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By: **Delegate Dumais**

Introduced and read first time: February 11, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law - Competency - Services**

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; requiring certain legal pleading to be served on  
6 certain individuals and agencies; requiring the court to take certain actions  
7 after the court makes a certain determination at a competency hearing;  
8 authorizing the court to take certain actions after the court makes a certain  
9 determination at a competency hearing; requiring the Department of Health  
10 and Mental Hygiene to take certain actions; requiring a certain service provider  
11 to file a certain report with the court; specifying that the court retains  
12 jurisdiction over a certain child for a certain period; requiring the court to  
13 dismiss a certain petition under certain circumstances; authorizing the court to  
14 dismiss a certain petition under certain circumstances; authorizing the court to  
15 order that certain proceedings be instituted under certain circumstances;  
16 requiring the Secretary of Health and Mental Hygiene and the Secretary of  
17 Juvenile Services to jointly adopt certain regulations; defining certain terms;  
18 and generally relating to the competency of a child to participate in certain  
19 proceedings and services.

20 BY repealing and reenacting, with amendments,  
21 Article - Courts and Judicial Proceedings  
22 Section 3-8A-01  
23 Annotated Code of Maryland  
24 (2002 Replacement Volume and 2004 Supplement)

25 BY adding to  
26 Article - Courts and Judicial Proceedings  
27 Section 3-8A-17.1 through 3-8A-17.6  
28 Annotated Code of Maryland  
29 (2002 Replacement Volume and 2004 Supplement)

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

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**Article - Courts and Judicial Proceedings**

2 3-8A-01.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (I) "COMPETENCY HEARING" MEANS A HEARING UNDER THIS SUBTITLE TO  
27 DETERMINE WHETHER A CHILD ALLEGED TO BE DELINQUENT IS MENTALLY  
28 COMPETENT TO PARTICIPATE IN A WAIVER HEARING UNDER § 3-8A-06 OF THIS  
29 SUBTITLE, AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, A  
30 DISPOSITION HEARING UNDER § 3-8A-19 OF THIS SUBTITLE, OR A VIOLATION OF  
31 PROBATION HEARING.

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

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

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

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

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

11     (O)     "DEVELOPMENTAL DISABILITY" MEANS A SEVERE CHRONIC DISABILITY  
12 OF A CHILD THAT:

13             (1)     IS ATTRIBUTABLE TO A PHYSICAL OR MENTAL IMPAIRMENT, OTHER  
14 THAN THE SOLE DIAGNOSIS OF MENTAL ILLNESS, OR TO A COMBINATION OF  
15 MENTAL AND PHYSICAL IMPAIRMENTS;

16             (2)     IS LIKELY TO CONTINUE INDEFINITELY;

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

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

22     [(n)]     (P)     "Disposition hearing" means a hearing under this subtitle to  
23 determine:

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

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

27     (Q)     "INCOMPETENT TO PROCEED" MEANS THAT A CHILD IS NOT ABLE TO:

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

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

30     [(o)]     (R)     "Intake officer" means the person assigned to the court by the  
31 Department of Juvenile Services to provide the intake services set forth in this  
32 subtitle.

33     (S)     (1)     "MENTAL DISORDER" MEANS A BEHAVIORAL OR EMOTIONAL  
34 ILLNESS THAT RESULTS FROM A PSYCHIATRIC OR NEUROLOGICAL DISORDER.

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

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

6 (T) "MENTAL RETARDATION" MEANS A DEVELOPMENTAL DISABILITY THAT IS  
7 EVIDENCED BY INTELLECTUAL FUNCTIONING THAT IS SIGNIFICANTLY BELOW  
8 AVERAGE AND IMPAIRMENT IN THE ADAPTIVE BEHAVIOR OF A CHILD.

9 [(p)] (U) "Mentally handicapped child" means a child who is or may be  
10 mentally retarded or mentally ill.

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

14 [(r)] (W) "Peace order proceeding" means a proceeding under § 3-8A-19.2 or §  
15 3-8A-19.4 of this subtitle.

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

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

21 (AA) "QUALIFIED EXPERT" MEANS A LICENSED PSYCHOLOGIST OR  
22 PSYCHIATRIST WHO HAS EXPERTISE IN CHILD DEVELOPMENT, WITH TRAINING IN  
23 FORENSIC EVALUATION PROCEDURES THROUGH FORMAL INSTRUCTION,  
24 PROFESSIONAL SUPERVISION, OR BOTH, AND WHO IS:

25 (1) FAMILIAR WITH THE COMPETENCY STANDARDS CONTAINED IN THIS  
26 SUBTITLE; AND

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

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

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

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

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

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

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

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

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

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

8 (1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

9 (2) § 10-108 of the Criminal Law Article; or

10 (3) § 26-103 of the Education Article.

11 [(y)] (FF) "Witness" means any person who is or expects to be a State's witness.  
12 3-8A-17.1.

13 (A) (1) AT ANY TIME AFTER A PETITION ALLEGING THAT A CHILD HAS  
14 COMMITTED A DELINQUENT ACT IS FILED WITH THE COURT UNDER THIS SUBTITLE,  
15 THE COURT ON ITS OWN MOTION, OR ON MOTION OF THE CHILD'S COUNSEL OR THE  
16 STATE'S ATTORNEY, SHALL STAY ALL PROCEEDINGS AND ORDER AN EVALUATION OF  
17 THE CHILD'S MENTAL CONDITION AND DEVELOPMENTAL LEVELS IF THE COURT  
18 FINDS THAT:

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

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

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

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

31 (B) ANY MOTION QUESTIONING THE CHILD'S COMPETENCY TO PROCEED, AND  
32 ANY SUBSEQUENT LEGAL PLEADING RELATING TO THE CHILD'S COMPETENCY TO  
33 PROCEED, SHALL BE SERVED ON THE CHILD'S COUNSEL, THE STATE'S ATTORNEY,  
34 AND THE DEPARTMENT OF JUVENILE SERVICES.

1 3-8A-17.2.

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

8 3-8A-17.3.

9 (A) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AT A  
10 COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE CHILD IS  
11 INCOMPETENT TO PROCEED BUT MAY BE ABLE TO ATTAIN COMPETENCY IN THE  
12 FORESEEABLE FUTURE, THE COURT SHALL ORDER INITIAL SERVICES TO ATTAIN  
13 COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A COMMUNITY OUTPATIENT  
14 SETTING OR NONSECURE FACILITY.

15 (2) (I) SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS  
16 PARAGRAPH, IF THE COURT DETERMINES BY CLEAR AND CONVINCING EVIDENCE  
17 THAT A CHILD DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS A DANGER TO  
18 THE CHILD OR THE PERSON OR PROPERTY OF OTHERS, THE COURT SHALL ORDER  
19 INITIAL SERVICES TO ATTAIN COMPETENCY FOR NOT MORE THAN 3 MONTHS IN A  
20 SECURE FACILITY.

21 (II) FOR A CHILD WITH MENTAL RETARDATION DESCRIBED IN  
22 SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT OF HEALTH AND  
23 MENTAL HYGIENE SHALL DESIGNATE A FACILITY FOR MENTALLY RETARDED  
24 CHILDREN AND SHALL REQUIRE THE DEVELOPMENTAL DISABILITIES  
25 ADMINISTRATION TO PROVIDE THE SERVICES REQUIRED UNDER THIS PARAGRAPH.

26 (3) (I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (3)(II) OF THIS  
27 SUBSECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL  
28 DESIGNATE THE APPROPRIATE COMMUNITY SETTING OR FACILITY CONSISTENT  
29 WITH THE ORDER OF THE COURT.

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

33 (III) A CHILD MAY NOT BE:

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

37 2. TREATED IN ANY GROUP WITH PERSONS WHO ARE AT  
38 LEAST 18 YEARS OLD.

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

5 (I) HAS ATTAINED COMPETENCY;

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

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

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

13 (C) (1) (I) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES  
14 ARE COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE  
15 CHILD IS COMPETENT, THE COURT SHALL PROCEED IN ACCORDANCE WITH §  
16 3-8A-17.2 OF THIS SUBTITLE.

17 (II) CASE MANAGEMENT AND SUPERVISION OF THE CHILD SHALL  
18 BE TRANSFERRED TO THE DEPARTMENT OF JUVENILE SERVICES TO CONTINUE  
19 PROCEEDINGS UNDER THIS SUBTITLE.

20 (III) THE COURT SHALL RETAIN AUTHORITY TO ORDER CONTINUED  
21 SERVICES TO MAINTAIN COMPETENCY.

22 (2) (I) SUBJECT TO THE TIME PERIODS FOR DISMISSAL OF THE CASE  
23 SPECIFIED IN § 3-8A-17.5 OF THIS SUBTITLE, IF THE COURT DETERMINES THAT THE  
24 CHILD REMAINS INCOMPETENT TO PROCEED, BUT THAT THE CHILD MAY BE ABLE TO  
25 ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT MAY CONTINUE  
26 SERVICES IN ACCORDANCE WITH THIS SECTION IN INCREMENTS OF NOT MORE THAN  
27 6 MONTHS.

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

32 (D) AT A COMPETENCY HEARING CONDUCTED AFTER SERVICES ARE  
33 COMPLETED UNDER THIS SECTION, IF THE COURT DETERMINES THAT THE CHILD IS  
34 UNABLE TO ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT  
35 SHALL PROCEED UNDER § 3-8A-17.4 OF THIS SUBTITLE.

36 3-8A-17.4.

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

1 (1) MAY:

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

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

6 (III) DISMISS THE DELINQUENCY PETITION OR VIOLATION OF  
7 PROBATION PETITION; AND

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

11 3-8A-17.5.

12 (A) UNLESS THE CASE IS DISMISSED UNDER § 3-8A-17.4 OF THIS SUBTITLE, AT  
13 A COMPETENCY HEARING, IF THE COURT DETERMINES THAT A CHILD IS  
14 INCOMPETENT TO PROCEED IN THE FORESEEABLE FUTURE, THE COURT SHALL  
15 RETAIN JURISDICTION OF THE CHILD FOR NOT MORE THAN 3 YEARS AFTER THE  
16 DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS ALLEGED TO HAVE  
17 COMMITTED AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT, AND  
18 UP TO 1 YEAR AFTER THE DATE OF THE ORDER OF INCOMPETENCY IF THE CHILD IS  
19 ALLEGED TO HAVE COMMITTED AN ACT THAT WOULD BE A MISDEMEANOR IF  
20 COMMITTED BY AN ADULT OR IS ALLEGED TO HAVE VIOLATED PROBATION.

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

23 (1) SHALL DISMISS THE DELINQUENCY PETITION OR THE VIOLATION OF  
24 PROBATION PETITION; AND

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

28 3-8A-17.6.

29 THE SECRETARY OF HEALTH AND MENTAL HYGIENE AND THE SECRETARY OF  
30 JUVENILE SERVICES SHALL JOINTLY ADOPT REGULATIONS TO CARRY OUT THE  
31 PROVISIONS OF THIS SUBTITLE RELATING TO COMPETENCY.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2005.