

HB0393S01 compared with HB0393

~~deleted text~~ shows text that was in HB0393 but was deleted in HB0393S01.

inserted text shows text that was not in HB0393 but was inserted into HB0393S01.

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Representative Kay L. McIff proposes the following substitute bill:

JUVENILE COMPETENCY AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts standards and procedures for juvenile competency proceedings, clarifies duties and responsibilities of the Department of Human Services, defines terms, and makes technical corrections.

Highlighted Provisions:

This bill:

- ▶ requires the department to:
 - conduct juvenile competency evaluations in the least restrictive setting;
 - upon a finding of good cause, use a second examiner to evaluate the juvenile; and
 - prepare an attainment plan when a minor is found not competent to proceed;
- ▶ grants the juvenile court jurisdiction over a minor not competent to proceed;

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- ▶ defines the following terms:
 - "Mental disorder";
 - "Intellectual disability";
 - "Not competent to proceed"; and
 - "Related condition";
- ▶ establishes competency to proceed standards and procedures; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-1-108.5, as last amended by Laws of Utah 2011, Chapter 366

62A-1-111, as last amended by Laws of Utah 2008, Chapters 3 and 382

78A-6-101, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-103, as last amended by Laws of Utah 2011, Chapter 366

78A-6-105, as last amended by Laws of Utah 2011, Chapter 320

78A-6-208, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78A-6-1301, Utah Code Annotated 1953

78A-6-1302, Utah Code Annotated 1953

78A-6-1303, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-1-108.5** is amended to read:

62A-1-108.5. Mental illness and intellectual disability examinations --

Responsibilities of the department.

(1) In accomplishing its duties to conduct mental illness and intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, and juvenile competency evaluations pursuant to Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed

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as outlined in this section and within appropriations authorized by the Legislature. The executive director may delegate the executive director's responsibilities under this section to one or more divisions within the department.

(2) When the department is ordered by the district court to conduct a mental illness or intellectual disability examination[;] the executive director shall:

(a) direct that the examination be performed at the Utah State Hospital; or

(b) designate at least one examiner, selected under Subsection [(3)] (4), to examine the defendant in the defendant's current custody or status.

(3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation pursuant to Title 78A, Chapter 6, Juvenile Court Act, the executive director shall:

~~{ (a) direct that the evaluation take place in the least restrictive setting;~~

~~{ (b) a} designate an examiner selected ~~{in}~~ pursuant to Subsection (4) ~~{as a juvenile examiner.}~~ to evaluate the minor; and~~

~~{(c) b} upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.~~

[(3)] (4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct mental illness and intellectual disability [~~examinations~~] or related condition, and juvenile competency evaluations under [~~Subsection~~] Subsections (2)(b) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6, Utah Procurement Code.

[(4)] (5) Nothing in this section prohibits the executive director, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection [(3)] (4) to contract with the department to conduct the [~~examination~~] evaluation. In selecting that person, the criteria of the department established under Subsection [(3)] (4) and the provisions of Title 63G, Chapter 6, Utah Procurement Code, shall be met.

Section 2. Section **62A-1-111** is amended to read:

62A-1-111. Department authority.

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The department may, in addition to all other authority and responsibility granted to it by law:

(1) adopt rules, not inconsistent with law, as the department may consider necessary or desirable for providing social services to the people of this state;

(2) establish and manage client trust accounts in the department's institutions and community programs, at the request of the client or the client's legal guardian or representative, or in accordance with federal law;

(3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(4) conduct adjudicative proceedings for clients and providers in accordance with the procedures of Title 63G, Chapter 4, Administrative Procedures Act;

(5) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;

(6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;

(7) set and collect fees for its services;

(8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;

(9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

(10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;

(11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(12) carry out the responsibility assigned in the Workforce Services Plan by the State Council on Workforce Services;

(13) carry out the responsibility assigned by Section 9-4-802 with respect to

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coordination of services for the homeless;

(14) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for students with a disability;

(15) provide training and educational opportunities for its staff;

(16) collect child support payments and any other money due to the department;

(17) apply the provisions of Title 78B, Chapter 12, Utah Child Support Act, to parents whose child lives out of the home in a department licensed or certified setting;

(18) establish policy and procedures, within appropriations authorized by the Legislature, in cases where the department is given custody of a minor by the juvenile court pursuant to Section 78A-6-117 or ordered to prepare an attainment plan for a minor found not competent to proceed pursuant to Section 78A-6-1301; any policy and procedures shall include:

(a) designation of interagency teams for each juvenile court district in the state;

(b) delineation of assessment criteria and procedures;

(c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and

(d) provisions for submittal of the plan and periodic progress reports to the court;

(19) carry out the responsibilities assigned to it by statute;

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and any person, agency, or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in Section 62A-15-102; and

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(21) pursuant to Subsection 62A-2-106(1)(d), accredit one or more agencies and persons to provide intercountry adoption services.

Section 3. Section **78A-6-101** is amended to read:

CHAPTER 6. JUVENILE COURT ACT

78A-6-101. Title.

This chapter is known as the "Juvenile Court Act [~~of 1996~~]."

Section 4. Section **78A-6-103** is amended to read:

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes

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within the court's jurisdiction under other provisions of this section;

(f) the emancipation of a minor in accordance with Part 8, Emancipation;

(g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(h) the treatment or commitment of a minor who has an intellectual disability;

(i) a minor who is a habitual truant from school;

(j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

(k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

(l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

(m) the treatment or commitment of a child with a mental illness. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;

(n) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

(o) a minor found not competent to proceed pursuant to Section 78A-6-1301;

~~(p)~~ (p) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

~~(q)~~ (q) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

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(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

Section 5. Section **78A-6-105** is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation; or

(iv) sexual abuse.

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(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in

Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a

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parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

- (a) pending court disposition or transfer to another jurisdiction; or
- (b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

- (a) marriage;
- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" is as defined in Section 53A-11-101.

(19) "Harm" means:

- (a) physical, emotional, or developmental injury or damage;
- (b) sexual abuse; or
- (c) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

- (i) blood relationships of the whole or half blood, without regard to legitimacy;
- (ii) relationships of parent and child by adoption; and
- (iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) "Intellectual disability" means:

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(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

~~[(21)]~~ (22) "Legal custody" means a relationship embodying the following rights and duties:

- (a) the right to physical custody of the minor;
- (b) the right and duty to protect, train, and discipline the minor;
- (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
- (d) the right to determine where and with whom the minor shall live; and
- (e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

~~[(22)]~~ (24) "Minor" means:

- (a) a child; or
- (b) a person who is:
 - (i) at least 18 years of age and younger than 21 years of age; and
 - (ii) under the jurisdiction of the juvenile court.

~~[(23)]~~ (25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

- (a) touches the anus or any part of the genitals of a child;
- (b) takes indecent liberties with a child; or
- (c) causes a child to take indecent liberties with the perpetrator or another.

~~[(24)]~~ (26) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

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~~[(25)]~~ (27) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; or

(iv) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection ~~[(25)]~~ (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection ~~[(25)]~~ (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection ~~[(25)]~~ (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

~~[(26)]~~ (28) "Neglected child" means a child who has been subjected to neglect.

~~[(27)]~~ (29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(30) "Not competent to proceed" means that a minor, due to a mental disorder,

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intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

~~[(28)]~~ (31) "Physical abuse" means abuse that results in physical injury or damage to a child.

~~[(29)]~~ (32) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

~~[(30)]~~ (33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

~~[(31)(a)]~~ (35) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and

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(iii) major medical, surgical, or psychiatric treatment.

~~[(32)]~~ (36) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

~~[(33)]~~ (37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

~~[(34)]~~ (38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

~~[(35)]~~ (39) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed towards a child; or

(b) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness or sexual battery, Section 76-9-702;

(v) lewdness involving a child, Section 76-9-702.5; or

(vi) voyeurism, Section 76-9-702.7.

~~[(36)]~~ (40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is

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actually charged with, or convicted of, the offense.

~~[(37)]~~ (41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

~~[(38)]~~ (42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

~~[(39)]~~ (43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

~~[(40)]~~ (44) "Substantiated" is as defined in Section 62A-4a-101.

~~[(41)]~~ (45) "Supported" is as defined in Section 62A-4a-101.

~~[(42)]~~ (46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(43)]~~ (47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~[(44)]~~ (48) "Unsubstantiated" is as defined in Section 62A-4a-101.

~~[(45)]~~ (49) "Without merit" is as defined in Section 62A-4a-101.

Section 6. Section **78A-6-208** is amended to read:

78A-6-208. Mental health evaluations -- Duty of administrator.

(1) The administrator of the juvenile court, with the approval of the board, and the executive director of the Department of Health, and director of the Division of Substance Abuse and Mental Health shall from time to time agree upon an appropriate plan:

(a) for obtaining mental health services and health services for the juvenile court from the state and local health departments and programs of mental health; and

(b) for assistance by the Department of Health and the Division of Substance Abuse and Mental Health in securing for the juvenile court special health, mental health, juvenile competency evaluations, and related services including community mental health services not already available from the Department of Health and the Division of Substance Abuse and Mental Health.

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(2) The Legislature may provide an appropriation to the Department of Health and the Division of Substance Abuse and Mental Health for this purpose.

Section 7. Section **78A-6-1301** is enacted to read:

Part 13. Juvenile Competency

78A-6-1301. Competency to proceed.

(1) Whenever a petition is filed alleging that a minor has committed an act that would be a crime if committed by an adult, a motion for an inquiry into the minor's competency may be filed. The motion shall be filed in the juvenile court where the petition is pending.

(2) The motion shall contain:

(a) a certificate that it is filed in good faith and on reasonable grounds to believe the minor is not competent to proceed;

(b) a recital of the facts, observations, and conversations with the minor that have formed the basis for the motion; and

(c) if filed by defense counsel, the motion shall contain information that can be revealed without invading the lawyer-client privilege.

(3) The motion may be based upon knowledge or information and belief and may be filed by:

(a) the minor alleged ~~incompetent~~ **not competent** to proceed;

(b) any person acting on the minor's behalf;

(c) the prosecuting attorney;

(d) the guardian ad litem; or

(e) any person having custody or supervision over the minor.

(4) The court in which a petition is pending may raise the issue of a minor's competency at any time. If raised by the court, counsel for each party shall be permitted to address the issue of competency.

Section 8. Section **78A-6-1302** is enacted to read:

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 stay all delinquency proceedings.

(2) If a motion for inquiry is opposed by either party, the court shall, prior to granting

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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.†

~~—— (a)† If it becomes apparent that the minor may be incompetent due to an intellectual disability, the mental health examiner shall be experienced in intellectual disability evaluations of minors.~~

~~—— (b) If it becomes apparent that the minor may be incompetent due to a developmental disability, the mental health examiner shall be experienced in developmental disability evaluations of minors.~~

~~—— (c) If it becomes apparent that the minor may be incompetent~~ **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.

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(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. ~~The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to proceed. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.~~ 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

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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 ~~incompetent~~ 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 78A-6-1303.

(d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall

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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.

(~~14~~15) If the court finds the minor ~~incompetent~~ not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).

Section 9. Section 78A-6-1303 is enacted to read:

78A-6-1303. Disposition on finding of incompetency to proceed -- Subsequent hearings -- Notice to prosecuting attorneys.

(1) If the court determines that the minor is not competent to proceed, ~~and there is a substantial likelihood that the minor may attain competency in the foreseeable future,~~ the court shall notify the Department of Human Services of the finding, and allow the department 30 days to develop a six month attainment plan for the minor.

(2) The attainment plan shall include:

(a) any services or treatment the minor has been or is currently receiving;

(b) any additional services or treatment the minor may require to attain competency within the six month time period;

(c) an assessment of the parent, custodian, or guardian's ability to access or provide any recommended treatment or services;

(d) any special conditions or supervision that may be necessary for the safety of the minor or others during the attainment period; and

(e) the likelihood that the minor will attain competency in a six month period.

(3) The department shall provide the attainment plan to the court, prosecutor, defense attorney, and guardian ad litem at least three days prior to the competency disposition hearing.

(4) During the attainment period, the minor shall remain in the least restrictive ~~custodial setting.~~ appropriate setting.

(a) A finding of not competent to proceed does not grant authority for a court to place a

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minor in the custody of the Department or any of its divisions, or create eligibility for services from the Division of Services for People With Disabilities.

(b) If the court orders the minor to be held in detention or placed outside of the home of the parent or guardian during the attainment period, the court shall make the following findings on the record:

(~~f~~a+i) the placement is the least restrictive setting;

(~~f~~b+ii) the placement is in the best interest of the minor;

(~~f~~c+iii) the minor will have access to the services and treatment required by the attainment plan in the placement; and

(~~f~~d+iv) the placement is necessary for the safety of the minor or others.

(5) If the minor is held in detention pending placement in a less restrictive setting, the department shall locate and transfer the minor to the alternative placement within 14 days.

(6) The court shall review the case at least once every three months to determine whether the placement is still the least restrictive appropriate placement.

(7) At any time that the minor becomes competent to proceed, during the attainment period, the executive director of the Department of Human Services, or its designee, shall notify the court, prosecutor, defense attorney, and guardian ad litem. The court shall hold a hearing with 15 business days of notice from the executive director.

(8) If at any time, during the attainment period, the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, 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.

(9) During the attainment period, the court may order a hearing or rehearing at anytime on its own motion or upon recommendations of any interested party or the executive director of the Department of Human Services.

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(10) At the conclusion of the attainment period, the department shall provide a report on the minor's progress towards competence. The report shall address the minor's:

(a) compliance with the attainment plan;

(b) progress towards competency based on the issues identified in the original competency evaluation;

(c) current mental ~~fitness~~ disorder, intellectual disability, or related condition and need for treatment, if any; and

(d) whether the minor has attained competency, or the likelihood of the minor attaining competency and the amount of time necessary to attain it.

(11) The court on its own motion, or upon motion by either party or by the executive director, may order an updated juvenile competency evaluation to examine the minor and advise the court on the minor's current competency status and progress toward competency restoration.

(12) Within 30 days of receipt of the report, the court shall hold a hearing to determine the minor's current status. At the hearing, the burden of proving the minor is competent is on the proponent of competency. The court shall determine by a preponderance of the evidence whether the minor is competent to proceed.

(13) If the minor has not attained competency after the initial six month attainment period but is showing reasonable progress towards attainment of competency, the court may extend the attainment period up to an additional six months.

(14) If the minor does not attain competency within one year after the court initially finds the minor not competent to proceed, the court shall terminate the competency proceedings and dismiss the delinquency charges without prejudice.

†

Legislative Review Note

~~as of 2-9-12 9:44 AM~~

~~Office of Legislative Research and General Counsel~~