

Effective 5/3/2023

Superseded 5/7/2025

80-6-402 Procedure -- Standard.

- (1) When a written motion is filed in accordance with Section 80-6-401 raising the issue of a minor's competency to proceed, or when the juvenile court raises the issue of a minor's competency to proceed, the juvenile court shall stay all proceedings under this chapter .
- (2)
 - (a) If a motion for inquiry is opposed by either party, the juvenile court shall, before granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion.
 - (b) If the juvenile court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, the juvenile court shall:
 - (i) enter an order for an evaluation of the minor's competency to proceed; and
 - (ii) set a date for a hearing on the issue of the minor's competency.
- (3) After the granting of a motion, and before a full competency hearing, the juvenile court may order the department to evaluate the minor and to report to the juvenile court concerning the minor's mental condition.
- (4) The minor shall be evaluated by a forensic evaluator who:
 - (a) has experience in juvenile forensic evaluations and juvenile brain development;
 - (b) if it becomes apparent that the minor is not competent due to an intellectual disability or related condition, has experience in intellectual disability or related conditions; and
 - (c) is not involved in the current treatment of the minor.
- (5) The petitioner or other party, as directed by the juvenile court, shall provide all information and materials relevant to a determination of the minor's competency to the department within seven days of the juvenile court's order, including:
 - (a) the motion;
 - (b) the arrest or incident reports pertaining to the charged offense;
 - (c) the minor's known delinquency history information;
 - (d) the minor's probation record relevant to competency;
 - (e) known prior mental health evaluations and treatments; and
 - (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.
- (6)
 - (a) The minor's parent or guardian, the prosecuting attorney, the defense attorney, and the attorney guardian ad litem, shall cooperate, by executing releases of information when necessary, in providing the relevant information and materials to the forensic evaluator, including:
 - (i) medical records;
 - (ii) prior mental evaluations; or
 - (iii) records of diagnosis or treatment of substance abuse disorders.
 - (b) The minor shall cooperate, by executing a release of information when necessary, in providing the relevant information and materials to the forensic evaluator regarding records of diagnosis or treatment of a substance abuse disorder.
- (7)
 - (a) In conducting the evaluation and in the report determining if a minor is competent to proceed, the forensic evaluator shall inform the juvenile court of the forensic evaluator's opinion whether:

- (i) the minor has a present ability to consult with counsel with a reasonable degree of rational understanding; and
 - (ii) the minor has a rational as well as factual understanding of the proceedings.
- (b) In evaluating the minor, the forensic evaluator shall consider the minor's present ability to:
 - (i) understand the charges or allegations against the minor;
 - (ii) communicate facts, events, and states of mind;
 - (iii) understand the range of possible penalties associated with the allegations against the minor;
 - (iv) engage in reasoned choice of legal strategies and options;
 - (v) understand the adversarial nature of the proceedings against the minor;
 - (vi) manifest behavior sufficient to allow the juvenile court to proceed;
 - (vii) testify relevantly; and
 - (viii) any other factor determined to be relevant to the forensic evaluator.
- (8)
 - (a) The forensic evaluator shall provide an initial report to the juvenile court, the prosecuting and defense attorneys, and the attorney guardian ad litem, if applicable, within 30 days of the receipt of the juvenile court's order.
 - (b) If the forensic evaluator informs the juvenile court that additional time is needed, the juvenile court may grant, taking into consideration the custody status of the minor, up to an additional 15 days to provide the report to the juvenile court and counsel.
 - (c) The forensic evaluator must provide the report within 45 days from the receipt of the juvenile court's order unless, for good cause shown, the juvenile court authorizes an additional period of time to complete the evaluation and provide the report.
 - (d) The report shall inform the juvenile court of the forensic evaluator's opinion concerning the minor's competency.
- (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the report shall indicate:
 - (a) the nature of the minor's:
 - (i) mental illness;
 - (ii) intellectual disability or related condition; or
 - (iii) developmental immaturity;
 - (b) the relationship of the minor's mental illness, intellectual disability, related condition, or developmental immaturity to the minor's incompetence;
 - (c) whether there is a substantial likelihood that the minor may attain competency in the foreseeable future;
 - (d) the amount of time estimated for the minor to achieve competency if the minor undergoes competency attainment treatment, including medication;
 - (e) the sources of information used by the forensic evaluator; and
 - (f) the basis for clinical findings and opinions.
- (10) Regardless of whether a minor consents to a competency evaluation, any statement made by the minor in the course of the competency evaluation, any testimony by the forensic evaluator based upon any statement made by the minor in the competency evaluation, and any other fruits of the statement made by the minor in the competency evaluation:
 - (a) may not be admitted in evidence against the minor in a proceeding under this chapter, except the statement may be admitted on an issue respecting the mental condition on which the minor has introduced evidence; and
 - (b) may be admitted where relevant to a determination of the minor's competency.

- (11) Before evaluating the minor for a competency evaluation, a forensic evaluator shall specifically advise the minor, and the minor's parent or guardian if reasonably available, of the limits of confidentiality as provided under Subsection (10).
- (12) When the report is received, the juvenile court shall set a date for a competency hearing that shall be held in not less than five and not more than 15 days, unless the juvenile court enlarges the time for good cause.
- (13)
- (a) A minor shall be presumed competent unless the juvenile court, by a preponderance of the evidence, finds the minor not competent to proceed.
- (b) The burden of proof is upon the proponent of incompetency to proceed.
- (14)
- (a) Following the hearing, the juvenile 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 juvenile court enters a finding described in Subsection (14)(a)(i), the juvenile court shall proceed with the proceedings in the minor's case.
- (c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile court shall proceed in accordance with Section 80-6-403.
- (d)
- (i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the juvenile court shall terminate the competency proceeding, dismiss the charges against the minor without prejudice, and release the minor from any custody order related to the pending proceeding, unless the prosecutor informs the court that commitment proceedings will be initiated in accordance with:
- (A) Title 26B, Chapter 6, Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability;
- (B) if the minor is 18 years old or older, Title 26B, Chapter 5, Part 3, Utah State Hospital and Other Mental Health Facilities; or
- (C) if the minor is a child, Title 26B, Chapter 5, Part 4, Commitment of Persons Under Age 18.
- (ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated within seven days after the day on which the juvenile court enters the order under Subsection (14)(a), unless the court enlarges the time for good cause shown.
- (iii) The juvenile court may order the minor to remain in custody until the commitment proceedings have been concluded.
- (15) If the juvenile court finds the minor not competent to proceed, the juvenile court's order shall contain findings addressing each of the factors in Subsection (7)(b).