

JUVENILE COMPETENCY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill amends provisions related to juvenile competency.

Highlighted Provisions:

This bill:

- ▶ defines terms in relation to juvenile competency;
- ▶ amends provisions regarding the admissibility of statements by a minor made in a competency evaluation or in the course of attainment; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-401, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-402, as renumbered and amended by Laws of Utah 2021, Chapter 261

80-6-403, as renumbered and amended by Laws of Utah 2021, Chapter 261

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

Section 1. Section **80-6-401** is amended to read:



28 **80-6-401. Definitions -- Competency to proceed.**

29 (1) As used in this part:

30 (a) "Competency" or "competent to proceed" means that a minor has:31 (i) a present ability to consult with counsel with a reasonable degree of rational32 understanding; and33 (ii) a rational as well as factual understanding of the proceedings.34 (b) "Competency evaluation" means an evaluation conducted by a forensic evaluator to
35 determine if a minor is competent to stand for trial or adjudication for pending charges.36 (c) "Forensic evaluator" means the same as that term is defined in Section [77-15-2](#).37 (d) "Not competent to proceed" means an individual is not competent to stand for trial
38 or adjudication for pending charges.39 ~~[(+)]~~ (2) If a petition is filed under Section [80-6-305](#), or a criminal information is filed
40 under Section [80-6-503](#), in the juvenile court, a written motion may be filed alleging
41 reasonable grounds to believe the minor is not competent to proceed.42 ~~[(2)]~~ (3) The written motion shall contain:43 (a) a certificate that it is filed in good faith and on reasonable grounds to believe the
44 minor is not competent to proceed due to:

45 (i) a mental illness;

46 (ii) an intellectual disability or a related condition; or

47 (iii) developmental immaturity;

48 (b) a recital of the facts, observations, and conversations with the minor that have
49 formed the basis for the motion; and50 (c) if filed by defense counsel, the motion shall contain information that can be
51 revealed without invading the lawyer-client privilege.52 ~~[(3)]~~ (4) The motion may be:

53 (a) based upon knowledge or information and belief; and

54 (b) filed by:

55 (i) the minor alleged not competent to proceed;

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

57 (iii) the prosecuting attorney;

58 (iv) the attorney guardian ad litem; or

- 59 (v) any person having custody or supervision over the minor.
- 60 [~~4~~] (5) (a) The juvenile court may raise the issue of a minor's competency at any time.
- 61 (b) If raised by the juvenile court, counsel for each party shall be permitted to address
- 62 the issue of competency.
- 63 (c) The juvenile court shall state the basis for the finding that there are reasonable
- 64 grounds to believe the minor is not competent to proceed.

65 Section 2. Section **80-6-402** is amended to read:

66 **80-6-402. Procedure -- Standard.**

67 (1) When a written motion is filed in accordance with Section **80-6-401** raising the

68 issue of a minor's competency to proceed, or when the juvenile court raises the issue of a

69 minor's competency to proceed, the juvenile court shall stay all proceedings under this chapter.

70 (2) (a) If a motion for inquiry is opposed by either party, the juvenile court shall, before

71 granting or denying the motion, hold a limited hearing solely for the purpose of determining the

72 sufficiency of the motion.

73 (b) If the juvenile court finds that the allegations of incompetency raise a bona fide

74 doubt as to the minor's competency to proceed, the juvenile court shall:

- 75 (i) enter an order for an evaluation of the minor's competency to proceed; and
- 76 (ii) set a date for a hearing on the issue of the minor's competency.

77 (3) After the granting of a motion, and before a full competency hearing, the juvenile

78 court may order the department to evaluate the minor and to report to the juvenile court

79 concerning the minor's mental condition.

80 (4) The minor shall be evaluated by a forensic evaluator who:

- 81 (a) has experience in juvenile forensic evaluations and juvenile brain development;
- 82 (b) if it becomes apparent that the minor is not competent due to an intellectual

83 disability or related condition, has experience in intellectual disability or related conditions;

84 and

85 (c) is not involved in the current treatment of the minor.

86 (5) The petitioner or other party, as directed by the juvenile court, shall provide all

87 information and materials relevant to a determination of the minor's competency to the

88 department within seven days of the juvenile court's order, including:

- 89 (a) the motion;

- 90 (b) the arrest or incident reports pertaining to the charged offense;
- 91 (c) the minor's known delinquency history information;
- 92 (d) the minor's probation record relevant to competency;
- 93 (e) known prior mental health evaluations and treatments; and
- 94 (f) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the
- 95 minor's education.

96 (6) (a) The minor's parent or guardian, the prosecuting attorney, the defense attorney,
97 and the attorney guardian ad litem, shall cooperate, by executing releases of information when
98 necessary, in providing the relevant information and materials to the forensic evaluator,
99 including:

- 100 (i) medical records;
- 101 (ii) prior mental evaluations; or
- 102 (iii) records of diagnosis or treatment of substance abuse disorders.

103 (b) The minor shall cooperate, by executing a release of information when necessary,
104 in providing the relevant information and materials to the forensic evaluator regarding records
105 of diagnosis or treatment of a substance abuse disorder.

106 (7) (a) In conducting the evaluation and in the report determining if a minor is
107 competent to proceed, the forensic evaluator shall inform the juvenile court of the forensic
108 evaluator's opinion whether:

- 109 (i) the minor has a present ability to consult with counsel with a reasonable degree of
110 rational understanding; and
- 111 (ii) the minor has a rational as well as factual understanding of the proceedings.

112 (b) In evaluating the minor, the forensic evaluator shall consider the minor's present
113 ability to:

- 114 (i) understand the charges or allegations against the minor;
- 115 (ii) communicate facts, events, and states of mind;
- 116 (iii) understand the range of possible penalties associated with the allegations against
117 the minor;
- 118 (iv) engage in reasoned choice of legal strategies and options;
- 119 (v) understand the adversarial nature of the proceedings against the minor;
- 120 (vi) manifest behavior sufficient to allow the juvenile court to proceed;

121 (vii) testify relevantly; and

122 (viii) any other factor determined to be relevant to the forensic evaluator.

123 (8) (a) The forensic evaluator shall provide an initial report to the juvenile court, the
124 prosecuting and defense attorneys, and the attorney guardian ad litem, if applicable, within 30
125 days of the receipt of the juvenile court's order.

126 (b) If the forensic evaluator informs the juvenile court that additional time is needed,
127 the juvenile court may grant, taking into consideration the custody status of the minor, up to an
128 additional 15 days to provide the report to the juvenile court and counsel.

129 (c) The forensic evaluator must provide the report within 45 days from the receipt of
130 the juvenile court's order unless, for good cause shown, the juvenile court authorizes an
131 additional period of time to complete the evaluation and provide the report.

132 (d) The report shall inform the juvenile court of the forensic evaluator's opinion
133 concerning the minor's competency.

134 (9) If the forensic evaluator's opinion is that the minor is not competent to proceed, the
135 report shall indicate:

136 (a) the nature of the minor's:

137 (i) mental illness;

138 (ii) intellectual disability or related condition; or

139 (iii) developmental immaturity;

140 (b) the relationship of the minor's mental illness, intellectual disability, related
141 condition, or developmental immaturity to the minor's incompetence;

142 (c) whether there is a substantial likelihood that the minor may attain competency in
143 the foreseeable future;

144 (d) the amount of time estimated for the minor to achieve competency if the minor
145 undergoes competency attainment treatment, including medication;

146 (e) the sources of information used by the forensic evaluator; and

147 (f) the basis for clinical findings and opinions.

148 (10) ~~[Any]~~ Regardless of whether a minor consents to a competency evaluation, any
149 statement made by the minor in the course of [any] the competency evaluation, [whether the
150 evaluation is with or without the consent of the minor,] any testimony by the forensic evaluator
151 based upon any statement made by the minor in the competency evaluation, and any other fruits

152 of the statement made by the minor in the competency evaluation:

153 (a) may not be admitted in evidence against the minor in a proceeding under this
154 chapter [~~except on an issue respecting the mental condition on which the minor has introduced~~
155 ~~evidence~~], except the statement may be admitted on an issue respecting the mental condition on
156 which the minor has introduced evidence; and

157 (b) may be admitted where relevant to a determination of the minor's competency.

158 (11) Before evaluating the minor for a competency evaluation, a forensic evaluator
159 shall specifically advise the minor, [~~and, if reasonably available, the parents or guardian,~~] and
160 the minor's parent or guardian if reasonably available, of the limits of confidentiality as
161 provided under Subsection (10).

162 (12) When the report is received, the juvenile court shall set a date for a competency
163 hearing that shall be held in not less than five and not more than 15 days, unless the juvenile
164 court enlarges the time for good cause.

165 (13) (a) A minor shall be presumed competent unless the juvenile court, by a
166 preponderance of the evidence, finds the minor not competent to proceed.

167 (b) The burden of proof is upon the proponent of incompetency to proceed.

168 (14) (a) Following the hearing, the juvenile court shall determine by a preponderance
169 of evidence whether the minor is:

170 (i) competent to proceed;

171 (ii) not competent to proceed with a substantial probability that the minor may attain
172 competency in the foreseeable future; or

173 (iii) not competent to proceed without a substantial probability that the minor may
174 attain competency in the foreseeable future.

175 (b) If the juvenile court enters a finding described in Subsection (14)(a)(i), the juvenile
176 court shall proceed with the proceedings in the minor's case.

177 (c) If the juvenile court enters a finding described in Subsection (14)(a)(ii), the juvenile
178 court shall proceed in accordance with Section [80-6-403](#).

179 (d) (i) If the juvenile court enters a finding described in Subsection (14)(a)(iii), the
180 juvenile court shall terminate the competency proceeding, dismiss the charges against the
181 minor without prejudice, and release the minor from any custody order related to the pending
182 proceeding, unless the prosecutor informs the court that commitment proceedings will be

183 initiated in accordance with:

184 (A) Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People
185 with an Intellectual Disability;

186 (B) if the minor is 18 years old or older, Title 62A, Chapter 15, Part 6, Utah State
187 Hospital and Other Mental Health Facilities; or

188 (C) if the minor is a child, Title 62A, Chapter 15, Part 7, Commitment of Persons
189 Under Age 18 to Division of Substance Abuse and Mental Health.

190 (ii) The commitment proceedings described in Subsection (14)(d)(i) shall be initiated
191 within seven days after the day on which the juvenile court enters the order under Subsection
192 (14)(a), unless the court enlarges the time for good cause shown.

193 (iii) The juvenile court may order the minor to remain in custody until the commitment
194 proceedings have been concluded.

195 (15) If the juvenile court finds the minor not competent to proceed, the juvenile court's
196 order shall contain findings addressing each of the factors in Subsection (7)(b).

197 Section 3. Section **80-6-403** is amended to read:

198 **80-6-403. Disposition on finding of not competent to proceed -- Subsequent**
199 **hearings -- Notice to prosecuting attorneys.**

200 (1) If the juvenile court determines that the minor is not competent to proceed, and
201 there is a substantial likelihood that the minor may attain competency in the foreseeable future,
202 the juvenile court shall notify the department of the finding and allow the department 30 days
203 to develop an attainment plan for the minor.

204 (2) The attainment plan shall include:

205 (a) any services or treatment the minor has been or is currently receiving that are
206 necessary to attain competency;

207 (b) any additional services or treatment the minor may require to attain competency;

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

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

212 (e) the likelihood that the minor will attain competency and the amount of time likely
213 required for the minor to attain competency.

214 (3) The department shall provide the attainment plan to the juvenile court, the
215 prosecuting attorney, the defense attorney, and the attorney guardian ad litem at least three days
216 before the competency disposition hearing.

217 (4) (a) During the attainment period, the minor shall remain in the least restrictive
218 appropriate setting.

219 (b) A finding of not competent to proceed does not grant authority for a juvenile court
220 to place a minor in the custody of a division of the department, or create eligibility for services
221 from the Division of Services for People With Disabilities.

222 (c) If the juvenile court orders the minor to be held in detention during the attainment
223 period, the juvenile court shall make the following findings on the record:

224 (i) the placement is the least restrictive appropriate setting;

225 (ii) the placement is in the best interest of the minor;

226 (iii) the minor will have access to the services and treatment required by the attainment
227 plan in the placement; and

228 (iv) the placement is necessary for the safety of the minor or others.

229 (d) A juvenile court shall terminate an order of detention related to the pending
230 proceeding for a minor who is not competent to proceed in that matter if:

231 (i) the most severe allegation against the minor if committed by an adult is a class B
232 misdemeanor;

233 (ii) more than 60 days have passed after the day on which the juvenile court
234 adjudicated the minor not competent to proceed; and

235 (iii) the minor has not attained competency.

236 (5) (a) At any time that the minor becomes competent to proceed during the attainment
237 period, the department shall notify the juvenile court, the prosecuting attorney, the defense
238 attorney, and the attorney guardian ad litem.

239 (b) The juvenile court shall hold a hearing with 15 business days of notice from the
240 department described in Subsection (5)(a).

241 (6) (a) If at any time during the attainment period the juvenile court finds that there is
242 not a substantial probability that the minor will attain competency in the foreseeable future, the
243 juvenile court shall terminate the competency proceeding, dismiss the petition or information
244 without prejudice, and release the minor from any custody order related to the pending

245 proceeding, unless the prosecuting attorney or any other individual informs the juvenile court
246 that commitment proceedings will be initiated in accordance with:

247 (i) Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People
248 with an Intellectual Disability;

249 (ii) if the minor is 18 years old or older, Title 62A, Chapter 15, Part 6, Utah State
250 Hospital and Other Mental Health Facilities; or

251 (iii) if the minor is a child, Title 62A, Chapter 15, Part 7, Commitment of Persons
252 Under Age 18 to Division of Substance Abuse and Mental Health.

253 (b) The prosecuting attorney shall initiate the proceedings described in Subsection
254 (6)(a) within seven days after the juvenile court's order, unless the juvenile court enlarges the
255 time for good cause shown.

256 (7) During the attainment period, the juvenile court may order a hearing or rehearing at
257 anytime on the juvenile court's own motion or upon recommendation of any interested party or
258 the department.

259 (8) (a) Within three months of the juvenile court's approval of the attainment plan, the
260 department shall provide a report on the minor's progress towards competence.

261 (b) The report described in Subsection (8)(a) shall address the minor's:

262 (i) compliance with the attainment plan;

263 (ii) progress towards competency based on the issues identified in the original
264 competency evaluation; and

265 (iii) current mental illness, intellectual disability or related condition, or developmental
266 immaturity, and need for treatment, if any, and whether there is substantial likelihood of the
267 minor attaining competency within six months.

268 (9) (a) Within 30 days of receipt of the report, the juvenile court shall hold a hearing to
269 determine the minor's current status.

270 (b) At the hearing, the burden of proving the minor is competent is on the proponent of
271 competency.

272 (c) The juvenile court shall determine by a preponderance of the evidence whether the
273 minor is competent to proceed.

274 (10) If the minor has not attained competency after the initial three month attainment
275 period but is showing reasonable progress towards attainment of competency, the juvenile

276 court may extend the attainment period up to an additional three months.

277 (11) The department shall provide an updated juvenile competency evaluation at the
278 conclusion of the six month attainment period to advise the juvenile court on the minor's
279 current competency status.

280 (12) If the minor does not attain competency within six months after the juvenile court
281 initially finds the minor not competent to proceed, the court shall terminate the competency
282 proceedings and dismiss the petition or information filed without prejudice, unless good cause
283 is shown that there is a substantial likelihood the minor will attain competency within one year
284 from the initial finding of not competent to proceed.

285 (13) In the event a minor has an unauthorized leave lasting more than 24 hours, the
286 attainment period shall toll until the minor returns.

287 (14) (a) Regardless of whether a minor consents to attainment, any statement made by
288 the minor in the course of attainment, any testimony by the forensic evaluator based upon any
289 statement made by the minor in the course of attainment, and any other fruits of a statement
290 made by the minor in the course of attainment:

291 (i) may not be admitted in evidence against the minor in a proceeding under this
292 chapter, except the statement may be admitted on an issue respecting the mental condition on
293 which the minor has introduced evidence; and

294 (ii) may be admitted where relevant to a determination of the minor's competency.

295 (b) Before evaluating the minor during the attainment period, a forensic evaluator shall
296 specifically advise the minor, and the minor's parent or guardian if reasonably available, of the
297 limits of confidentiality provided in Subsection (14)(a).