HB 1007

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1007 (Delegate Dumais)
Judiciary

Juvenile Law - Competency - Services

This bill sets forth court processes for providing services that are necessary for a child to attain competency.

Fiscal Summary

State Effect: General fund expenditures could increase by an estimated $452,000 in FY 2006 due to payment for initial treatment and ongoing services for juveniles found incompetent. Future year expenditure increases reflect annualization and inflation. In addition, additional confinement costs could be incurred by the Department of Health and Mental Hygiene (DHMH) if involuntary commitment proceedings are instituted against juveniles deemed incompetent. 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	452,000	608,700	614,800	621,000	627,200
Net Effect	($452,000)	($608,700)	($614,800)	($621,000)	($627,200)

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: 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.

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.

If a child is found to be competent at the competency hearing, the stay is lifted and proceedings on the child's petition continue. If a court determines that a child is incompetent to proceed, but may be able to attain competency in the foreseeable future, the court must order initial services to attain competency for not more than three months in a community outpatient setting or nonsecure facility. 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.

For a child with mental retardation, DHMH must designate a facility for mentally retarded children and the Developmental Disabilities Administration (DDA) must provide initial services.

DHMH must designate the appropriate community setting or facility consistent with the order of the court and must ensure that the child is provided services in the least restricting alternative consistent with public safety.

A child must be placed in accommodations and treated in groups that are separate from persons at least 18 years old who are in the facility.

Follow-up Competency Evaluation and Hearing

After completion of the services, 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 in the foreseeable future. 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. Case management and supervision of the child are transferred to the Department of Juvenile Services (DJS). 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 not more than six months. After the completion of additional services, the service provider must file a report with the court and the court must schedule a competency hearing.

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. Unless the case is dismissed, the court must retain jurisdiction of the child for not more than three years, if the child is alleged to have committed a felony, or for up to one year if the child is alleged to have committed a misdemeanor or a probation violation. After the expiration of the deadline, if the child has not attained competency, the court must dismiss the petition against the child and may order proceedings for involuntary admission, if appropriate.

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."

Several states address juvenile competency in their statutory or case law. With one exception, those states held that 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 – for example 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.

State Expenditures: General fund expenditures could increase by an estimated $452,036 in fiscal 2006. This estimate is based on DHMH providing initial and ongoing services for juveniles determined to be incompetent to stand trial. The Office of the Public Defender (OPD) advises, however, that some of the costs for treatment and ongoing services, if necessary, could be absorbed by other resources and may not require DHMH expenditures.

DHMH estimates that 2% of the total number of prosecuted cases (based on the 2001 total number of juvenile cases prosecuted – 23,000), or 460 children, will be referred for evaluation. DHMH also assumes that 33% of those children, or 152, will be found incompetent to proceed and one-third of those children, or 50, will require three months of inpatient treatment to attain competency.

While OPD does not represent every juvenile offender in the State, it does represent approximately 90% of the juveniles in Maryland. In calendar 2003 and 2004, competency was raised a total of 53 times, or 0.23%, out of 22,859 cases in these years in the seven metropolitan/suburban jurisdictions: Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City. **Exhibits 1** and

2 show the breakdown in the number of cases by county. Juveniles were found to be incompetent to proceed only 14 times, or 0.06% of the total number of delinquency petitions filed in those counties. OPD advises that there were a total of 14,663 juvenile petitions filed in 2004.

Legislative Services advises that given the historical experience of OPD with the raising of juvenile competency, it is likely that incompetency will be found far less frequently than DHMH estimates.

Initial Services

DHMH estimates that inpatient services cost $568 per day and outpatient services cost $50 per day. The bill allows a maximum of three-month treatment prior to the court holding a second competency hearing. The bill, however, mandates that the juvenile be placed in a community outpatient setting or nonsecure facility, unless the child is severely mentally retarded or the standard for involuntary commitment is met. Assuming that nine children, based on the number of petitions filed in 2004, are found incompetent to proceed, three, based on DHMH's estimates, would require three-month inpatient treatment at a cost of $153,360 annually and six would require outpatient treatment at a potential cost of $27,000 annually. General fund expenditures could increase by an estimated $135,270 in fiscal 2006, which reflects the bill's October 1, 2005 effective date. Future year expenditures would reflect 3% annual inflation.

Ongoing Services

DHMH estimates that one-third (31) of the children found incompetent (9) will be unable to attain competency and will require additional services. DDA estimates that 50% will require additional services through the Mental Health Administration (MHA) and 50% will be committed to DDA for services – both outpatient and inpatient.

Inpatient costs for a secure commitment at a DDA facility is an estimated $198,084 per year. Costs for outpatient treatment average $6,000 per year. If one individual is committed to each DDA program, general fund expenditures would increase $204,084 per year.

Average inpatient costs for an MHA facility are $218,270 per year. MHA outpatient costs also average $6,000 per year. Assuming that the one remaining child requires inpatient services, general fund expenditures would increase $218,270 per year.

General fund expenditures for ongoing services would increase by an estimated $602,714 on an annual basis. For fiscal 2006, general fund expenditures would increase by

$452,036, which reflects the bill's October 1, 2005 effective date. Future year expenditures reflect annualization and inflation.

Initial Services	$135,270
Ongoing Services	316,766
Total FY 2006 Expenditures	**$452,036**

The total costs associated with confinement in DHMH facilities following an involuntary commitment 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.

Additional Information

Prior Introductions: None.

Cross File: SB 784 (Senator Grosfeld) – Judicial Proceedings.

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

Fiscal Note History: First Reader - March 1, 2005
m/jr

Analysis by: Kineta A. Rotan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Exhibit 1
Competency Cases Raised in Suburban Counties 2003

	Anne Arundel County	Baltimore City	Baltimore County	Prince George's County	Montgomery County	Harford County	Howard County	Total
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**

Exhibit 2
Competency Cases Raised in Suburban Counties 2004

	Anne Arundel County	Baltimore City	Baltimore County	Prince George's County	Montgomery County	Harford County	Howard County	Total
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**