

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;
- ▶ 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:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **62A-1-108.5**, as last amended by Laws of Utah 2011, Chapter 366

34 **62A-1-111**, as last amended by Laws of Utah 2008, Chapters 3 and 382

35 **78A-6-101**, as renumbered and amended by Laws of Utah 2008, Chapter 3

36 **78A-6-103**, as last amended by Laws of Utah 2011, Chapter 366

37 **78A-6-105**, as last amended by Laws of Utah 2011, Chapter 320

38 **78A-6-208**, as renumbered and amended by Laws of Utah 2008, Chapter 3

39 ENACTS:

40 **78A-6-1301**, Utah Code Annotated 1953

41 **78A-6-1302**, Utah Code Annotated 1953

42 **78A-6-1303**, Utah Code Annotated 1953



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

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

46 **62A-1-108.5. Mental illness and intellectual disability examinations --**

47 **Responsibilities of the department.**

48 (1) In accomplishing its duties to conduct mental illness and intellectual disability
49 examinations under Title 77, Utah Code of Criminal Procedure, and juvenile competency
50 evaluations pursuant to Title 78A, Chapter 6, Juvenile Court Act, the department shall proceed
51 as outlined in this section and within appropriations authorized by the Legislature. The
52 executive director may delegate the executive director's responsibilities under this section to
53 one or more divisions within the department.

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

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

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

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

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

63 (b) designate an examiner selected in Subsection (4) as a juvenile examiner, to evaluate
64 the minor; and

65 (c) upon a finding of good cause and order of the court, designate a second examiner to
66 evaluate the minor.

67 [~~(3)~~] (4) The department shall establish criteria, in consultation with the Commission
68 on Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
69 mental illness and intellectual disability [~~examinations~~] or related condition, and juvenile
70 competency evaluations under [~~Subsection~~] Subsections (2)(b) and (3)(b). In making this
71 selection, the department shall follow the provisions of Title 63G, Chapter 6, Utah
72 Procurement Code.

73 [~~(4)~~] (5) Nothing in this section prohibits the executive director, at the request of
74 defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code
75 of Criminal Procedure, and for good cause shown, from proposing a person who has not been
76 previously selected under Subsection [~~(3)~~] (4) to contract with the department to conduct the
77 [~~examination~~] evaluation. In selecting that person, the criteria of the department established
78 under Subsection [~~(3)~~] (4) and the provisions of Title 63G, Chapter 6, Utah Procurement Code,
79 shall be met.

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

81 **62A-1-111. Department authority.**

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

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

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

89 (3) purchase, as authorized or required by law, services that the department is

90 responsible to provide for legally eligible persons;

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

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

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

97 (7) set and collect fees for its services;

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

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

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

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

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

112 (13) carry out the responsibility assigned by Section 9-4-802 with respect to
113 coordination of services for the homeless;

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

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

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

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

120 (18) establish policy and procedures, within appropriations authorized by the

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

- 125 (a) designation of interagency teams for each juvenile court district in the state;
 126 (b) delineation of assessment criteria and procedures;
 127 (c) minimum requirements, and timeframes, for the development and implementation
 128 of a collaborative service plan for each minor placed in department custody; and
 129 (d) provisions for submittal of the plan and periodic progress reports to the court;
 130 (19) carry out the responsibilities assigned to it by statute;
 131 (20) examine and audit the expenditures of any public funds provided to local
 132 substance abuse authorities, local mental health authorities, local area agencies on aging, and
 133 any person, agency, or organization that contracts with or receives funds from those authorities
 134 or agencies. Those local authorities, area agencies, and any person or entity that contracts with
 135 or receives funds from those authorities or area agencies, shall provide the department with any
 136 information the department considers necessary. The department is further authorized to issue
 137 directives resulting from any examination or audit to local authorities, area agencies, and
 138 persons or entities that contract with or receive funds from those authorities with regard to any
 139 public funds. If the department determines that it is necessary to withhold funds from a local
 140 mental health authority or local substance abuse authority based on failure to comply with state
 141 or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of
 142 services. For purposes of this Subsection (20) "public funds" means the same as that term is
 143 defined in Section 62A-15-102; and
 144 (21) pursuant to Subsection 62A-2-106(1)(d), accredit one or more agencies and
 145 persons to provide intercountry adoption services.

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

147 **CHAPTER 6. JUVENILE COURT ACT**

148 **78A-6-101. Title.**

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

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

151 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

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

154 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
155 person younger than 21 years of age who has violated any law or ordinance before becoming
156 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection
157 78A-7-106(2);

158 (b) a person 21 years of age or older who has failed or refused to comply with an order
159 of the juvenile court to pay a fine or restitution, if the order was imposed before the person's
160 21st birthday; however, the continuing jurisdiction is limited to causing compliance with
161 existing orders;

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

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

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

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

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

174 (e) appointment of a guardian of the person or other guardian of a minor who comes
175 within the court's jurisdiction under other provisions of this section;

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

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

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

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

182 (j) the judicial consent to the marriage of a child under age 16 upon a determination of

183 voluntariness or where otherwise required by law, employment, or enlistment of a child when
184 consent is required by law;

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

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

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

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

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

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

202 [~~(q)~~] (q) adoptions conducted in accordance with the procedures described in Title
203 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an
204 order terminating the rights of a parent and finds that adoption is in the best interest of the
205 child.

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

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

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

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

213 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is

214 referred to it by the Division of Child and Family Services or by public or private agencies that
215 contract with the division to provide services to that child where, despite earnest and persistent
216 efforts by the division or agency, the child has demonstrated that the child:

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

220 (b) has run away from home.

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

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

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

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

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

230 **78A-6-105. Definitions.**

231 As used in this chapter:

232 (1) (a) "Abuse" means:

233 (i) nonaccidental harm of a child;

234 (ii) threatened harm of a child;

235 (iii) sexual exploitation; or

236 (iv) sexual abuse.

237 (b) "Abuse" does not include:

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

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

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

241 (A) in self-defense;

242 (B) in defense of others;

243 (C) to protect the child; or

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

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

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

247 (3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
248 alleged in the petition have been proved.

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

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

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

254 (7) "Child placement agency" means:

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

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

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

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

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

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

263 (10) "Court" means the juvenile court.

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

266 (12) "Deprivation of custody" means transfer of legal custody by the court from a
267 parent or the parents or a previous legal custodian to another person, agency, or institution.

268 (13) "Detention" means home detention and secure detention as defined in Section
269 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
270 restricting facility:

271 (a) pending court disposition or transfer to another jurisdiction; or

272 (b) while under the continuing jurisdiction of the court.

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

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

276 petition may be filed.

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

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

280 (a) marriage;

281 (b) enlistment in the armed forces;

282 (c) major medical, surgical, or psychiatric treatment; or

283 (d) legal custody, if legal custody is not vested in another person, agency, or institution.

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

285 (19) "Harm" means:

286 (a) physical, emotional, or developmental injury or damage;

287 (b) sexual abuse; or

288 (c) sexual exploitation.

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

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

293 (i) blood relationships of the whole or half blood, without regard to legitimacy;

294 (ii) relationships of parent and child by adoption; and

295 (iii) relationships of stepparent and stepchild while the marriage creating the

296 relationship of a stepparent and stepchild exists.

297 (21) "Intellectual disability" means:

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

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

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

307 [~~(21)~~] (22) "Legal custody" means a relationship embodying the following rights and
308 duties:

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

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

317 [~~(22)~~] (24) "Minor" means:

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

322 [~~(23)~~] (25) "Molestation" means that a person, with the intent to arouse or gratify the
323 sexual desire of any person:

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

327 [~~(24)~~] (26) "Natural parent" means a minor's biological or adoptive parent, and
328 includes the minor's noncustodial parent.

329 [~~(25)~~] (27) (a) "Neglect" means:

- 330 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
331 Relinquishment of a Newborn Child;
332 (ii) lack of proper parental care of a child by reason of the fault or habits of the parent,
333 guardian, or custodian;
334 (iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
335 subsistence, education, or medical care, or any other care necessary for the child's health,
336 safety, morals, or well-being; or
337 (iv) a child at risk of being neglected or abused because another child in the same home

338 is neglected or abused.

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

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

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

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

353 [~~(26)~~ (28)] "Neglected child" means a child who has been subjected to neglect.

354 [~~(27)~~ (29)] "Nonjudicial adjustment" means closure of the case by the assigned
355 probation officer without judicial determination upon the consent in writing of:

356 (a) the assigned probation officer; and

357 (b) (i) the minor; or

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

359 (30) "Not competent to proceed" means that a minor, due to a mental disorder,
360 intellectual disability, or related condition as defined, lacks the ability to:

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

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

365 [~~(28)~~ (31)] "Physical abuse" means abuse that results in physical injury or damage to a
366 child.

367 [~~(29)~~ (32)] "Probation" means a legal status created by court order following an
368 adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the

369 minor is permitted to remain in the minor's home under prescribed conditions and under
370 supervision by the probation department or other agency designated by the court, subject to
371 return to the court for violation of any of the conditions prescribed.

372 ~~[(30)]~~ (33) "Protective supervision" means a legal status created by court order
373 following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor
374 is permitted to remain in the minor's home, and supervision and assistance to correct the abuse,
375 neglect, or dependency is provided by the probation department or other agency designated by
376 the court.

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

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

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

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

- 389 (i) marriage;
390 (ii) enlistment; and
391 (iii) major medical, surgical, or psychiatric treatment.

392 ~~[(32)]~~ (36) "Secure facility" means any facility operated by or under contract with the
393 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
394 youth offenders committed to the division for custody and rehabilitation.

395 ~~[(33)]~~ (37) "Severe abuse" means abuse that causes or threatens to cause serious harm
396 to a child.

397 ~~[(34)]~~ (38) "Severe neglect" means neglect that causes or threatens to cause serious
398 harm to a child.

399 ~~[(35)]~~ (39) "Sexual abuse" means:

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

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

- 405 (i) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 406 (ii) child bigamy, Section 76-7-101.5;
- 407 (iii) incest, Section 76-7-102;
- 408 (iv) lewdness or sexual battery, Section 76-9-702;
- 409 (v) lewdness involving a child, Section 76-9-702.5; or
- 410 (vi) voyeurism, Section 76-9-702.7.

411 [~~36~~] (40) "Sexual exploitation" means knowingly:

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

- 413 (i) pose in the nude for the purpose of sexual arousal of any person; or
- 414 (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing,
415 filming, recording, or displaying in any way the sexual or simulated sexual conduct;

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

- 418 (i) in the nude, for the purpose of sexual arousal of any person; or
- 419 (ii) engaging in sexual or simulated sexual conduct; or

420 (c) engaging in any conduct that would constitute an offense under Section 76-5b-201,
421 Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is
422 actually charged with, or convicted of, the offense.

423 [~~37~~] (41) "Shelter" means the temporary care of a child in a physically unrestricted
424 facility pending court disposition or transfer to another jurisdiction.

425 [~~38~~] (42) "State supervision" means a disposition that provides a more intensive level
426 of intervention than standard probation but is less intensive or restrictive than a community
427 placement with the Division of Juvenile Justice Services.

428 [~~39~~] (43) "Substance abuse" means the misuse or excessive use of alcohol or other
429 drugs or substances.

430 [~~40~~] (44) "Substantiated" is as defined in Section 62A-4a-101.

431 [~~(41)~~] (45) "Supported" is as defined in Section 62A-4a-101.

432 [~~(42)~~] (46) "Termination of parental rights" means the permanent elimination of all
433 parental rights and duties, including residual parental rights and duties, by court order.

434 [~~(43)~~] (47) "Therapist" means:

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

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

439 [~~(44)~~] (48) "Unsubstantiated" is as defined in Section 62A-4a-101.

440 [~~(45)~~] (49) "Without merit" is as defined in Section 62A-4a-101.

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

442 **78A-6-208. Mental health evaluations -- Duty of administrator.**

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

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

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

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

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

456 **Part 13. Juvenile Competency**

457 **78A-6-1301. Competency to proceed.**

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

461 (2) The motion shall contain:

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

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

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

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

470 (a) the minor alleged incompetent to proceed;

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

472 (c) the prosecuting attorney;

473 (d) the guardian ad litem; or

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

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

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

479 **78A-6-1302. Procedure -- Standard.**

480 (1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a
481 minor's competency to proceed, or when the court raises the issue of a minor's competency to
482 proceed, the juvenile court in which proceedings are pending stay all delinquency proceedings.

483 (2) If a motion for inquiry is opposed by either party, the court shall, prior to granting
484 or denying the motion, hold a limited hearing solely for the purpose of determining the
485 sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona
486 fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of
487 the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's
488 competency.

489 (3) After the granting of a motion, and prior to a full competency hearing, the court
490 may order the Department of Human Services to evaluate the minor and to report to the court
491 concerning the minor's mental condition.

492 (4) The minor shall be evaluated by a mental health examiner with experience in

493 juvenile forensic evaluations and juvenile brain development, who is not involved in the
494 current treatment of the minor.

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

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

501 (c) If it becomes apparent that the minor may be incompetent due to an intellectual
502 disability or related condition, the examiner shall be experienced in intellectual disability or
503 related condition evaluations of minors.

504 (5) The petitioner or other party, as directed by the court, shall provide all information
505 and materials to the examiners relevant to a determination of the minor's competency
506 including:

507 (a) the motion;

508 (b) the arrest or incident reports pertaining to the charged offense;

509 (c) the minor's known delinquency history information;

510 (d) known prior mental health evaluations and treatments; and

511 (e) consistent with 20 U.S.C. Sec. 1232G (b)(1)(E)(ii)(I), records pertaining to the
512 minor's education.

513 (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad
514 litem, shall cooperate in providing the relevant information and materials to the examiners.

515 (7) In conducting the evaluation and in the report determining if a minor is competent
516 to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a
517 mental disorder, intellectual disability, or related condition on a minor's present capacity to:

518 (a) comprehend and appreciate the charges or allegations;

519 (b) disclose to counsel pertinent facts, events, or states of mind;

520 (c) comprehend and appreciate the range and nature of possible penalties, if applicable,
521 that may be imposed in the proceedings against the minor;

522 (d) engage in reasoned choice of legal strategies and options;

523 (e) understand the adversarial nature of the proceedings;

524 (f) manifest appropriate courtroom behavior; and

525 (g) testify relevantly, if applicable.

526 (8) In addition to the requirements of Subsection (7), the examiner's written report
527 shall:

528 (a) identify the specific matters referred for evaluation;

529 (b) describe the procedures, techniques, and tests used in the evaluation and the
530 purpose or purposes for each;

531 (c) state the examiner's clinical observations, findings, and opinions on each issue
532 referred for evaluation by the court, and indicate specifically those issues, if any, on which the
533 examiner could not give an opinion;

534 (d) state the likelihood that the minor will attain competency and the amount of time
535 estimated to achieve it; and

536 (e) identify the sources of information used by the examiner and present the basis for
537 the examiner's clinical findings and opinions.

538 (9) The examiner shall provide an initial report to the court, the prosecuting and
539 defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the
540 court's order. The report shall inform the court of the examiner's opinion concerning the
541 competency and the likelihood of the minor to proceed. In the alternative, the examiner may
542 inform the court in writing that additional time is needed to complete the report. If the
543 examiner informs the court that additional time is needed, the court may grant, taking into
544 consideration the custody status of the minor, up to an additional 30 days to provide the report
545 to the court and counsel. The examiner must provide the report within 60 days from the receipt
546 of the court's order unless, for good cause shown, the court authorizes an additional period of
547 time to complete the evaluation and provide the report.

548 (10) Any statement made by the minor in the course of any competency evaluation,
549 whether the evaluation is with or without the consent of the minor, any testimony by the
550 examiner based upon any statement, and any other fruits of the statement may not be admitted
551 in evidence against the minor in any delinquency or criminal proceeding except on an issue
552 respecting the mental condition on which the minor has introduced evidence. The evidence
553 may be admitted, however, where relevant to a determination of the minor's competency.

554 (11) Prior to evaluating the minor, examiners shall specifically advise the minor and

555 the parents or guardian of the limits of confidentiality as provided under Subsection (10).

556 (12) When the report is received the court shall set a date for a competency hearing
557 which shall be held in not less than five and not more than 15 days, unless the court enlarges
558 the time for good cause.

559 (13) A minor shall be presumed competent unless the court, by a preponderance of the
560 evidence, finds the minor incompetent to proceed. The burden of proof is upon the proponent
561 of incompetency to proceed.

562 (14) If the court finds the minor incompetent to proceed, its order shall contain findings
563 addressing each of the factors in Subsection (7).

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

565 **78A-6-1303. Disposition on finding of incompetency to proceed -- Subsequent**
566 **hearings -- Notice to prosecuting attorneys.**

567 (1) If the court determines that the minor is not competent to proceed, the court shall
568 notify the Department of Human Services of the finding, and allow the department 30 days to
569 develop a six month attainment plan for the minor.

570 (2) The attainment plan shall include:

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

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

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

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

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

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

581 (4) During the attainment period, the minor shall remain in the least restrictive
582 custodial setting. If the court orders the minor to be held in detention or placed outside of the
583 home of the parent or guardian during the attainment period, the court shall make the following
584 findings on the record:

585 (a) the placement is the least restrictive setting;

- 586 (b) the placement is in the best interest of the minor;
587 (c) the minor will have access to the services and treatment required by the attainment
588 plan in the placement; and
589 (d) the placement is necessary for the safety of the minor or others.
590 (5) If the minor is held in detention pending placement in a less restrictive setting, the
591 department shall locate and transfer the minor to the alternative placement within 14 days.
592 (6) The court shall review the case at least once every three months to determine
593 whether the placement is still the least restrictive appropriate placement.
594 (7) At any time that the minor becomes competent to proceed, during the attainment
595 period, the executive director of the Department of Human Services, or its designee, shall
596 notify the court, prosecutor, defense attorney, and guardian ad litem. The court shall hold a
597 hearing with 15 business days of notice from the executive director.
598 (8) If at any time, during the attainment period, the court finds that there is not a
599 substantial probability that the minor will attain competency in the foreseeable future, the court
600 shall terminate the competency proceeding, dismiss the delinquency charges without prejudice,
601 and release the minor from any custody order related to the pending delinquency proceeding,
602 unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A,
603 Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse
604 and Mental Health Act, will be initiated. These commitment proceedings shall be initiated
605 within seven days after the court's order, unless the court enlarges the time for good cause
606 shown. The minor may be ordered to remain in custody until the commitment proceedings
607 have been concluded.
608 (9) During the attainment period, the court may order a hearing or rehearing at anytime
609 on its own motion or upon recommendations of any interested party or the executive director of
610 the Department of Human Services.
611 (10) At the conclusion of the attainment period, the department shall provide a report
612 on the minor's progress towards competence. The report shall address the minor's:
613 (a) compliance with the attainment plan;
614 (b) progress towards competency based on the issues identified in the original
615 competency evaluation;
616 (c) current mental illness, intellectual disability, or related condition and need for

617 treatment, if any; and

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

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

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

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

631 (14) If the minor does not attain competency within one year after the court initially
632 finds the minor not competent to proceed, the court shall terminate the competency
633 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