

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 564 (Senator Grosfeld, *et al.*)
 Judicial Proceedings

Juvenile Law - Competency

This bill sets court processes for determining the competency of a child alleged to have committed a delinquent act. During the determination of a child’s competency, court proceedings must be stayed and, if the court determines that services are necessary for a child to attain competency, the appropriate services must be provided to the child. If the court determines that a child is incompetent to proceed and is unable to attain competency in the foreseeable future, the petition against the child must be dismissed.

Fiscal Summary

State Effect: General fund expenditures could increase by an estimated \$1.5 million in FY 2005 due to payments for competency evaluations. Future year expenditure increases reflect annualization and inflation. In addition, significant treatment and confinement costs would be incurred by the Department of Health and Mental Hygiene (DHMH) and detention costs for the Department of Juvenile Services (DJS) could increase. Revenues would not be affected.

| (\$ in millions) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|------------------|---------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 1.5 | 2.1 | 2.1 | 2.2 | 2.3 |
| Net Effect | (\$1.5) | (\$2.1) | (\$2.1) | (\$2.2) | (\$2.3) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Any increase in juvenile hearings that results from the bill could be handled with the existing resources of the juvenile courts.

Small Business Effect: Potential meaningful. Small business mental health evaluators and treatment facilities could realize increased demand for their services.

Analysis

Bill Summary:

Motion to Stay Proceedings Until Competency Is Determined

On its own motion, or a motion by a child's counsel or the State's Attorney, a juvenile court must stay all proceedings and order an evaluation of a child's mental condition and developmental levels if: (1) there is probable cause to believe that the child has committed the delinquent act; and (2) there is reason to believe that the child may be incompetent to proceed with the required hearing. "Incompetent to proceed" means that a child is not able to: (1) understand the nature or object of the proceeding; or (2) assist in the child's defense.

Initial Competency Evaluation

The juvenile court must set and may change the conditions under which a competency evaluation is to be conducted. A court may require the examination of a child who is being detained during court proceedings to be conducted on an inpatient or outpatient basis. The examination of a child who is not being detained must be conducted on an outpatient basis. If the court finds it is necessary for the health and safety of the child, the court may order confinement in a medical facility designated as appropriate by DHMH, pending the examination.

If a competency evaluation is ordered by a juvenile court, DHMH must ensure that the evaluation is completed by a qualified expert and that a complete report by the expert is filed with the court within 45 days of the court order. "Qualified expert" is defined as a licensed psychologist or psychiatrist who has been certified by DHMH, has expertise in child development, and is familiar with competency standards and programs available to youths in the State. The expert must examine the child and prepare a written report stating whether, in the expert's opinion, the child is incompetent to proceed. If the expert believes that the child is incompetent to proceed, the report must describe the treatment the child needs to attain competency. In addition, the expert must state whether the child is a danger to the child or the person or property of others. Counsel for the child may be present at the evaluation. On good cause shown, the 45-day timeline may be extended for an additional 15 days.

Initial Competency Hearing

Within 15 days of the receipt of the report filed by the qualified expert, the court must hold a competency hearing. On good cause shown, the court may extend this deadline an additional 15 days. At the competency hearing, the court must determine whether the

child is incompetent to proceed based on the expert's evaluation. The State bears the burden of proving competency beyond a reasonable doubt. If the child is found to be competent, the stay is lifted and proceedings on the child's petition continue.

If a court determines that a child is incompetent due to mental disorder, mental retardation, or developmental disability but may be able to attain competency within the foreseeable future, the court must order services to attain competency for no more than three months in a community setting or nonsecure facility. If a court determines that a child is incompetent due to developmental immaturity, the court must order initial education services to attain competency for no more than three months in a community outpatient setting. If the court determines by clear and convincing evidence that a child is a danger to the child or to the person or property of others, the court must order initial services to attain competency for not more than three months in a secure facility. DHMH must designate the appropriate community setting or facility, and a child may not be placed in a facility or treated in a group with persons 18 or older.

Follow-up Competency Evaluation and Hearing

After completion of the services provided in the community setting or facility, the service provider must file a report with the court stating whether, in the provider's opinion: (1) the child has attained competency; (2) the child has not attained competency but may be able to in the foreseeable future; or (3) the child is unable to attain competency. The court must schedule a competency hearing within 30 days after receiving the report. If the court determines that the child is competent, the stay is lifted and proceedings on the child's petition continue. If the court determines that the child remains incompetent to proceed but may attain competency in the foreseeable future, the court may continue services in increments of six months.

If the court determines that the child is unable to attain competency in the foreseeable future, the court may: (1) order that proceedings for involuntary admission be instituted, if appropriate; (2) order services for the child; or (3) dismiss the petition against the child. Unless the court finds that the child is a danger to the child or the person or property of others, the child must be released from any facility. The court may not retain jurisdiction of the child for more than three years if the child is alleged to have committed a felony, or for more than one year if the child is alleged to have committed a misdemeanor or a probation violation. After the expiration of the deadline, the court must dismiss the petition against the child and may order proceedings for involuntary admission, if appropriate.

General Provisions

Unless the child's counsel introduces the expert's initial competency report, any statement made by the child or information elicited during a competency hearing or in connection with the determination of competency may not be admitted in evidence in any proceeding other than the competency hearing. The Secretary of Health and Mental Hygiene and the Secretary of Juvenile Services are required to jointly adopt regulations to carry out the competency processes specified in the bill.

Finally, the bill specifies that a child need not be present at a juvenile court proceeding prior to an adjudication if the child's testimony is not required.

Current Law: There are no clear procedures for handling a child who is alleged to have committed a delinquent offense and is incompetent to face proceedings. In adult criminal proceedings, the court is authorized to determine, on evidence presented on the record, if a defendant is competent to stand trial. A court may order DHMH to examine a defendant to determine whether the defendant is incompetent to stand trial. If a defendant is found to be incompetent, the court may, under certain circumstances, order the defendant committed to a facility designated by DHMH. If the court finds that resuming a criminal proceeding would be unjust because so much time has passed since a defendant was found incompetent to stand trial, the court may dismiss the charge.

A juvenile intake officer must discuss a referral for mental health and substance abuse screening with a child who is the subject of a complaint within 25 days of receiving the complaint. The screening must be conducted by a qualified health, mental health, or substance abuse professional or staff trained by a qualified health, mental health, or substance abuse professional. If the screening shows that the child is mentally handicapped, seriously emotionally disturbed, or a substance abuser, the screener must conduct a comprehensive mental health or substance abuse assessment of the child. There is no statutory requirement, however, that the screener attempt to determine the child's competency to proceed.

Background: A recent article in the *Western Maryland Law Journal* entitled "Due Process Rights for Juveniles: Ensuring Competence to Stand Trial in Maryland's Juvenile Courts" notes that "Maryland juvenile law offers no guidance for initiating and conducting competency proceedings." The article then indicates that the ambiguity has resulted in the juvenile courts using a wide range of methods for handling these cases. Some courts have dismissed cases involving incompetent children, the article reports, "while other judges have labored through their own made-up procedures on a case-by-case basis."

State Fiscal Effect: General fund expenditures would increase significantly to provide for competency evaluations and to pay for the institutionalization in DHMH facilities of a subset of youths referred for evaluations. DJS detention costs could also increase.

Competency Evaluations

On a motion, the bill gives a juvenile court judge the option of referring a child for a competency evaluation conducted by a qualified expert. Independent of any other costs related to the potential confinement of a child during the process, it is estimated that each competency evaluation would cost \$2,000. Assuming that roughly 1,000 evaluations are ordered per year (an estimated 5% of the approximately 20,000 juvenile petitions that are formally processed each year), evaluations would cost \$2 million annually. General fund expenditures would increase by an estimated \$1.5 million in fiscal 2005, which reflects the bill's October 1, 2004 effective date. Future year expenditures would reflect 3% annual inflation.

Department of Health and Mental Hygiene Confinement Costs

At the time an initial competency evaluation is ordered, the bill also grants a juvenile court the authority to order confinement in a medical facility that DHMH designates if the confinement is appropriate for the health and safety of the child or others. Following the initial competency evaluation, if a determination is made that the child is not competent to proceed, DHMH would again be required to designate an appropriate facility for the child.

Although the bill specifies that a child must be kept in the least restrictive environment, the bill could only result in an increase in the number of children being placed in DHMH facilities. The annual cost for commitment in a child psychiatric facility is estimated at \$200,000 per year, or approximately \$550 per day. Even if a relatively small number of children are placed in DHMH facilities, costs would be significant. One hundred children (0.5% of juvenile petitions) confined for an average of three months each would cost an estimated \$5 million annually. Depending on the actions taken by the courts, this number could be higher or average stays in confinement could be longer.

To some extent, the cost of confinement in DHMH facilities would be offset by a potential reduction in DJS detention and commitment costs. If confinement in a DHMH facility is ordered prior to an initial competency evaluation, it is likely that the child would be removed from a DJS detention center, thereby replacing DJS detention costs with DHMH confinement costs. Detention costs are roughly half of the DHMH facility costs. However, confinement in a DHMH facility after a competency hearing would not be offset by the same level of DJS costs because, under current law, some children would have had their cases disposed of at this point in the processing. To further add to the

costs, a longer stay in DHMH confinement could be ordered after a competency evaluation determines that a child is not competent to proceed.

The total costs associated with confinement in DHMH facilities are dependent on the courts' use of the competency procedures established in the bill and cannot be reliably estimated at this point. DHMH advises that any significant increase in juvenile referrals could not be handled within its existing infrastructure and would require additional capital costs in addition to the necessary operating costs.

Department of Juvenile Services Detention Costs

DJS advises that the bill could extend detention periods for children who are required to undergo competency evaluations. Although this would only marginally increase detention costs, it could create overcrowding problems at detention facilities. DJS detention costs average approximately \$90,000 per year, or \$250 per day.

Additional Information

Prior Introductions: None.

Cross File: HB 994 (Delegate Dumais) – Judiciary.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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