

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 802

(Delegate Dumais)

Judiciary

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. 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. The bill also requires the Department of Health and Mental Hygiene (DHMH), in coordination with other State agencies, to work with the Judiciary to develop training for judges, juvenile masters, and local agencies on available services.

The bill takes effect December 31, 2005.

Fiscal Summary

State Effect: Significant increase in general fund expenditures from payments for competency evaluations, assuming all evaluations are performed by DHMH, and additional staff to provide training to judicial personnel. Under two sets of assumptions, FY 2006 expenditures for competency evaluations could range from \$116,460 to \$488,620, depending on the number of cases in which competency was raised. Personnel expenditures would increase by \$155,000 in FY 2006, as reflected below. Future year personnel costs reflect annualization and inflation. Future year competency evaluation costs reflect medical inflation. In addition, detention costs for the Department of Juvenile Services (DJS) could increase. Revenues would not be affected.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	155,000	280,700	296,700	313,900	332,300
Net Effect	(\$155,000)	(\$280,700)	(\$296,700)	(\$313,900)	(\$332,300)

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 a required waiver, adjudicatory, or disposition hearing or violation of probation hearing.

The evaluation must be performed by a qualified expert.

“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.

The evaluation must be completed by a qualified expert and a complete report by the expert must be filed with the court within 45 days of the court order. “Qualified expert” is defined as a licensed psychologist or psychiatrist who 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 evidence presented on the record. Findings of fact must be 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 unable to attain competency in the foreseeable future, the court may order that proceedings for involuntary admission be instituted or dismiss the delinquency petition or violation of probation.

If the case is not dismissed and the court determines that a child is incompetent to proceed in the foreseeable future, the court retains jurisdiction of the child for no more than three years after the date of the order of incompetency, if the child is alleged to have committed an act that would be a felony if committed by an adult, and up to one year after the date of the order of incompetency, if the child is alleged to have committed an act that would be a misdemeanor if committed by an adult.

If the child has not attained competency at the end of the one- or three-year period, the court must dismiss the delinquency petition or the violation of probation petition and may order that proceedings for involuntary admission be instituted.

General Provisions

Unless the child's counsel introduces the expert's 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. A child need not be present at a juvenile court proceeding, prior to an adjudication, if the child's testimony is not required.

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.

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: An 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."

Roughly half the states address juvenile competency in their statutory or case law. With one exception in these states the juvenile has a fundamental right not to be tried when incompetent. Some states have a definition of incompetency that is more restrictive than the adult constitutional standard, *e.g.*, requiring that the incompetency result from an underlying mental disease or defect. Only Oklahoma has held that, because juvenile proceedings are rehabilitative and not criminal, and because juvenile courts are not restricted by common law presumptions of age-related incompetency, its legislature intended for juvenile courts to proceed with cases regardless of a juvenile's mental state.

The Oklahoma Court of Criminal Appeals held in that case that the juvenile court procedures provided an adequate substitute for the competency requirement.

Similar legislation was enacted in Florida in 1997. The Florida Department of Children and Families (FDCF) operates the Juvenile Incompetent to Proceed Program, which provides “restoration services” for children found incompetent to stand trial. The program currently serves approximately 200 children (150 in community and 48 in the secure facility) and has 27 children on a waiting list for restoration services (26 for community and one for the secure facility). The waiting time ranges from three to six months. FDCF was unable to provide information about the number of competency petitions filed prior to the enactment of the legislation.

Virginia also has a Juvenile Competency to Stand Trial Restoration Program. Prior to its enactment, juvenile competency was rarely raised. There were approximately 10 referrals in 1998, the year before the legislation was enacted. The Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services advises that in Richmond, which accounts for approximately 60% of the state’s cases, competency is raised in 1% of its cases.

State Expenditures: General fund expenditures would increase due to payments for competency evaluations, assuming that evaluations are performed by DHMH, and hiring additional staff to develop training protocol and conduct training for judicial personnel. The fiscal 2006 increase for competency evaluations could range from \$116,460 to \$488,620 and from \$243,168 to \$1,020,329 beginning in fiscal 2007. The actual fiscal impact depends on the number of cases in which competency is raised and the number of children referred for inpatient evaluations versus outpatient evaluations. Future years reflect 4.4% medical inflation as shown below.

Exhibit 1
Competency Evaluation Cost Ranges

	<u>Fiscal</u> <u>2006</u>*	<u>Fiscal</u> <u>2007</u>	<u>Fiscal</u> <u>2008</u>	<u>Fiscal</u> <u>2009</u>	<u>Fiscal</u> <u>2010</u>
Low Estimate	\$116,460	\$243,168	\$253,038	\$265,038	\$276,762
High Estimate	488,620	1,020,329	1,065,129	1,111,995	1,160,923

*Reflects the bill’s December 31, 2005 effective date. Future years reflect 4.4% medical inflation.

The low end of the range is based on the Office of the Public Defender’s (OPD) assertion that, based on historical experience, competency will be raised in very few juvenile cases. The high end of range is based on DHMH’s assertion that, because juvenile incompetency will become an option for defense attorneys, it will be raised more often. Personnel expenditures would increase by \$154,984 in fiscal 2006. This estimate is based on the following assumptions:

- there were 14,663 juvenile petitions prosecuted in 2004;
- 20% of juveniles referred will require inpatient evaluations;
- DHMH is performing all necessary evaluations (although not specifically mandated by the bill). In Baltimore City, which accounted for 20% of the 2004 cases in which competency was raised, the Baltimore City Court Medical Division is funded to perform evaluations;
- outpatient competency evaluations performed by DHMH cost \$2,000 and inpatient evaluations cost \$568 per day;
- inpatient evaluations average 45 days;
- competency will be raised in 0.23% or 1% of juvenile cases (low/high estimate).

OPD, which represents approximately 90% of the juveniles in Maryland, advises that in calendar 2003 and 2004, competency was raised a total of 53 times in the seven metropolitan/suburban jurisdictions: Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George’s counties and Baltimore City. **Exhibits 2 and 3** show the breakdown in the number of cases by county. Accordingly, OPD estimates that based on prior experience with juvenile competency, it will be raised in less than 1% of its juvenile cases (0.23%).

Assuming that 34 children, based on the number of petitions filed in 2004, are referred to DHMH for evaluations, 7 for inpatient evaluations (20%) and the remaining 27 for outpatient evaluations, the evaluations would cost \$232,920 annually. General fund expenditures would increase by an estimated \$116,460 in fiscal 2006, which reflects the bill’s December 31, 2005 effective date.

Inpatient Evaluations	\$186,792
Outpatient Evaluations	<u>56,376</u>
FY 2007 Evaluation Expenditures	\$243,168

DHMH estimates that juvenile competency will be raised in 2% of juvenile cases. DHMH’s estimate is based on the premise that with the enactment of a statute, the issue

of juvenile competency will be raised more frequently. Legislative Services cannot discount this assumption, but advises that a 1% estimate may be more realistic based on Virginia's experiences. Accordingly, approximately 147 children may be referred for competency evaluations (1% of the 14,663 petitions filed in 2004).

Assuming that 147 children, based on the number of petitions filed in 2004, are referred to DHMH for evaluations, 29 for inpatient evaluations (20%) and the remaining 118 for outpatient evaluations, the evaluations would cost \$977,240 annually. General fund expenditures would increase by an estimated \$488,620 in fiscal 2006, which reflects the bill's December 31, 2005 effective date.

Inpatient Evaluations	\$773,855
Outpatient Evaluations	<u>246,384</u>
FY 2007 Evaluation Expenditures	\$1,020,329

Additional Personnel

The bill also requires DHMH to develop training for judges, juvenile masters, and local agencies on available services. General fund expenditures would increase by \$154,984 in fiscal 2006 which accounts for the bill's December 31, 2005 effective date. This estimate reflects the cost of hiring one psychiatrist, two social workers, and one program manager to develop training materials and provide the training. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$135,623
Operating Expenses	<u>19,361</u>
FY 2006 Personnel Expenditures	\$154,984

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

DHMH advises that it will need seven additional employees to develop training materials and provide the training, including two psychiatrists, two social workers, two behavioral aids, and one program manager. Legislative Services does not agree and advises that most of the training can be conducted by social workers, with one psychiatrist to develop the materials, advise, and assist.

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 \$87,700 in fiscal 2005, or \$240 per day.

Additional Information

Prior Introductions: SB 564 of 2004, a bill containing similar provisions, received an unfavorable report from the Judicial Proceedings Committee.

Cross File: SB 616 (Senator Grosfeld, *et al.*) – Judicial Proceedings.

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

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Exhibit 2
Competency Cases Raised in Suburban Counties 2003

	<u>Anne Arundel County</u>	<u>Baltimore City</u>	<u>Baltimore County</u>	<u>Prince George's County</u>	<u>Montgomery County</u>	<u>Harford County</u>	<u>Howard County</u>	<u>Total</u>
Competency Raised	0	25	0	5	4	1	3	38
Found Not Competent	0	5	0	2	1	1	0	9
Total Juvenile Cases	649	6,022	1,700	1,164	782	547	312	11,176

Source: Office of the Public Defender

Exhibit 3
Competency Cases Raised in Suburban Counties 2004

	<u>Anne Arundel County</u>	<u>Baltimore City</u>	<u>Baltimore County</u>	<u>Prince George's County</u>	<u>Montgomery County</u>	<u>Harford County</u>	<u>Howard County</u>	<u>Total</u>
Competency Raised	1	3	3	5	1	1	1	15
Found Not Competent	1	2	1	0	1	0	0	5
Total Juvenile Cases	708	6,037	1,706	1,354	870	617	391	11,683

Source: Office of the Public Defender
