

**Department of Legislative Services**  
 Maryland General Assembly  
 2006 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1257  
 Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

**Juvenile Law - Competency - Services**

The bill makes several alterations to the juvenile competency statutes.

**Fiscal Summary**

**State Effect:** Increase in general fund expenditures due to competency attainment services, assuming all services will be provided by the Department of Health and Mental Hygiene (DHMH), and additional staff to administer the program and provide training to qualified experts. FY 2007 expenditures for competency attainment services could range from \$114,000 to \$456,100, depending on the number of cases in which competency is raised. The average of the estimated range is reflected below. Personnel and training expenditures would increase by \$113,600 in FY 2007, also reflected below. Future year personnel and training costs reflect annualization and inflation. Future year competency attainment services costs reflect medical inflation. Revenues would not be affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	398,600	520,400	545,100	571,100	598,500
Net Effect	(\$398,600)	(\$520,400)	(\$545,100)	(\$571,100)	(\$598,500)

*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:** The bill clarifies the definition of “qualified expert” to require qualified experts to have obtained DHMH-approved training in the forensic evaluation of children.

The bill authorizes DHMH to conduct competency evaluations. The bill repeals the requirement that a competency evaluation ascertain the child’s mental condition and developmental levels, and instead requires that an evaluation determine the child’s competency to proceed with the judicial process.

The bill repeals general provisions authorizing the court to order involuntary admission or to dismiss delinquency or violation of probation petitions if a court determines that a child is unable to attain competency in the foreseeable future.

Based on competency hearing determinations, courts have the following options.

- *Child is incompetent to proceed, substantial probability child may attain competency in foreseeable future, and services are necessary for child to attain competency.* The court may order DHMH to provide competency attainment services for an initial period of up to 90 days. These services must be provided in the least restrictive environment. Children shall not be (1) placed in service groups with persons 18 years of age or older, unless otherwise required by the child’s individual treatment plan; (2) placed in a detention facility; or (3) placed in a psychiatric hospital, except in accordance with provisions in the Health-General Article relating to voluntary and involuntary admission for mental health treatment.

The court may order the child to be placed in a facility for children if (1) the child was detained prior to a child in need of supervision (CINS) or delinquency hearing at the time of the competency hearing; and (2) after a hearing, the court finds that this type of placement is necessary to protect the child or others or because the child is a flight risk and a less restrictive alternative placement adequate to meet the child’s needs is not available.

- *Child is incompetent to proceed, unlikely to attain competency in the foreseeable future, has a mental disorder, and is a danger to the life and safety of the child or others.* The court may order a petition for emergency evaluation.
- *Child is incompetent to proceed, unlikely to attain competency in the foreseeable future, and has a developmental disability.* The court may order the

Developmental Disabilities Administration (DDA) to evaluate the child within 30 days to determine if the child is eligible for DDA services.

- *Child is incompetent to proceed and unlikely to attain competency in the foreseeable future.* The court may dismiss the delinquency petition or violation of probation petition.

The court must dismiss these petitions (1) six months after the incompetency finding, provided that the child committed an act that would be a misdemeanor if committed by an adult or would be an adult-level felony but is under the District Court's exclusive original jurisdiction; or (2) 18 months after the incompetency finding if the child committed specific gun-related violations or an act that would be an adult-level felony.

If the court orders DHMH to provide competency attainment services, DHMH must file a report with the court and with notice to counsel, within 90 days of the court order. The report must state whether the child has attained competency or is incompetent to proceed, and whether or not the child is likely to attain competency in the foreseeable future. The court must hold a competency hearing within 15 days after receipt of the report. The hearing date can be postponed for good cause shown. If the child is found to be competent, the stay is lifted and proceedings on the child's petition continue. Courts may order attainment services to continue in increments of not more than six months if the child is incompetent to proceed but may be able to attain competency in the foreseeable future. This extension is still subject to the dismissal timeline discussed above. The same reporting and hearing provisions that applied to the original service period apply to the extension.

The presumption of the child's innocence with respect to the allegations in the delinquency petition is preserved during the competency determination process. Any information provided by the child while receiving competency attainment services is inadmissible in any proceeding other than a competency hearing.

The secretaries of DHMH, the Department of Human Resources (DHR), and the Department of Juvenile Services (DJS), along with the State Superintendent of Schools, must jointly adopt regulations to carry out juvenile competency provisions.

**Current Law:** Prior to 2005, Maryland law contained no clear procedures for handling a child who was alleged to have committed a delinquent offense and was incompetent to face proceeding. Chapter 580 of 2005 (HB 802), effective December 31, 2005, instituted procedural measures for juvenile courts confronted with children incompetent to face adjudication, but did not address what a court may do with a child who is found to be incompetent.

### *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. "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.

"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, pending the examination, 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. 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, or is alleged to have violated probation.

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 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.

**Background:** 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 150 children (98 in the community and 48 in a secure facility) and has 80 children on a waiting list for restoration services. The waiting time is approximately six months, but varies based on the level of funding for the program.

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 advised in 2005 that in Richmond, which accounts for approximately 60% of the state's cases, competency is raised in 1% of its cases. It should be noted that in Virginia, juvenile offenses can be counted under the "three strikes" statute.

Colorado passed juvenile competency legislation in 2005. The bill provided for competency hearings and outlined court procedures in juvenile incompetency cases. A similar bill did not pass in Connecticut.

**State Expenditures:** General fund expenditures would increase due to payments for competency attainment services, assuming that services are provided by DHMH; training of qualified experts; and hiring additional staff to administer the program.

#### *Competency Attainment Services*

The cost for competency services could range from \$114,014 to \$456,057 in fiscal 2007 as shown in **Exhibit 1**. For the purposes of the fiscal note, the cost is assumed to be the average of the high and low estimate. The actual fiscal impact depends on the number of cases in which competency is raised, the number of children found to be incompetent, and the amount of competency attainment services required by children found to be incompetent. Future years reflect 4.5% medical inflation.

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**Exhibit 1**  
**Competency Attainment Services Cost Ranges**

	<b><u>Fiscal</u> <u>2007*</u></b>	<b><u>Fiscal</u> <u>2008</u></b>	<b><u>Fiscal</u> <u>2009</u></b>	<b><u>Fiscal</u> <u>2010</u></b>	<b><u>Fiscal</u> <u>2011</u></b>
Low Estimate	\$114,014	\$158,860	\$166,009	\$173,479	\$181,285
High Estimate	456,057	635,439	664,034	693,915	725,142
<b>Average Estimate</b>	<b>\$285,036</b>	<b>\$397,150</b>	<b>\$415,022</b>	<b>\$433,697</b>	<b>\$453,214</b>

\*Reflects the bill's October 1, 2006 effective date. Future years reflect 4.5% medical inflation.

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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 the range is based on DHMH's assertion that, due to the passage of Chapter 580 of 2005 and the subsequent training provided by DHMH to the Judiciary and attorneys, juvenile competency will be raised more often.

Both estimates are based on the following assumptions:

- 17,755 juvenile petitions were prosecuted in 2004, which represents the cases opened by OPD. It is assumed that juvenile cases handled by private attorneys would utilize private competency evaluations and services;
- 18.2% of the juveniles referred for competency evaluations will be found incompetent;
- DHMH is providing all necessary attainment services (although some jurisdictions use private providers);
- outpatient attainment services last for an average of twelve months per child at a cost of \$21,717 per child. This cost estimate reflects: competency reevaluations and court appearances by a psychiatrist after 6 and 12 months; competency attainment services (1-2 visits per week totaling 100 visits over 12 months); and mileage; and
- each child who requires competency attainment services will require 12 months of outpatient services (the average of the 6- and 18-month dismissal timeline provided in the bill).

DHMH would prefer to provide competency attainment services in an outpatient setting, since it is the least restrictive environment. DHMH advises that per its conversations

with key personnel in the Virginia program, inpatient treatment is rarely used for these services. The bill provides an initial attainment service period of no more than 90 days. If the court feels that the child is still incompetent, it can order continuation of attainment services in renewal periods of up to six months each. However, under this bill, the delinquency or violation of probation petition against the child must be dismissed either 6 months or 18 months after the date of the finding of incompetency, depending on the nature of the alleged offense.

*Office of the Public Defender (Low Estimate)*

OPD, which represents approximately 90% of the juveniles in Maryland, advises that it raises competency in 0.23% of juvenile cases statewide. According to the *Office of the Public Defender Fiscal Year 2005 Annual Report*, OPD opened 17,755 juvenile cases in calendar 2004.

Assuming that 41 children, based on the number of OPD juvenile cases in calendar 2004, are referred to DHMH for evaluations, then 7 of those children would be found incompetent. Assuming each child requires 12 months of outpatient services, these services would cost \$152,019 annually. General fund expenditures would increase by an estimated \$114,014 in fiscal 2007, which reflects the bill's October 1, 2006 effective date. This would increase to \$158,860 in fiscal 2008 reflecting a full year of costs and medical inflation. However, actual expenses would vary depending on: (1) the number of children who require attainment services; and (2) the actual amount of attainment services required by children.

*Department of Health and Mental Hygiene (High Estimate)*

DHMH advises that it received 44 requests for juvenile competency evaluations in calendar year 2005, and 18 requests in the first six weeks of calendar 2006. Assuming that the request rate for 2006 remains steady, DHMH will receive 156 evaluations in calendar year 2006 (approximately 0.88% of juvenile cases). Assuming that the finding of incompetency rate remains constant (18.2%), of these 156 referrals, 28 will be found incompetent. These 28 children would require competency attainment services.

General fund expenditures would increase by \$456,057 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date, increasing to \$635,439 in fiscal 2008 reflecting a full year of costs and medical inflation. Actual expenses would vary depending on: (1) the number of children who require attainment services; and (2) the actual amount of attainment services required by children.



*Program Administration and Training*

In order to administer this program, DHMH advises that it will need one program manager and one administrative aide. General fund expenditures would increase by \$113,571 in fiscal 2007 which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one program manager and one administrative aide, and contracting with an outside vendor to develop a training program for qualified experts to have DHMH-approved training in the forensic evaluation of children and conduct one training session in fiscal 2007. DHMH assumes that it will provide this training since DHMH has the most expertise in this area in the State.

Salaries and Fringe Benefits	\$83,291
Development of Training Program (one-time)	15,000
One Training Session	3,750
Operating Expenses	<u>11,530</u>
<b>FY 2007 Administrative Expenditures</b>	<b>\$113,571</b>

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

*Other Potential Costs*

The bill requires children to receive services in the least restrictive environment, but provides that children may be placed in a facility for children under very limited circumstances. To the extent that this occurs, it would cause a marginal increase in DJS population. It is assumed that any increase in caseloads associated with emergency evaluations or DDA determinations under this bill would not result in an increase in total costs for DHMH.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 808 (Senator Grosfeld) – 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; *Summary of 2005 State Juvenile*

*Justice Legislation*, National Juvenile Defender Center; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2006  
ncs/rhh Revised - Enrolled Bill - April 25, 2006

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