

78A-6-1302 Procedure -- Standard.

- (1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings.
- (2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.
- (3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.
- (4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.
- (5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:
 - (a) the motion;
 - (b) the arrest or incident reports pertaining to the charged offense;
 - (c) the minor's known delinquency history information;
 - (d) known prior mental health evaluations and treatments; and
 - (e) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.
- (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.
- (7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:
 - (a) comprehend and appreciate the charges or allegations;
 - (b) disclose to counsel pertinent facts, events, or states of mind;
 - (c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;
 - (d) engage in reasoned choice of legal strategies and options;
 - (e) understand the adversarial nature of the proceedings;
 - (f) manifest appropriate courtroom behavior; and
 - (g) testify relevantly, if applicable.
- (8) In addition to the requirements of Subsection (7), the examiner's written report shall:
 - (a) identify the specific matters referred for evaluation;
 - (b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;
 - (c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;
 - (d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and

- (e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.
- (9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.
- (10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.
- (11) Prior to evaluating the minor, examiners shall specifically advise the minor and the parents or guardian of the limits of confidentiality as provided under Subsection (10).
- (12) When the report is received the court shall set a date for a competency hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.
- (13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.
- (14)
 - (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:
 - (i) competent to proceed;
 - (ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or
 - (iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.
 - (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.
 - (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.
 - (d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.

(15) If the court finds the minor not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).

Amended by Chapter 278, 2013 General Session