

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Delegates Dumais, Anderson, Carter, Gutierrez, Kelley, Kelly, Lee, Mayer, McComas, Menes, Rosenberg, Shank, Shewell, Simmons, Smigiel, Sophocleus, and Zirkin**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Juvenile Law - Competency - Services**

3 FOR the purpose of authorizing the juvenile court to order the Department of Health
4 and Mental Hygiene or a qualified expert to conduct an evaluation of a child's
5 competency to proceed in certain juvenile delinquency hearings; repealing
6 certain provisions relating to a finding of incompetency to proceed; specifying
7 the procedures for a finding of incompetency to proceed; requiring the
8 Department of Health and Mental Hygiene to file a certain report under certain
9 circumstances; requiring the court to hold a certain competency hearing and
10 take certain actions under certain circumstances; authorizing the court to take
11 certain actions at a certain competency hearing; requiring the court to dismiss a
12 delinquency petition or violation of probation petition under certain
13 circumstances; prohibiting the admission in evidence of certain statements and
14 information elicited while certain services are being provided; establishing a
15 certain presumption; altering a certain provision relating to the adoption of

1 regulations; altering a certain definition; and generally relating to juvenile
2 competency.

3 BY repealing and reenacting, without amendments,
4 Article - Courts and Judicial Proceedings
5 Section 3-8A-01(a), 3-8A-17.4, and 3-8A-17.5
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2005 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 3-8A-01(z), 3-8A-17.1, 3-8A-17.8, and 3-8A-17.9
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2005 Supplement)

13 BY repealing
14 Article - Courts and Judicial Proceedings
15 Section 3-8A-17.6 and 3-8A-17.7
16 Annotated Code of Maryland
17 (2002 Replacement Volume and 2005 Supplement)

18 BY adding to
19 Article - Courts and Judicial Proceedings
20 Section 3-8A-17.6, 3-8A-17.7, 3-8A-17.8, 3-8A-17.9, and 3-8A-17.11
21 Annotated Code of Maryland
22 (2002 Replacement Volume and 2005 Supplement)

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

25 **Article - Courts and Judicial Proceedings**

26 3-8A-01.

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

29 (z) "Qualified expert" means [a licensed psychologist or psychiatrist who has
30 expertise in child development, with training in forensic evaluation procedures
31 through formal instruction, professional supervision, or both, and who is:

32 (1) Familiar with the competency standards contained in this subtitle;
33 and

1 (2) Familiar with the treatment, training, and restoration programs for
2 children that are available in this State] A ~~LICENSED-CERTIFIED SOCIAL~~
3 ~~WORKER-CLINICAL~~, LICENSED PSYCHOLOGIST, OR LICENSED PSYCHIATRIST WHO:

4 (4) (I) HAS EXPERTISE IN CHILD DEVELOPMENT, WITH TRAINING IN
5 THE FORENSIC EVALUATION OF CHILDREN, AS APPROVED BY THE SECRETARY OF
6 HEALTH AND MENTAL HYGIENE;

7 (5) (II) IS FAMILIAR WITH THE COMPETENCY STANDARDS CONTAINED
8 IN THIS SUBTITLE; AND

9 (6) (III) IS FAMILIAR WITH THE TREATMENT, TRAINING, AND
10 RESTORATION PROGRAMS FOR CHILDREN THAT ARE AVAILABLE IN THIS STATE.

11 3-8A-17.1.

12 (a) (1) At any time after a petition alleging that a child has committed a
13 delinquent act is filed with the court under this subtitle, the court on its own motion,
14 or on motion of the child's counsel or the State's Attorney, shall stay all proceedings
15 and order THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE OR ANY
16 OTHER QUALIFIED EXPERT CONDUCT an evaluation of the child's [mental condition
17 and developmental levels] COMPETENCY TO PROCEED if the court finds that:

18 (i) There is probable cause to believe that the child has committed
19 the delinquent act; and

20 (ii) There is reason to believe that the child may be incompetent to
21 proceed with a waiver hearing under § 3-8A-06 of this subtitle, an adjudicatory
22 hearing under § 3-8A-18 of this subtitle, a disposition hearing under § 3-8A-19 of
23 this subtitle, or a violation of probation hearing.

24 (2) An evaluation ordered under paragraph (1) of this subsection shall be
25 performed by a qualified expert.

26 (3) This subsection may not be construed to prohibit the State or the
27 child from calling other expert witnesses to testify at a competency hearing.

28 (b) Any motion questioning the child's competency to proceed, and any
29 subsequent legal pleading relating to the child's competency to proceed, shall be
30 served on the child's counsel, the State's Attorney, the Department of Juvenile
31 Services, and the Department of Health and Mental Hygiene.

32 3-8A-17.4.

33 (a) (1) Except as provided in paragraph (2) of this subsection, within 15 days
34 after receipt of a report of a qualified expert, the court shall hold a competency
35 hearing.

36 (2) On good cause shown, the court may extend the time for holding the
37 competency hearing for an additional 15 days.

1 (b) At the competency hearing, the court shall determine, by evidence
2 presented on the record, whether the juvenile is incompetent to proceed.

3 (c) Findings of fact shall be based on the evaluation of the child by the
4 qualified expert.

5 (d) The State shall bear the burden of proving the child's competency beyond a
6 reasonable doubt.

7 3-8A-17.5.

8 At a competency hearing, if the court determines that the child is competent, the
9 court shall enter an order stating that the child is competent, lift the stay imposed
10 under § 3-8A-17.1 of this subtitle, and proceed with the delinquency petition or
11 violation of probation petition in accordance with the time periods specified in this
12 subtitle and in the Maryland Rules.

13 [3-8A-17.6.

14 At a competency hearing, if the court determines that the child is unable to
15 attain competency in the foreseeable future, the court may:

16 (1) Order that proceedings for involuntary admission under Title 10,
17 Subtitle 6, Part III of the Health - General Article be instituted, if appropriate; or

18 (2) Dismiss the delinquency petition or violation of probation petition.]

19 3-8A-17.6.

20 (A) AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE
21 CHILD IS INCOMPETENT TO PROCEED, BUT THAT THERE IS A SUBSTANTIAL
22 PROBABILITY THAT THE CHILD MAY BE ABLE TO ATTAIN COMPETENCY IN THE
23 FORESEEABLE FUTURE AND THAT SERVICES ARE NECESSARY TO ATTAIN
24 COMPETENCY, THE COURT MAY ORDER THE DEPARTMENT OF HEALTH AND MENTAL
25 HYGIENE TO PROVIDE COMPETENCY ATTAINMENT SERVICES FOR THE CHILD FOR AN
26 INITIAL PERIOD OF NOT MORE THAN 90 DAYS.

27 (B) ANY COMPETENCY ATTAINMENT SERVICES SHALL BE PROVIDED IN THE
28 LEAST RESTRICTIVE ENVIRONMENT.

29 (C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE COURT MAY ORDER A
30 CHILD TO BE PLACED IN A FACILITY FOR CHILDREN IF:

31 (1) THE CHILD IS DETAINED UNDER § 3-8A-15 OF THIS SUBTITLE AT THE
32 TIME OF THE COMPETENCY HEARING; AND

33 (2) THE COURT FINDS AFTER A HEARING ON THE ISSUE THAT:

34 (I) PLACEMENT IN A FACILITY IS NECESSARY TO PROTECT THE
35 CHILD OR OTHERS, OR THE CHILD IS LIKELY TO LEAVE THE JURISDICTION OF THE
36 COURT; AND

1 (II) NO LESS RESTRICTIVE ALTERNATIVE PLACEMENT IS
2 AVAILABLE THAT WILL PROTECT THE CHILD OR THE COMMUNITY OR PREVENT THE
3 CHILD FROM LEAVING THE JURISDICTION OF THE COURT.

4 (D) A CHILD MAY NOT BE:

5 (1) UNLESS THE CHILD'S INDIVIDUALIZED TREATMENT PLAN
6 DEVELOPED UNDER § 10-706 OF THE HEALTH - GENERAL ARTICLE OTHERWISE
7 INDICATES, PROVIDED SERVICES IN ANY GROUP WITH PERSONS WHO ARE AT LEAST
8 18 YEARS OLD;

9 (2) PLACED IN A DETENTION FACILITY; OR

10 (3) PLACED IN A PSYCHIATRIC HOSPITAL, EXCEPT IN ACCORDANCE
11 WITH TITLE 10, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE.

12 [3-8A-17.7.

13 (a) Unless the case is dismissed under § 3-8A-17.6 of this subtitle, at a
14 competency hearing, if the court determines that a child is incompetent to proceed in
15 the foreseeable future, the court shall retain jurisdiction of the child for not more than
16 3 years after the 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 up to 1 year
18 after the date of the order of incompetency if the child is alleged to have committed an
19 act that would be a misdemeanor if committed by an adult or is alleged to have
20 violated probation.

21 (b) At the end of any period specified in subsection (a) of this section, if the
22 child has not attained competency, the court:

23 (1) Shall dismiss the delinquency petition or the violation of probation
24 petition; and

25 (2) May order that proceedings for involuntary admission under Title 10,
26 Subtitle 6, Part III of the Health - General Article be instituted, if appropriate.]

27 3-8A-17.7.

28 (A) AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE
29 CHILD IS INCOMPETENT TO PROCEED, IS UNLIKELY TO ATTAIN COMPETENCY IN THE
30 FORESEEABLE FUTURE, HAS A MENTAL DISORDER, AS DEFINED IN § 10-620 OF THE
31 HEALTH - GENERAL ARTICLE, AND IS A DANGER TO THE LIFE OR SAFETY OF THE
32 CHILD OR OTHERS, THE COURT MAY ORDER A PETITION FOR EMERGENCY
33 EVALUATION UNDER § 10-622 OF THE HEALTH - GENERAL ARTICLE.

34 (B) AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE
35 CHILD IS INCOMPETENT TO PROCEED, IS UNLIKELY TO ATTAIN COMPETENCY IN THE
36 FORESEEABLE FUTURE, AND HAS A DEVELOPMENTAL DISABILITY, AS DEFINED IN §
37 7-101 OF THE HEALTH - GENERAL ARTICLE, THE COURT MAY ORDER THE
38 DEVELOPMENTAL DISABILITIES ADMINISTRATION TO EVALUATE THE CHILD WITHIN

1 30 DAYS TO DETERMINE THE CHILD'S ELIGIBILITY FOR SERVICES UNDER TITLE 7 OF
2 THE HEALTH - GENERAL ARTICLE.

3 (C) AT A COMPETENCY HEARING, IF THE COURT DETERMINES THAT THE
4 CHILD IS INCOMPETENT TO PROCEED AND IS UNLIKELY TO ATTAIN COMPETENCY IN
5 THE FORESEEABLE FUTURE, THE COURT:

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

8 (2) AFTER THE EXPIRATION OF THE TIME PERIODS FOR DISMISSAL
9 SPECIFIED IN § 3-8A-17.9 OF THIS SUBTITLE, SHALL DISMISS THE DELINQUENCY
10 PETITION OR VIOLATION OF PROBATION PETITION.

11 3-8A-17.8.

12 (A) IF THE COURT ORDERS THE DEPARTMENT OF HEALTH AND MENTAL
13 HYGIENE TO PROVIDE COMPETENCY ATTAINMENT SERVICES UNDER § 3-8A-17.6 OF
14 THIS SUBTITLE, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL FILE A
15 WRITTEN REPORT WITH THE COURT, WITH NOTICE TO COUNSEL OF THE SUBMISSION
16 OF THE REPORT, WITHIN 90 DAYS AFTER THE COURT ORDER, STATING WHETHER, IN
17 THE OPINION OF THE DEPARTMENT, THE CHILD:

18 (1) HAS ATTAINED COMPETENCY;

19 (2) REMAINS INCOMPETENT TO PROCEED, BUT MAY BE ABLE TO ATTAIN
20 COMPETENCY IN THE FORESEEABLE FUTURE; OR

21 (3) REMAINS INCOMPETENT TO PROCEED, AND IS UNLIKELY TO ATTAIN
22 COMPETENCY IN THE FORESEEABLE FUTURE.

23 (B) (1) THE COURT SHALL HOLD A COMPETENCY HEARING IN ACCORDANCE
24 WITH § 3-8A-17.4 OF THIS SUBTITLE WITHIN 15 DAYS AFTER THE COURT RECEIVES
25 THE REPORT DESCRIBED IN SUBSECTION (A) OF THIS SECTION.

26 (2) FOR GOOD CAUSE SHOWN, THE HEARING DATE MAY BE CONTINUED
27 FOR A REASONABLE PERIOD OF TIME.

28 (C) (1) AT THE COMPETENCY HEARING, IF THE COURT DETERMINES THAT
29 THE CHILD IS COMPETENT, THE COURT SHALL PROCEED IN ACCORDANCE WITH §
30 3-8A-17.5 OF THIS SUBTITLE.

31 (2) CASE MANAGEMENT AND SUPERVISION OF THE CHILD SHALL BE
32 TRANSFERRED TO THE DEPARTMENT OF JUVENILE SERVICES TO CONTINUE
33 PROCEEDINGS UNDER THIS SUBTITLE.

34 (3) (I) SUBJECT TO THE TIME PERIODS FOR DISMISSAL OF THE CASE
35 SPECIFIED IN § 3-8A-17.9 OF THIS SUBTITLE, IF THE COURT DETERMINES THAT THE
36 CHILD REMAINS INCOMPETENT TO PROCEED, BUT MAY BE ABLE TO ATTAIN

1 COMPETENCY IN THE FORESEEABLE FUTURE, THE COURT MAY ORDER THAT
2 SERVICES BE CONTINUED IN INCREMENTS OF NOT MORE THAN 6 MONTHS.

3 (II) WITHIN 6 MONTHS AFTER THE COURT ORDERS ADDITIONAL
4 SERVICES UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE DEPARTMENT OF
5 HEALTH AND MENTAL HYGIENE SHALL FILE A WRITTEN REPORT AS DESCRIBED IN
6 SUBSECTION (A) OF THIS SECTION.

7 (III) 1. THE COURT SHALL HOLD A COMPETENCY HEARING IN
8 ACCORDANCE WITH § 3-8A-17.4 OF THIS SUBTITLE WITHIN 15 DAYS AFTER THE
9 COURT RECEIVES THE REPORT DESCRIBED IN SUBPARAGRAPH (III) OF THIS
10 PARAGRAPH.

11 2. FOR GOOD CAUSE SHOWN, THE HEARING DATE MAY BE
12 CONTINUED FOR A REASONABLE PERIOD OF TIME.

13 ~~(3)~~ (4) IF THE COURT DETERMINES THAT THE CHILD REMAINS
14 INCOMPETENT TO PROCEED AND IS UNLIKELY TO ATTAIN COMPETENCY IN THE
15 FORESEEABLE FUTURE, THE COURT SHALL PROCEED IN ACCORDANCE WITH §
16 3-8A-17.7 OF THIS SUBTITLE.

17 3-8A-17.9.

18 THE COURT SHALL DISMISS THE DELINQUENCY PETITION OR THE VIOLATION
19 OF PROBATION PETITION IF THE CHILD HAS NOT ATTAINED COMPETENCY WITHIN:

20 (1) 18 MONTHS AFTER THE DATE OF THE FINDING OF INCOMPETENCY IF
21 THE CHILD IS ALLEGED TO HAVE:

22 (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SECTION,
23 COMMITTED AN ACT THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT; OR

24 (II) COMMITTED AN ACT IN VIOLATION OF § 5-133, § 5-134, § 5-138,
25 OR § 5-203 OF THE PUBLIC SAFETY ARTICLE OR § 4-203, § 4-204, OR § 4-205 OF THE
26 CRIMINAL LAW ARTICLE; OR

27 (2) 6 MONTHS AFTER THE DATE OF THE FINDING OF INCOMPETENCY IF
28 THE CHILD IS ALLEGED TO HAVE:

29 (I) COMMITTED AN ACT OTHER THAN AN ACT SPECIFIED IN
30 PARAGRAPH (1)(II) OF THIS SECTION THAT WOULD BE A MISDEMEANOR IF
31 COMMITTED BY AN ADULT; OR

32 (II) COMMITTED AN ACT THAT WOULD BE A FELONY IF COMMITTED
33 BY AN ADULT OVER WHICH THE DISTRICT COURT HAS EXCLUSIVE ORIGINAL
34 JURISDICTION UNDER TITLE 4, SUBTITLE 3 OF THE COURTS ARTICLE.

1 [3-8A-17.8.] 3-8A-17.10.

2 (a) At any time before an adjudication under this subtitle, a hearing on a
3 preliminary motion on another issue, including an objection to the sufficiency of the
4 petition, may be conducted without the child being present if the child's testimony is
5 not required.

6 (b) (1) Except as provided in paragraph (2) of this subsection, any statement
7 made by the child or information elicited during a competency hearing [or], in
8 connection with the determination of competency, OR WHILE SERVICES ARE BEING
9 PROVIDED under this subtitle, and any report prepared by a qualified expert, may not
10 be admitted in evidence in any proceeding except a proceeding relating to the child's
11 competency to proceed.

12 (2) Paragraph (1) of this subsection does not apply if the counsel for the
13 child introduces the report of the qualified expert, or any part of it, in any hearing
14 other than a competency hearing.

15 3-8A-17.11.

16 IN ANY COMPETENCY HEARING UNDER THIS SUBTITLE, IT IS PRESUMED THAT
17 THE CHILD DID NOT COMMIT THE ACT ALLEGED IN THE PETITION.

18 [3-8A-17.9.] 3-8A-17.12.

19 The [Secretary] SECRETARIES of Health and Mental Hygiene, HUMAN
20 RESOURCES, and [the Secretary of] Juvenile Services, AND THE STATE
21 SUPERINTENDENT OF SCHOOLS shall jointly adopt regulations to carry out the
22 provisions of this subtitle relating to competency.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2006.