determination at a competency hearing;
18 authorizing the court to take certain actions after the court makes a certain
19 determination at a competency hearing; requiring a certain service provider to
20 file a certain report with the court; specifying that the court retains jurisdiction
21 over a certain child for a certain period; requiring the court to dismiss a certain
22 petition under certain circumstances; authorizing the court to order that certain
23 proceedings be instituted under certain circumstances; establishing that certain
24 hearings may be conducted without the presence of the child under certain
25 circumstances; specifying that certain statements, information, and reports are
26 not admissible in a proceeding except under certain circumstances; requiring
27 the Secretary of Health and Mental Hygiene and the Secretary of Juvenile
28 Services to jointly adopt certain regulations; defining certain terms; and
29 generally relating to the competency of a child to participate in certain
30 proceedings.

31 BY repealing and reenacting, with amendments,
32 Article - Courts and Judicial Proceedings
33 Section 3-8A-01
34 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY adding to

3 Article - Courts and Judicial Proceedings

4 Section 3-8A-17.1 through 3-8A-17.10

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Courts and Judicial Proceedings**

10 3-8A-01.

11 (a) In this subtitle the following words have the meanings indicated, unless
12 the context of their use indicates otherwise.

13 (b) "Adjudicatory hearing" means a hearing under this subtitle to determine
14 whether the allegations in the petition, other than allegations that the child requires
15 treatment, guidance or rehabilitation, are true.

16 (c) "Adult" means an individual who is at least 18 years old.

17 (d) "Child" means an individual under the age of 18 years.

18 (e) "Child in need of supervision" is a child who requires guidance, treatment,
19 or rehabilitation and:

20 (1) Is required by law to attend school and is habitually truant;

21 (2) Is habitually disobedient, ungovernable, and beyond the control of
22 the person having custody of him;

23 (3) Deports himself so as to injure or endanger himself or others; or

24 (4) Has committed an offense applicable only to children.

25 (f) "Citation" means the written form issued by a police officer which serves
26 as the initial pleading against a child for a violation and which is adequate process to
27 give the court jurisdiction over the person cited.

28 (g) "Commit" means to transfer legal custody.

29 (h) (1) "Community detention" means a program monitored by the
30 Department of Juvenile Services in which a delinquent child or a child alleged to be
31 delinquent is placed in the home of a parent, guardian, custodian, or other fit person,
32 or in shelter care, as a condition of probation or as an alternative to detention.

33 (2) "Community detention" includes electronic monitoring.

1 (I) "COMPETENCY HEARING" MEANS A HEARING UNDER THIS SUBTITLE TO
2 DETERMINE WHETHER A CHILD ALLEGED TO BE DELINQUENT IS MENTALLY
3 COMPETENT TO PARTICIPATE IN A WAIVER HEARING UNDER § 3-8A-06 OF THIS
4 SUBTITLE, AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, A
5 DISPOSITION HEARING UNDER § 3-8A-19 OF THIS SUBTITLE, OR A VIOLATION OF
6 PROBATION HEARING.

7 [(i)] (J) "Court" means the circuit court for a county sitting as the juvenile
8 court.

9 [(j)] (K) "Custodian" means a person or agency to whom legal custody of a
10 child has been given by order of the court, other than the child's parent or legal
11 guardian.

12 [(k)] (L) "Delinquent act" means an act which would be a crime if committed
13 by an adult.

14 [(l)] (M) "Delinquent child" is a child who has committed a delinquent act and
15 requires guidance, treatment, or rehabilitation.

16 [(m)] (N) "Detention" means the temporary care of children who, pending court
17 disposition, require secure custody for the protection of themselves or the community,
18 in physically restricting facilities.

19 (O) "DEVELOPMENTAL DISABILITY" MEANS A SEVERE CHRONIC DISABILITY
20 OF A CHILD THAT:

21 (1) IS ATTRIBUTABLE TO A PHYSICAL OR MENTAL IMPAIRMENT, OTHER
22 THAN THE SOLE DIAGNOSIS OF MENTAL ILLNESS, OR TO A COMBINATION OF
23 MENTAL AND PHYSICAL IMPAIRMENTS;

24 (2) IS LIKELY TO CONTINUE INDEFINITELY;

25 (3) RESULTS IN AN INABILITY TO LIVE INDEPENDENTLY WITHOUT
26 EXTERNAL SUPPORT OR CONTINUING AND REGULAR ASSISTANCE; AND

27 (4) REFLECTS THE NEED FOR A COMBINATION AND SEQUENCE OF
28 SPECIAL INTERDISCIPLINARY OR GENERIC CARE, TREATMENT, OR OTHER SERVICES
29 THAT ARE INDIVIDUALLY PLANNED AND COORDINATED FOR THE CHILD.

30 (P) "DEVELOPMENTAL IMMATURITY" MEANS THAT THE AGE OR MATURITY
31 LEVEL PREVENTS A CHILD FROM HAVING:

32 (1) A BASIC COMPREHENSION OF THE PURPOSE AND NATURE OF THE
33 PROCEEDINGS;

34 (2) THE CAPACITY TO PROVIDE RELEVANT INFORMATION TO COUNSEL
35 AND TO PROCESS INFORMATION; AND

1 (3) THE ABILITY TO APPLY INFORMATION TO THE CHILD'S OWN
2 SITUATION IN A MANNER THAT IS NEITHER DISTORTED NOR IRRATIONAL.

3 [(n)] (Q) "Disposition hearing" means a hearing under this subtitle to
4 determine:

5 (1) Whether a child needs or requires guidance, treatment, or
6 rehabilitation; and if so

7 (2) The nature of the guidance, treatment, or rehabilitation.

8 (R) "INCOMPETENT TO PROCEED" MEANS THAT A CHILD IS NOT ABLE TO:

9 (1) UNDERSTAND THE NATURE OR OBJECT OF THE PROCEEDING; OR

10 (2) ASSIST IN THE CHILD'S DEFENSE.

11 [(o)] (S) "Intake officer" means the person assigned to the court by the
12 Department of Juvenile Services to provide the intake services set forth in this
13 subtitle.

14 [(p)] (T) "Mentally handicapped child" means a child who is or may be
15 mentally retarded or mentally ill.

16 (U) (1) "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL
17 ILLNESS THAT RESULTS FROM A PSYCHIATRIC OR NEUROLOGICAL DISORDER.

18 (2) "MENTAL DISORDER" INCLUDES A MENTAL ILLNESS THAT SO
19 SUBSTANTIALLY IMPAIRS THE MENTAL OR EMOTIONAL FUNCTIONING OF A CHILD
20 AS TO MAKE CARE OR TREATMENT NECESSARY OR ADVISABLE FOR THE WELFARE OF
21 THE CHILD OR FOR THE SAFETY OF THE CHILD OR PROPERTY OF ANOTHER.

22 (3) "MENTAL DISORDER" DOES NOT INCLUDE MENTAL RETARDATION.

23 (V) "MENTAL RETARDATION" MEANS A DEVELOPMENTAL DISABILITY THAT IS
24 EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY BELOW
25 AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.

26 [(q)] (W) "Party" includes a child who is the subject of a petition or a peace
27 order request, the child's parent, guardian, or custodian, the petitioner and an adult
28 who is charged under § 3-8A-30 of this subtitle.

29 [(r)] (X) "Peace order proceeding" means a proceeding under § 3-8A-19.2 or §
30 3-8A-19.4 of this subtitle.

31 [(s)] (Y) "Peace order request" means the initial pleading filed with the court
32 under § 3-8A-19.1 of this subtitle.

33 [(t)] (Z) "Petition" means the pleading filed with the court under § 3-8A-13 of
34 this subtitle alleging that a child is a delinquent child or a child in need of supervision
35 or that an adult violated § 3-8A-30 of this subtitle.

1 (AA) "QUALIFIED EXPERT" MEANS A LICENSED PSYCHOLOGIST OR
2 PSYCHIATRIST WHO HAS BEEN CERTIFIED BY THE DEPARTMENT OF HEALTH AND
3 MENTAL HYGIENE TO HAVE EXPERTISE IN CHILD DEVELOPMENT, WITH TRAINING IN
4 FORENSIC EVALUATION PROCEDURES THROUGH FORMAL INSTRUCTION,
5 PROFESSIONAL SUPERVISION, OR BOTH, AND WHO IS:

6 (1) FAMILIAR WITH THE COMPETENCY STANDARDS CONTAINED IN THIS
7 SUBTITLE; AND

8 (2) FAMILIAR WITH THE TREATMENT, TRAINING, AND RESTORATION
9 PROGRAMS FOR CHILDREN THAT ARE AVAILABLE IN THIS STATE.

10 [(u)] (BB) "Respondent" means the individual against whom a petition or a
11 peace order request is filed.

12 [(v)] (CC) (1) "Shelter care" means the temporary care of children in
13 physically unrestricting facilities.

14 (2) "Shelter care" does not mean care in a State mental health facility.

15 [(w)] (DD) (1) "Victim" means:

16 (i) A person who suffers direct or threatened physical, emotional,
17 or financial harm as a result of a delinquent act; or

18 (ii) An individual against whom an act specified in § 3-8A-19.1(b)
19 of this subtitle is committed or alleged to have been committed.

20 (2) "Victim" includes a family member of a minor, disabled, or a deceased
21 victim.

22 (3) "Victim" includes, if the victim is not an individual, the victim's agent
23 or designee.

24 [(x)] (EE) "Violation" means a violation for which a citation is issued under:

25 (1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

26 (2) § 10-108 of the Criminal Law Article; or

27 (3) § 26-103 of the Education Article.

28 [(y)] (FF) "Witness" means any person who is or expects to be a State's witness.
29 3-8A-17.1.

30 (A) (1) AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS
31 COMMITTED A DELINQUENT ACT IS FILED WITH THE COURT UNDER THIS SUBTITLE,
32 THE COURT ON ITS OWN MOTION, OR ON MOTION OF THE CHILD'S COUNSEL OR THE
33 STATE'S ATTORNEY, SHALL STAY ALL PROCEEDINGS AND ORDER AN EVALUATION OF

1 THE CHILD'S MENTAL CONDITION AND DEVELOPMENTAL LEVELS IF THE COURT
2 FINDS THAT:

3 (I) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE CHILD HAS
4 COMMITTED THE DELINQUENT ACT; AND

5 (II) THERE IS REASON TO BELIEVE THAT THE CHILD MAY BE
6 INCOMPETENT TO PROCEED WITH A WAIVER HEARING UNDER § 3-8A-06 OF THIS
7 SUBTITLE, AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, A
8 DISPOSITION HEARING UNDER § 3-8A-19 OF THIS SUBTITLE, OR A VIOLATION OF
9 PROBATION HEARING.

10 (2) AN EVALUATION ORDERED UNDER SUBSECTION (A) OF THIS
11 SECTION SHALL BE PERFORMED BY A QUALIFIED EXPERT.

12 (3) THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT THE
13 STATE OR THE CHILD FROM CALLING OTHER EXPERT WITNESSES TO TESTIFY AT A
14 COMPETENCY HEARING.

15 (B) ANY MOTION QUESTIONING THE CHILD'S COMPETENCY TO PROCEED, AND
16 ANY SUBSEQUENT LEGAL PLEADING RELATING TO THE CHILD'S COMPETENCY TO
17 PROCEED, SHALL BE SERVED ON THE CHILD'S COUNSEL, THE STATE'S ATTORNEY,
18 THE DEPARTMENT OF JUVENILE SERVICES, AND THE DEPARTMENT OF HEALTH AND
19 MENTAL HYGIENE.

20 3-8A-17.2.

21 (A) THE COURT SHALL SET AND MAY CHANGE THE CONDITIONS UNDER
22 WHICH THE EXAMINATION IS TO BE CONDUCTED.

23 (B) ON CONSIDERATION OF THE NATURE OF THE PETITION, THE COURT MAY
24 REQUIRE THE EXAMINATION TO BE CONDUCTED ON AN OUTPATIENT BASIS IF THE
25 CHILD WAS PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS SUBTITLE AND SHALL
26 REQUIRE THE EXAMINATION TO BE CONDUCTED ON AN OUTPATIENT BASIS IF THE
27 CHILD WAS NOT PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS SUBTITLE.

28 (C) (1) IF A CHILD WAS PREVIOUSLY DETAINED UNDER § 3-8A-15 OF THIS
29 SUBTITLE, THE COURT MAY ORDER THE CHILD TO CONTINUE TO BE DETAINED
30 BEYOND ANY PERIOD SPECIFIED IN § 3-8A-15 OF THIS SUBTITLE UNTIL THE
31 EXAMINATION IS COMPLETED.

32 (2) IF THE COURT FINDS IT APPROPRIATE FOR THE HEALTH OR SAFETY
33 OF THE CHILD, OR FOR THE SAFETY OF OTHERS, THE COURT MAY ORDER
34 CONFINEMENT OF THE JUVENILE, PENDING THE EXAMINATION, IN A MEDICAL
35 FACILITY THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE DESIGNATES
36 AS APPROPRIATE.

1 3-8A-17.3.

2 (A) (1) THE QUALIFIED EXPERT SHALL EXAMINE THE CHILD AND PREPARE
3 A REPORT STATING WHETHER, IN THE EXPERT'S OPINION, THE CHILD IS
4 INCOMPETENT TO PROCEED.

5 (2) IN CONDUCTING THE EXAMINATION, THE QUALIFIED EXPERT SHALL
6 REVIEW ALL AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
7 CONCERNING THE CHILD AND THE CHILD'S CASE.

8 (3) IN DETERMINING WHETHER THE CHILD IS INCOMPETENT TO
9 PROCEED, THE QUALIFIED EXPERT SHALL CONSIDER THE FOLLOWING FACTORS:

10 (I) THE CHILD'S AGE, MATURITY LEVEL, DEVELOPMENTAL STAGE,
11 AND DECISION-MAKING ABILITIES;

12 (II) THE CAPACITY OF THE CHILD TO:

13 1. APPRECIATE THE ALLEGATIONS AGAINST THE CHILD;

14 2. APPRECIATE THE RANGE AND NATURE OF ALLOWABLE
15 DISPOSITIONS THAT MAY BE IMPOSED IN THE PROCEEDINGS AGAINST THE CHILD;

16 3. UNDERSTAND THE ROLES OF THE PARTICIPANTS AND
17 THE ADVERSARY NATURE OF THE LEGAL PROCESS;

18 4. DISCLOSE TO COUNSEL FACTS PERTINENT TO THE
19 PROCEEDINGS AT ISSUE;

20 5. DISPLAY APPROPRIATE COURTROOM BEHAVIOR; AND

21 6. TESTIFY RELEVANTLY; AND

22 (III) ANY OTHER FACTORS THAT THE QUALIFIED EXPERT DEEMS TO
23 BE RELEVANT.

24 (4) THE WRITTEN REPORT SUBMITTED BY THE QUALIFIED EXPERT
25 SHALL:

26 (I) IDENTIFY THE SPECIFIC MATTERS REFERRED FOR
27 EVALUATION;

28 (II) DESCRIBE THE PROCEDURES, TECHNIQUES, AND TESTS USED
29 IN THE EXAMINATION AND THE PURPOSES OF EACH;

30 (III) STATE THE QUALIFIED EXPERT'S CLINICAL OBSERVATIONS,
31 FINDINGS, AND OPINIONS ON EACH FACTOR SPECIFIED IN PARAGRAPH (3) OF THIS
32 SUBSECTION, AND IDENTIFY THOSE FACTORS, IF ANY, ON WHICH THE QUALIFIED
33 EXPERT COULD NOT GIVE AN OPINION; AND

1 (IV) IDENTIFY THE SOURCES OF INFORMATION USED BY THE
2 QUALIFIED EXPERT AND PRESENT THE FACTUAL BASIS FOR THE QUALIFIED
3 EXPERT'S CLINICAL FINDINGS AND OPINIONS.

4 (B) (1) IF THE QUALIFIED EXPERT BELIEVES THAT THE CHILD IS
5 INCOMPETENT TO PROCEED, THE REPORT SHALL DESCRIBE THE TREATMENT THAT
6 THE QUALIFIED EXPERT BELIEVES IS NECESSARY FOR THE CHILD TO ATTAIN
7 COMPETENCY TO PROCEED, AND, IN A SEPARATE REPORT, SHALL STATE WHETHER
8 THE CHILD POSES A DANGER TO THE CHILD OR TO THE PERSON OR PROPERTY OF
9 OTHERS.

10 (2) IN DETERMINING THE TREATMENT THAT IS NECESSARY FOR THE
11 CHILD TO ATTAIN COMPETENCY TO PROCEED, THE QUALIFIED EXPERT SHALL
12 CONSIDER AND REPORT ON THE FOLLOWING:

13 (I) THE MENTAL ILLNESS, MENTAL RETARDATION,
14 DEVELOPMENTAL IMMATURITY, OR OTHER DEVELOPMENTAL DISABILITY CAUSING
15 THE CHILD TO BE INCOMPETENT TO PROCEED;

16 (II) THE TREATMENT OR EDUCATION APPROPRIATE FOR THE
17 MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL IMMATURITY, OR
18 OTHER DEVELOPMENTAL DISABILITY OF THE CHILD, AND AN EXPLANATION OF
19 EACH OF THE POSSIBLE TREATMENT OR EDUCATION ALTERNATIVES, IN ORDER OF
20 RECOMMENDATION;

21 (III) THE LIKELIHOOD OF THE CHILD ATTAINING COMPETENCY TO
22 PROCEED UNDER THE TREATMENT OR EDUCATION RECOMMENDED, AN
23 ASSESSMENT OF THE PROBABLE DURATION OF THE TREATMENT REQUIRED TO
24 ATTAIN COMPETENCY, AND THE PROBABILITY THAT THE CHILD WILL ATTAIN
25 COMPETENCY TO PROCEED IN THE FORESEEABLE FUTURE; AND

26 (IV) WHETHER THE CHILD MEETS THE CRITERIA FOR
27 INVOLUNTARY ADMISSION UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH -
28 GENERAL ARTICLE.

29 (C) (1) ALL REPORTS REQUIRED UNDER THIS SECTION SHALL BE FILED
30 WITH THE COURT AND SERVED ON THE CHILD'S COUNSEL, THE STATE'S ATTORNEY,
31 AND THE DEPARTMENT OF JUVENILE SERVICES WITHIN 45 DAYS AFTER THE COURT
32 ORDERS THE EXAMINATION.

33 (2) ON GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME
34 PERIOD SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION FOR AN ADDITIONAL 15
35 DAYS.

36 (3) FAILURE OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
37 TO FILE A COMPLETE REPORT WITHIN THE TIME PERIODS SPECIFIED IN THIS
38 SUBSECTION MAY NOT BE, IN AND OF ITSELF, GROUNDS FOR DISMISSAL OF THE
39 PETITION ALLEGING DELINQUENCY.

1 (D) COUNSEL FOR THE CHILD MAY BE PRESENT AT AN EXAMINATION UNDER
2 THIS SECTION.

3 (E) IF THE COURT ORDERS AN EXAMINATION UNDER THIS SECTION, THE
4 DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ENSURE THAT:

5 (1) THE CHILD IS EXAMINED BY A QUALIFIED EXPERT; AND

6 (2) A COMPLETE REPORT BY THE QUALIFIED EXPERT IS FILED WITH
7 THE COURT AND SERVED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

8 3-8A-17.4.

9 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
10 WITHIN 15 DAYS AFTER RECEIPT OF A REPORT OF A QUALIFIED EXPERT, THE COURT
11 SHALL HOLD A COMPETENCY HEARING.

12 (2) ON GOOD CAUSE SHOWN, THE COURT MAY EXTEND THE TIME FOR
13 HOLDING THE COMPETENCY HEARING FOR AN ADDITIONAL 15 DAYS.

14 (B) AT THE COMPETENCY HEARING, THE COURT SHALL DETERMINE, BY
15 EVIDENCE PRESENTED ON THE RECORD, WHETHER THE JUVENILE IS INCOMPETENT
16 TO PROCEED.

17 (C) FINDINGS OF FACT SHALL BE BASED ON THE EVALUATION OF THE CHILD
18 BY THE QUALIFIED EXPERT.

19 (D) THE STATE SHALL BEAR THE BURDEN OF PROVING THE CHILD'S
20 COMPETENCY BEYOND A REASONABLE DOUBT.

21 3-8A-17.5.

22 AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
23 COMPETENT, THE COURT SHALL ENTER AN ORDER STATING THAT THE CHILD IS
24 COMPETENT, LIFT THE STAY IMPOSED UNDER § 3-8A-17.1 OF THIS SUBTITLE, AND
25 PROCEED WITH THE DELINQUENCY PETITION OR VIOLATION OF PROBATION
26 PETITION IN ACCORDANCE WITH THE TIME PERIODS SPECIFIED IN THIS SUBTITLE
27 AND IN THE MARYLAND RULES.

28 3-8A-17.6.

29 (A) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AT A
30 COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
31 INCOMPETENT TO PROCEED AS A RESULT OF A MENTAL DISORDER, MENTAL
32 RETARDATION, OR A DEVELOPMENTAL DISABILITY BUT MAY BE ABLE TO ATTAIN
33 COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT SHALL ORDER INITIAL
34 SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A
35 COMMUNITY SETTING OR NONSECURE FACILITY.

1 (2) IF THE COURT DETERMINES THAT THE CHILD IS INCOMPETENT
2 BECAUSE OF DEVELOPMENTAL IMMATURITY, THE COURT SHALL ORDER INITIAL
3 EDUCATION SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN
4 A COMMUNITY OUTPATIENT SETTING.

5 (3) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS
6 PARAGRAPH, IF THE COURT DETERMINES BY CLEAR AND CONVINCING EVIDENCE
7 THAT A CHILD DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS A DANGER TO
8 THE CHILD OR THE PERSON OR PROPERTY OF OTHERS, THE COURT SHALL ORDER
9 INITIAL SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A
10 SECURE FACILITY.

11 (II) FOR A CHILD WITH MENTAL RETARDATION DESCRIBED IN
12 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT OF HEALTH AND
13 MENTAL HYGIENE SHALL DESIGNATE A FACILITY FOR MENTALLY RETARDED
14 CHILDREN AND SHALL REQUIRE THE DEVELOPMENTAL DISABILITIES
15 ADMINISTRATION TO PROVIDE THE SERVICES REQUIRED UNDER THIS PARAGRAPH.

16 (4) (I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (3)(II) OF THIS
17 SUBSECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL
18 DESIGNATE THE APPROPRIATE COMMUNITY SETTING OR FACILITY CONSISTENT
19 WITH THE ORDER OF THE COURT.

20 (II) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL
21 ENSURE THAT THE CHILD IS PROVIDED SERVICES IN THE LEAST RESTRICTIVE
22 ALTERNATIVE CONSISTENT WITH PUBLIC SAFETY.

23 (III) A CHILD MAY NOT BE:

24 1. PLACED IN ANY FACILITY UNLESS THE CHILD IS PLACED
25 IN ACCOMMODATIONS THAT ARE SEPARATE FROM OTHER PERSONS AT LEAST 18
26 YEARS OLD WHO ARE PLACED IN THAT FACILITY; OR

27 2. TREATED IN ANY GROUP WITH PERSONS WHO ARE AT
28 LEAST 18 YEARS OLD.

29 (B) (1) AFTER COMPLETION OF THE SERVICES REQUIRED UNDER
30 SUBSECTION (A) OF THIS SECTION, THE SERVICE PROVIDER SHALL FILE A REPORT
31 WITH THE COURT STATING WHETHER, IN THE SERVICE PROVIDER'S OPINION, THE
32 CHILD:

33 (I) HAS ATTAINED COMPETENCY;

34 (II) REMAINS INCOMPETENT, BUT MAY BE ABLE TO ATTAIN
35 COMPETENCY IN THE FORESEEABLE FUTURE; OR

36 (III) REMAINS INCOMPETENT, AND IS UNABLE TO ATTAIN
37 COMPETENCY IN THE FORESEEABLE FUTURE.

1 (2) THE COURT SHALL SCHEDULE A COMPETENCY HEARING WITHIN 30
2 DAYS AFTER THE COURT RECEIVES THE REPORT UNDER PARAGRAPH (1) OF THIS
3 SUBSECTION.

4 (C) (1) (I) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES
5 ARE COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE
6 CHILD IS COMPETENT, THE COURT SHALL PROCEED IN ACCORDANCE WITH §
7 3-8A-17.5 OF THIS SUBTITLE.

8 (II) CASE MANAGEMENT AND SUPERVISION OF THE CHILD SHALL
9 BE TRANSFERRED TO THE DEPARTMENT OF JUVENILE SERVICES TO CONTINUE
10 PROCEEDINGS UNDER THIS SUBTITLE.

11 (III) THE COURT SHALL RETAIN AUTHORITY TO ORDER THE
12 DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO PROVIDE CONTINUED
13 SERVICES TO MAINTAIN COMPETENCY.

14 (2) (I) SUBJECT TO THE TIME PERIODS FOR DISMISSAL OF THE CASE
15 SPECIFIED IN § 3-8A-17.8 OF THIS SUBTITLE, IF THE COURT DETERMINES THAT THE
16 CHILD REMAINS INCOMPETENT TO PROCEED, BUT THAT THE CHILD MAY BE ABLE TO
17 ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT MAY CONTINUE
18 SERVICES IN ACCORDANCE WITH THIS SECTION IN INCREMENTS OF NOT MORE THAN
19 6 MONTHS.

20 (II) AFTER COMPLETION OF ANY ADDITIONAL SERVICES ORDERED
21 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SERVICE PROVIDER SHALL
22 FILE A REPORT WITH THE COURT AND THE COURT SHALL SCHEDULE A
23 COMPETENCY HEARING IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

24 (D) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES ARE
25 COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE CHILD IS
26 UNABLE TO ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT
27 SHALL PROCEED UNDER § 3-8A-17.7 OF THIS SUBTITLE.

28 3-8A-17.7.

29 AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS
30 UNABLE TO ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT:

31 (1) MAY:

32 (I) ORDER THAT PROCEEDINGS FOR INVOLUNTARY ADMISSION
33 UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH - GENERAL ARTICLE BE
34 INSTITUTED, IF APPROPRIATE;

35 (II) ORDER SERVICES TO BE PROVIDED TO THE CHILD; OR

36 (III) DISMISS THE DELINQUENCY PETITION OR VIOLATION OF
37 PROBATION PETITION; AND

1 (2) UNLESS THE COURT FINDS THAT THE CHILD IS A DANGER TO THE
2 CHILD OR THE PERSON OR PROPERTY OF OTHERS, SHALL RELEASE THE CHILD FROM
3 ANY FACILITY.

4 3-8A-17.8.

5 (A) UNLESS THE CASE IS DISMISSED UNDER § 3-8A-17.7 OF THIS SUBTITLE, AT
6 A COMPETENCY HEARING, IF THE COURT DETERMINES THAT A CHILD IS
7 INCOMPETENT TO PROCEED IN THE FORESEEABLE FUTURE, THE COURT SHALL
8 RETAIN JURISDICTION OF THE CHILD FOR NOT MORE THAN 3 YEARS AFTER THE
9 DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS ALLEGED TO HAVE
10 COMMITTED AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, AND
11 UP TO 1 YEAR AFTER THE DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS
12 ALLEGED TO HAVE COMMITTED AN ACT THAT WOULD BE A MISDEMEANOR IF
13 COMMITTED BY AN ADULT OR IS ALLEGED TO HAVE VIOLATED PROBATION.

14 (B) AT THE END OF ANY PERIOD SPECIFIED IN SUBSECTION (A) OF THIS
15 SECTION, IF THE CHILD HAS NOT ATTAINED COMPETENCY, THE COURT:

16 (1) SHALL DISMISS THE DELINQUENCY PETITION OR THE VIOLATION OF
17 PROBATION PETITION; AND

18 (2) MAY ORDER THAT PROCEEDINGS FOR INVOLUNTARY ADMISSION
19 UNDER TITLE 10, SUBTITLE 6, PART III OF THE HEALTH - GENERAL ARTICLE BE
20 INSTITUTED, IF APPROPRIATE.

21 3-8A-17.9.

22 (A) AT ANY TIME BEFORE AN ADJUDICATION UNDER THIS SUBTITLE, A
23 HEARING ON A PRELIMINARY MOTION ON ANOTHER ISSUE, INCLUDING AN
24 OBJECTION TO THE SUFFICIENCY OF THE PETITION, MAY BE CONDUCTED WITHOUT
25 THE CHILD BEING PRESENT IF THE CHILD'S TESTIMONY IS NOT REQUIRED.

26 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ANY
27 STATEMENT MADE BY THE CHILD OR INFORMATION ELICITED DURING A
28 COMPETENCY HEARING OR IN CONNECTION WITH THE DETERMINATION OF
29 COMPETENCY UNDER THIS SUBTITLE, AND ANY REPORT PREPARED BY A QUALIFIED
30 EXPERT, MAY NOT BE ADMITTED IN EVIDENCE IN ANY PROCEEDING EXCEPT A
31 PROCEEDING RELATING TO THE CHILD'S COMPETENCY TO PROCEED.

32 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY IF THE
33 COUNSEL FOR THE CHILD INTRODUCES THE REPORT OF THE QUALIFIED EXPERT, OR
34 ANY PART OF IT, IN ANY HEARING OTHER THAN A COMPETENCY HEARING.

35 3-8A-17.10.

36 THE SECRETARY OF HEALTH AND MENTAL HYGIENE AND THE SECRETARY OF
37 JUVENILE SERVICES SHALL JOINTLY ADOPT REGULATIONS TO CARRY OUT THE
38 PROVISIONS OF THIS SUBTITLE RELATING TO COMPETENCY.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2004.