



# Senate

General Assembly

**File No. 455**

February Session, 2006

Senate Bill No. 667

*Senate, April 10, 2006*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## **AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE MATTERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) (a) In any juvenile matter,  
2 as defined in section 46b-121 of the general statutes, in which a child is  
3 alleged to have committed an offense, including, but not limited to, an  
4 act or omission for which a petition may be filed under section 46b-149  
5 of the general statutes, the child shall not be prosecuted, tried or  
6 convicted while the child is not competent. For the purposes of this  
7 section, a child is not competent if the child is unable to understand the  
8 proceedings against him or her or to assist in his or her own defense.  
9 As used in this section, "child" means a child as defined for purposes of  
10 delinquency matters in section 46b-120 of the 2006 supplement to the  
11 general statutes.

12 (b) A child is presumed to be competent if the child is nine years of  
13 age or older and is presumed to be not competent if the child is less  
14 than nine years of age. The burden of proving by a preponderance of

15 the evidence that the child is not competent is on the party raising the  
16 issue of competency. The burden of going forward with the evidence  
17 shall be on the party raising the issue of competency, except that if the  
18 court raises the issue of competency, the burden of going forward with  
19 the evidence shall be on the state. The court may call its own witnesses  
20 and conduct its own inquiry.

21 (c) If, at any time during the proceedings on the juvenile matter, it  
22 appears that the child is not competent, counsel for the child or for the  
23 state, or the court, on its own motion, may request an examination to  
24 determine the child's competency. Whenever a request for a  
25 competency examination is under consideration by the court, the child  
26 shall be represented by counsel.

27 (d) (1) If the court finds that the request for an examination is  
28 justified and that there is probable cause to believe that the child has  
29 committed the alleged offense, the court shall order a competency  
30 examination of the child.

31 (2) The court may (A) appoint one or more physicians specializing  
32 in child and adolescent psychiatry to examine the child, or (B) order  
33 the Commissioner of Children and Families or, for a person eighteen  
34 years of age or older who is accused of committing the alleged offense  
35 prior to attaining sixteen years of age, the Commissioner of Mental  
36 Health and Addiction Services to conduct the examination.

37 (3) An examination ordered under subdivision (2) of this subsection  
38 shall be conducted by either: (A) A clinical team consisting of a  
39 physician who has experience in child and adolescent psychiatry, a  
40 clinical psychologist with experience in child and adolescent  
41 psychology and one of the following: (i) A clinical social worker  
42 licensed pursuant to chapter 383b of the general statutes who has  
43 experience in child and adolescent development, or (ii) a child and  
44 adolescent psychiatric nurse clinical specialist holding a master's  
45 degree in nursing, provided at least one member of the clinical team  
46 shall have experience in conducting forensic evaluations; or (B) one or  
47 more physicians specializing in child and adolescent psychiatry and

48 having experience in conducting forensic evaluations. If the  
49 Commissioner of Children and Families is ordered to conduct the  
50 examination, the commissioner shall select the members of the clinical  
51 team or the physician or physicians. If the Commissioner of Mental  
52 Health and Addiction Services is ordered to conduct the examination,  
53 the commissioner shall select the members of the clinical team or the  
54 physician or physicians.

55 (4) The court may authorize a physician who has experience in child  
56 and adolescent psychiatry, a clinical psychologist with experience in  
57 child and adolescent psychology, a clinical social worker licensed  
58 pursuant to chapter 383b of the general statutes who has experience in  
59 child and adolescent development, or a child and adolescent  
60 psychiatric nurse clinical specialist holding a master's degree in  
61 nursing, who is selected by the child, to observe the examination.  
62 Counsel for the child and, if the child is represented by a public  
63 defender, assistant public defender or deputy assistant public  
64 defender, a social worker from the Division of Public Defender  
65 Services may observe the examination.

66 (e) The examination shall be completed not later than fifteen days  
67 after the date it was ordered and the examiners shall prepare and sign,  
68 without notarization, a written report and file such report with the  
69 court not later than twenty-one business days after the date of the  
70 order. The report shall address, at a minimum, the child's capacity to:  
71 (1) Appreciate the charges or allegations against him or her; (2)  
72 appreciate the range and nature of possible penalties that may be  
73 imposed in the proceedings against him or her, if applicable; (3)  
74 understand the adversarial nature of the legal process; (4) disclose to  
75 counsel the facts pertinent to the proceedings at issue; (5) display  
76 appropriate courtroom behavior; and (6) provide relevant testimony.  
77 On receipt of the written report, the clerk of the court shall cause  
78 copies of such written report to be delivered to (A) counsel for the state  
79 immediately, and (B) counsel for the child at least forty-eight hours  
80 prior to the hearing held under subsection (g) of this section.

81 (f) If the examiners determine that the child is not competent, the  
82 examiners shall then determine whether there is substantial  
83 probability that the child, if provided with an appropriate  
84 intervention, will attain or regain competency not later than eighteen  
85 months after such intervention is ordered by the court. If the  
86 examiners determine that there is a substantial probability that the  
87 child will attain or regain competency if provided with an appropriate  
88 intervention, the examiners shall recommend the nature and type of  
89 intervention to be provided.

90 (g) The court shall hold a hearing as to the competency of the child  
91 not later than ten days after the court receives the written report of the  
92 examiners. Any evidence regarding the child's competency, including,  
93 but not limited to, the written report, may be introduced in evidence at  
94 the hearing by either the child or the state. If the written report is  
95 introduced, at least one of the examiners shall be present to testify as to  
96 the determinations in the report, unless the examiner's presence is  
97 waived by the child and the state. Any member of the clinical team  
98 shall be considered competent to testify as to the clinical team's  
99 determinations. A child and the child's counsel may waive such  
100 hearing only if the examiners, in the written report, determine without  
101 qualification that the child is competent.

102 (h) If the court, after the hearing, finds that the child is competent,  
103 the court shall continue with the proceedings on the juvenile matter. If  
104 the court finds that the child is not competent, the court shall also  
105 determine whether there is substantial probability that the child, if  
106 provided with an appropriate intervention, will attain or regain  
107 competency within eighteen months after the issuance of an  
108 intervention order under this section.

109 (i) If the court, after the hearing, finds that there is not a substantial  
110 probability that the child, if provided with an appropriate  
111 intervention, will attain or regain competency within eighteen months  
112 after the issuance of an intervention order under this section, the court  
113 shall follow the procedure set forth in subsection (o) of this section.

114 (j) If the court, after the hearing, finds that there is a substantial  
115 probability that the child, if provided with an appropriate  
116 intervention, will attain or regain competency within eighteen months  
117 after the issuance of an intervention order under this section, the court  
118 shall order an appropriate intervention for the child, in the least  
119 restrictive setting available that will maximize the likelihood of the  
120 child attaining or regaining competency.

121 (k) The provision of an appropriate intervention for the purpose of  
122 rendering a child competent shall comply with the following  
123 conditions: (1) The period of intervention under the order or any  
124 combination of orders shall not exceed the period of the maximum  
125 commitment authorized for the charges against the child, or eighteen  
126 months, whichever is less; (2) the intervention shall be provided by the  
127 Commissioner of Children and Families, the Commissioner of Mental  
128 Health and Addiction Services or the Commissioner of Mental  
129 Retardation or, if the child's parent or guardian or the appropriate  
130 commissioner agrees to provide payment, by any appropriate mental  
131 health facility or treatment program that agrees to provide an  
132 appropriate intervention to the child and to adhere to the requirements  
133 of this section; and (3) the court shall order the intervention on an  
134 inpatient, residential or outpatient basis, which the court finds is the  
135 least restrictive setting appropriate and available to attain or regain  
136 competency. If a residential or outpatient intervention is the least  
137 restrictive setting for a child who has not yet been released from a  
138 juvenile detention center, the court shall consider whether the  
139 availability of such intervention is a sufficient basis on which to release  
140 the child. If the court determines that the child may not be so released,  
141 the court may order an intervention on an inpatient basis at an  
142 appropriate facility, provided the court shall hold a hearing every  
143 fifteen days thereafter to determine the availability of a residential or  
144 outpatient intervention and the possibility of release, unless such  
145 hearing is waived by the parties. If the written report of the examiners  
146 concludes without qualification that the child is not competent due to  
147 immaturity only, the child may not be placed in a psychiatric hospital.  
148 If the written report concludes that the child may attain or regain

149 competency through education, an appropriate educational  
150 intervention shall be provided through the Department of Children  
151 and Families or, for a person eighteen years of age or older who is  
152 accused of committing the alleged offense prior to attaining sixteen  
153 years of age, by the Commissioner of Mental Health and Addiction  
154 Services.

155 (l) (1) The person in charge of a program of intervention ordered by  
156 the court under this section, or such person's designee, shall submit a  
157 written progress report to the court: (A) At least seven days prior to  
158 the date of any hearing on the issue of the child's competency; (B)  
159 whenever such person or designee believes that the child has attained  
160 or regained competency; or (C) whenever such person or designee  
161 believes that there is not a substantial probability that the child will  
162 attain or regain competency within the period covered by the  
163 intervention order.

164 (2) A progress report submitted under this subsection shall contain:  
165 (A) The clinical findings of the person submitting the report and the  
166 facts on which the findings are based; (B) the opinion of the person  
167 submitting the report as to whether the child has attained or regained  
168 competency or is making progress, while participating in the  
169 intervention, toward attaining or regaining competency within the  
170 period covered by the intervention order; and (C) any other  
171 information concerning the child requested by the court, including, but  
172 not limited to, the method of intervention or the type, dosage and  
173 effect of any medication the child is receiving.

174 (m) (1) Whenever an intervention order is issued or continued  
175 under this section, the court shall set a date for a hearing, to be held  
176 not later than ninety days after the date such order is issued or  
177 continued, for reconsideration of the issue of the child's competency.  
178 Whenever the court receives a progress report under subsection (l) of  
179 this section which indicates that the child (A) has attained or regained  
180 competency, (B) will not attain or regain competency within the  
181 remainder of the period covered by the intervention order, or (C) will

182 not attain or regain competency within the remainder of such period  
183 absent administration of psychiatric medication for which the child's  
184 parent or guardian, or the person if the person is eighteen years of age  
185 or older, is unwilling or unable to provide consent, the court shall set  
186 the issue for a hearing not later than ten days after the progress report  
187 is received. The hearing may be waived by the child only if the  
188 progress report indicates that the child is competent. The court shall  
189 determine whether the child is competent or is likely to attain or regain  
190 competency within the period covered by the intervention order. If the  
191 court finds that the child is competent and the child has been in an  
192 inpatient or residential setting, the child shall be returned to the  
193 custody of the supervisor of the juvenile detention center or, if the  
194 basis for the child's detention no longer exists, the child shall be  
195 released and the court shall continue with the proceedings on the  
196 juvenile matter. If the court finds that the child is still not competent  
197 but that the child is making progress toward attaining or regaining  
198 competency, the court may continue or modify the intervention order.  
199 If the court finds that the child is still not competent and will not attain  
200 or regain competency within the remainder of the period covered by  
201 the intervention order absent administration of psychiatric medication  
202 for which the child's parent or guardian, or the person if the person is  
203 eighteen years of age or older, is unwilling or unable to provide  
204 consent, the court shall proceed as provided in subdivisions (2) and (3)  
205 of this subsection.

206 (2) If the court finds that the child will not attain or regain  
207 competency within the remainder of the period covered by the  
208 intervention order absent administration of psychiatric medication for  
209 which the child's parent or guardian, or the person if the person is  
210 eighteen years of age or older, is unwilling or unable to provide  
211 consent, the court shall appoint a health care guardian, who shall be a  
212 licensed health care provider with specialized training in the treatment  
213 of children with psychiatric disabilities, to represent the health care  
214 interests of the child before the court. Notwithstanding the provisions  
215 of section 52-146e of the general statutes, as amended by this act, the  
216 health care guardian shall have access to the psychiatric records of the

217 child. The health care guardian shall file a report with the court not  
218 later than thirty days after the health care guardian is appointed. The  
219 report shall set forth the health care guardian's findings and  
220 recommendations concerning the administration of psychiatric  
221 medication to the child, including, but not limited to, the risks and  
222 benefits of such medication, the likelihood and seriousness of any  
223 adverse side effects and the prognosis with and without such  
224 medication. The court shall hold a hearing on the issue not later than  
225 ten days after receipt of such report and may order the involuntary  
226 medication of the child if the court finds by clear and convincing  
227 evidence that: (A) To a reasonable degree of medical certainty,  
228 involuntary medication of the child will render the child competent to  
229 stand trial; (B) an adjudication or conviction cannot be had using less  
230 intrusive means; (C) the proposed treatment plan is narrowly tailored  
231 to minimize intrusion on the child's liberty and privacy interests; (D)  
232 the proposed drug regimen will not cause an unnecessary risk to the  
233 child's health; and (E) the seriousness of the pending allegations is  
234 such that the interest of the state overrides the child's interest in self-  
235 determination. In deciding whether to order the involuntary  
236 medication of the child, the court shall take into account the health care  
237 guardian's opinion concerning the health care interests of the child, but  
238 shall not take into account the health care guardian's opinion, if any,  
239 concerning the interest of the state.

240 (3) The state shall hold harmless and indemnify any health care  
241 guardian appointed by the court under subdivision (2) of this  
242 subsection from financial loss and expense arising out of any claim,  
243 demand, suit or judgment by reason of the health care guardian's  
244 alleged negligence or alleged deprivation of any person's civil rights or  
245 other act or omission resulting in damage or injury, provided the  
246 health care guardian is found to have been acting in the discharge of  
247 the health care guardian's duties pursuant to said subdivision (2) and  
248 such act or omission is found not to have been wanton, reckless or  
249 malicious. The provisions of subsections (b), (c) and (d) of section 5-  
250 141d of the 2006 supplement to the general statutes shall apply to such  
251 health care guardian. The provisions of chapter 53 of the general

252 statutes shall not apply to a claim against such health care guardian.

253 (n) If a child who has been ordered placed for intervention on an  
254 inpatient or residential basis at a facility is released from such facility  
255 on a furlough or for work, school, therapy or any other reason and fails  
256 to return to the facility in accordance with the terms and conditions of  
257 the child's release, the person in charge of the facility or the person's  
258 designee shall, not later than twenty-four hours after such failure to  
259 return, report such failure to return to the juvenile probation officer for  
260 the child. The juvenile probation officer shall notify the prosecuting  
261 authority, counsel for the child and the child's parent or guardian of  
262 the child's failure to return. The failure of a child to return to the  
263 facility in which the child was placed for intervention under this  
264 section may constitute sufficient cause for the child to be taken into  
265 custody upon order of the court.

266 (o) If, at any time, the court determines that there is not a substantial  
267 probability that the child will attain or regain competency within the  
268 period of intervention authorized by this section, or if, at the end of  
269 such period, the court finds that the child is still not competent and the  
270 child has been in an inpatient or residential setting, the court shall  
271 either (1) discharge the child and appoint, if not previously appointed,  
272 a guardian ad litem for the child for the purpose of determining  
273 whether a petition should be filed under section 46b-129 of the general  
274 statutes, in which case the guardian ad litem shall file a report with the  
275 court not later than fifteen days after the appointment, or (2) order the  
276 child placed in the custody of the Commissioner of Children and  
277 Families, the Commissioner of Mental Health and Addiction Services  
278 or the Commissioner of Mental Retardation. The commissioner given  
279 custody, or the commissioner's designee, shall then apply for civil  
280 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270  
281 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive, of the general  
282 statutes. The court shall hear arguments as to whether the child should  
283 be released or remain placed in the custody of the Commissioner of  
284 Children and Families, the Commissioner of Mental Health and  
285 Addiction Services or the Commissioner of Mental Retardation. If the

286 court orders the release of a child charged with the commission of a  
287 capital felony, a class A or B felony or a violation of section 53a-54d of  
288 the general statutes, or orders the placement of such child in the  
289 custody of the Commissioner of Children and Families, or, for a person  
290 eighteen years of age or older who is accused of committing the  
291 alleged offense prior to attaining sixteen years of age, the  
292 Commissioner of Mental Health and Addiction Services or the  
293 Commissioner of Mental Retardation, the court may, on its own  
294 motion or on motion of the prosecuting authority, order, as a condition  
295 of such release or placement, periodic examinations of the child as to  
296 the child's competency. Such examinations shall be conducted in  
297 accordance with subsection (d) of this section. After receipt of the  
298 written report as provided in subsection (e) of this section, the court  
299 shall, upon the request of either party filed not later than thirty days  
300 after the court receives such written report, conduct a hearing as  
301 provided in subsection (g) of this section, that shall be held not later  
302 than ninety days after the court receives such report. If the court finds  
303 that the child has attained or regained competency, the court shall  
304 continue with the proceedings on the juvenile matter and the child  
305 shall be returned to the custody of the supervisor of the juvenile  
306 detention center or, if the basis for the child's detention no longer  
307 exists, the child shall be released. Periodic examinations ordered by the  
308 court under this subsection shall continue until the court finds that the  
309 child has attained or regained competency or until the time within  
310 which the child may be prosecuted for the offense with which he or  
311 she is charged, as provided in section 54-193 or 54-193a of the general  
312 statutes, has expired, whichever occurs first. The court shall dismiss,  
313 with or without prejudice, any charge against the child for which a  
314 nolle prosequi is not entered when the time within which the child  
315 may be prosecuted for such offense, as provided in section 54-193 or  
316 54-193a of the general statutes, has expired. Notwithstanding the  
317 erasure provisions of section 46b-146 of the general statutes, police and  
318 court records and records of any state's attorney pertaining to a charge  
319 which is nolle or dismissed without prejudice while the child is not  
320 competent shall not be erased until the time for the prosecution of the

321 child expires under section 54-193 or 54-193a of the general statutes. A  
322 child who is not civilly committed as the result of an application made  
323 by the Commissioner of Children and Families, the Commissioner of  
324 Mental Health and Addiction Services or the Commissioner of Mental  
325 Retardation pursuant to this section shall be released. A child who is  
326 civilly committed pursuant to such an application shall be treated in  
327 the same manner as any other civilly committed person.

328 (p) The cost of the examination effected by the Commissioner of  
329 Children and Families, the Commissioner of Mental Health and  
330 Addiction Services or the Commissioner of Mental Retardation and of  
331 testimony of persons conducting the examination effected by the  
332 appropriate commissioner under this section shall be paid by the  
333 department conducting the examination. If the child is indigent and  
334 alleged to be delinquent, the fee of the person selected by the child to  
335 observe the examination and to testify on the child's behalf shall be  
336 paid by the Public Defender Services Commission. The expense of  
337 treating a child placed in the custody of the Commissioner of Children  
338 and Families, the Commissioner of Mental Health and Addiction  
339 Services or the Commissioner of Mental Retardation pursuant to  
340 subsection (o) of this section shall be computed and paid for in the  
341 same manner as is provided for persons committed by a probate court  
342 under the provisions of sections 17b-122, 17b-124 to 17b-132, inclusive,  
343 17b-136 to 17b-138, inclusive, 17b-194 to 17b-197, inclusive, 17b-222 to  
344 17b-250, inclusive, 17b-256, 17b-263 of the general statutes, sections,  
345 17b-340 to 17b-350, inclusive, of the 2006 supplement to the general  
346 statutes, sections 17b-689b and 17b-743 to 17b-747, inclusive, of the  
347 general statutes.

348 (q) Until a hearing is held under subsection (g) of this section, the  
349 child, if not released, shall remain in the custody of the supervisor of  
350 the juvenile detention center.

351 (r) The provisions of this section shall not prevent counsel for the  
352 child from raising, prior to trial and while the child is not competent,  
353 any issue susceptible of fair determination.

354 (s) Actual time spent in placement on an inpatient or residential  
 355 basis pursuant to this section shall be credited against any period of  
 356 probation imposed on the child in the pending proceedings in the  
 357 same manner as is credited for time spent in a juvenile detention  
 358 center.

359 Sec. 2. Subsection (a) of section 52-146e of the general statutes is  
 360 repealed and the following is substituted in lieu thereof (*Effective*  
 361 *October 1, 2006*):

362 (a) All communications and records as defined in section 52-146d  
 363 shall be confidential and shall be subject to the provisions of sections  
 364 52-146d to 52-146j, inclusive. Except as provided in sections 52-146f to  
 365 52-146i, inclusive, or section 1 of this act, no person may disclose or  
 366 transmit any communications and records or the substance or any part  
 367 or any resume thereof which identify a patient to any person,  
 368 corporation or governmental agency without the consent of the patient  
 369 or his authorized representative.

|   |                        |             |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                        |             |
| Section 1   | <i>October 1, 2006</i> | New section |
| Sec. 2  | <i>October 1, 2006</i> | 52-146e(a)  |

**JUD**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

| Agency Affected                        | Fund-Effect | FY 07 \$  | FY 08 \$  |
|--|-------------|-----------|-----------|
| Mental Health & Addiction Serv., Dept. | GF - None   | None      | None      |
| Children & Families, Dept.             | GF - Cost   | See Below | See Below |
| Department of Mental Retardation       | GF - Cost   | Potential | Potential |

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill codifies the court procedures to be followed when the competence is in question of any juvenile charged with a delinquent act or families with service needs violation. The bill establishes a presumption that any child less than nine years of age is not competent (i.e., unable to understand the proceedings and therefore unable to assist in his/her defense). These changes do not vary materially from current practice and, as a consequence, the overall number of juveniles examined or subsequently deemed to be incompetent is not expected to be substantially different than under current law. The bill would result in a net state cost of about \$100,000 annually, however, as the cost for conducting competency examinations and restoring juveniles is shifted among state agencies with no offsetting savings anticipated.

The DCF will incur costs to perform competency evaluations for an estimated 50 children and youth a year, at a cost of approximately \$100,000. This function is currently performed by DMHAS staff. It is expected that transferring this responsibility will reduce the employees' workload, but will not lead to direct operational savings to DMHAS.

Additional costs will be incurred to provide restoration to competency services in the least restrictive setting. Restoration is now

provided primarily at Riverview Hospital for Children and Youth, a DCF-operated facility. Under the bill, an estimated 15 children will instead receive services in an outpatient setting and 3 will be placed in private residential treatment. This will result in an estimated annual cost of up to \$70,875. No offsetting savings are projected for Riverview Hospital, as it has an extensive waitlist and a reduction in the number of restoration cases will not lead to a downsizing of the facility's census.

Finally, costs of approximately \$30,350 will be incurred for re-evaluations of competency for children and youth in restoration outside Riverview, expert testimony and related physician supervision/training activities.

The bill allows the court to commit juveniles directly to the care of the Department of Mental Retardation. To the extent that the bill results in additional placements/services provided by the Department of Mental Retardation (DMR), a cost will result. It is unknown how many children the department would be required to serve as a result of the bill. The cost would vary depending on the number of children and the court's required services. These costs are currently not included in the DMR's budget. Should any of these newly required DMR services otherwise have been funded by the DCF, an offsetting savings would occur.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****SB 667*****AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE MATTERS.*****SUMMARY:**

This bill prohibits juvenile courts from prosecuting, trying, or convicting a child while he is incompetent (i.e., can understand the proceedings against them and assist in their own defense). It establishes a presumption that children age nine and older are competent and that younger children are not. It specifies that a child's attorney may raise pre-trial issues that are susceptible of fair determination in spite of the child's incompetency.

In most respects the bill's provisions parallel the laws applicable to criminal defendants, including children being tried on the adult docket. Like that law, the bill contains provisions for:

1. competency examinations and court hearings,
2. service options for children who may regain competency and those unlikely to do so, and
3. cost allocations among state agencies.

Current law has no provision for resolving competency issues in juvenile courts. Juvenile judges use provisions in the Connecticut Practice Book, which are court-adopted rules. Competency examiners need not have expertise in evaluating children. And psychiatric hospitalization is the only option for incompetent children who might regain competency if provided appropriate treatment.

EFFECTIVE DATE: October 1, 2006

**CHILDREN COVERED**

The competency provisions apply to children under age 16 charged with a crime or status offense (e.g., truancy, running away, or being beyond their parents' control). They also apply to children age 16 and older charged with violating a court order or probation condition imposed for a crime they committed when they were under age 16.

***Rebutting the Competency Presumption***

The bill places the burden of proof on the party raising the issue of a child's competency. If the court proceeding raises the issue on its own, the prosecution bears the burden of going forward with the evidence. The bill allows the court to conduct its own inquiry, including calling its own witnesses.

**COMPETENCY EXAMINATIONS**

The court must order a competency examination at any time it finds it justified, so long as it also finds probable cause that the child committed the charged offense. The child must be represented by counsel while the court is considering whether to order an exam. Children being held in juvenile detention must remain there until the court rules on their competency.

The court may appoint one or more child and adolescent psychiatrists with forensic evaluation experience to conduct the exam. Alternatively, it may order the Department of Children and Families (DCF) to examine children under age 18 or the Department of Mental Health and Addiction Services (DMHAS) to examine older children.

Examinations must be completed no later than 15 days after ordered by the court.

***Clinical Teams***

When either DCF or DMHAS is ordered to perform the evaluation, the department may appoint one or more physicians or a clinical team to conduct it. The team must be composed of a child and adolescent psychiatrist and psychologist, and either (1) a clinical social worker

with experience in child and adolescent development or (2) a master's level child and adolescent psychiatric nurse clinical specialist. At least one member must have experience conducting forensic evaluations.

### **Observers**

The bill permits a child's private attorney or a social worker from the public defender's office, as the case may be, to observe the examination. The court may also authorize observation by the child's selected:

1. child and adolescent psychiatrist or psychologist,
2. clinical social worker with expertise in child and adolescent development, or
3. master's level child and adolescent psychiatric nurse clinical specialist.

### **COURT REPORTS**

The bill requires the examiner to file a signed report with the court no later than 21 days after the examination order was issued. The court clerk must deliver copies to the prosecutor immediately and to the child's counsel at least 48 hours before the competency hearing.

At a minimum, the report must address the child's ability to:

1. appreciate the charges or allegations against him;
2. appreciate the range and nature of possible penalties that may be imposed in the proceedings against him, if applicable;
3. understand the adversarial nature of the legal process;
4. disclose to counsel the facts pertinent to the proceedings at issue;
5. display appropriate courtroom behavior; and
6. provide relevant testimony.

If the examiners determine that the child is not competent, they must then decide whether there is a substantial probability that the child will attain or regain competency within 18 months if provided an appropriate intervention (i.e., is restorable). If so, they must recommend the type of intervention that would be appropriate.

### **COMPETENCY HEARINGS**

The court must hold a competency hearing not later than 10 days after receiving the examiners' report. The child and prosecutor may offer evidence concerning the child's competency, including the examiner's report. If the report is introduced, at least one of the examiners must be present to testify about it, unless the need for his presence is waived by both the child and prosecutor.

#### ***Children Found Competent***

The child and his counsel may waive holding the hearing if the examiners' report concludes without qualification that the child is competent. Competent children return to court for further proceedings on the underlying charges.

#### ***Children Found Unlikely to Regain Competency***

Whenever the court determines that (1) there is not a substantial probability that a child will attain or regain competency within restoration period or (2) a child is still incompetent when the restoration period ends, it must order the child discharged. It may appoint a guardian ad litem if the child does not have one and have him file a report no later than 15 days after his appointment indicating whether a petition should be filed to commit the child to DCF.

***Civil Commitment.*** The court may also order the child placed with either the DCF, DMHAS, or Department of Mental Retardation (DMR) commissioners if it does so, the agency must pursue civil commitment proceedings in the probate court. The agency must release the child if the probate court denies its commitment petition. A civilly committed child must be treated in the same manner as any other civilly committed person.

***Periodic Competency Evaluations.*** The bill permits the court to order periodic examinations of incompetent children charged with killing or seriously injuring another person as a condition of their release from custody or those they place with DCF, DMR, or DMHAS. The examinations can be ordered by the court on its own authority or upon a prosecutor's motion, and must continue until the child becomes competent or the statute of limitations for prosecuting him expires, whichever occurs first.

As with initial competency examinations, the clinical team or court-appointed psychiatrist must complete their work within 15 days and file a court report within 21 days of the referral.

Once the court receives the report, the parties have 30 days to request a hearing, which the court must then hold within 90 days. If the court finds the child competent, it must resume the juvenile court proceeding and either place him in pre-trial detention or release him if he has met the conditions of release.

***Case Dismissal and Record Erasure.*** The court must dismiss charges when the statute of limitation has expired. The bill specifies that police, court and prosecutor records pertaining to any charge which is nolleed or dismissed without prejudice while the child was not competent cannot be erased until the statute of limitations has expired.

***Children Found Likely to Regain Competency if Given Intervention Services***

The bill limits the duration of intervention orders to the lesser of (1) 18 months or (2) the maximum period the child could be committed to DCF as a delinquent for the crimes charged. The DCF, DMHAS, or DMR commissioners must provide the services unless a parent or the appropriate commissioner agrees to pay for services elsewhere.

The order must specify whether the intervention is on an inpatient, residential, or outpatient basis; the setting must be the least restrictive one appropriate and available. Children unqualifiedly found incompetent solely because of immaturity cannot be ordered to

undergo inpatient psychiatric care.

DCF or DMHAS, depending on a child's age, must provide an appropriate educational intervention when this is recommended for a restorable child.

Children get probation credit for time spent in an inpatient or residential setting.

**Children in Juvenile Detention.** When the court determines outpatient or residential intervention is the least restrictive setting for a child currently in detention, the bill requires it to consider whether to order the child's release. If it concludes that this would not be appropriate, it may order the child to obtain intervention services on an inpatient basis.

When this occurs, it must hold hearings every 15 days to determine whether outpatient or residential services are available and if the child should be released from the hospital. Hearings may be waived on the agreement of the parties.

**Escapes.** The bill requires the director of an inpatient or residential intervention facility, or his designee, to notify a child's juvenile probation officer no later than 24 hours after the child fails to return from a furlough or other approved off-campus activity. The probation officer must then notify the juvenile prosecutor and the child's parents and attorney.

The bill specifies that the court may order that the child be taken into custody.

## **PROGRESS REPORTS**

The bill requires the person in charge of the child's intervention program to file a progress report with the court when:

1. at least seven days before a competency hearing is scheduled or
2. when he determines that the child is competent or is

incompetent and not restorable.

### ***Report Contents***

Reports must contain:

1. clinical findings and supporting facts;
2. an opinion as to whether the child has attained or regained competency or is making progress during the intervention toward attaining or regaining competency within the period covered by the intervention order; and
3. any other information about the child the court requests, such as the method of intervention or the type, dosage, and effect of any medication the child is taking.

### **COURT HEARINGS**

The court must hold a competency hearing no later than 10 days after it receives a progress report. It must rule on the child's competency and the likelihood of restoration during the intervention period. It may continue or revise its intervention orders for children making progress towards regaining competency. It must also automatically conduct a hearing every 90 days.

#### ***Children Restored to Competency***

If the court determines that the child's competency has been restored, it must continue with the juvenile proceeding on the underlying charged. It must order a child returned to juvenile detention if the child's restoration intervention occurred in an inpatient or residential setting or order his release if it concludes that there is no basis for detaining him.

#### ***Children Who Cannot be Restored Without Involuntary Medication***

The court must appoint a health care guardian to represent the health care interests of a child it determines is not competent and will not become so unless the court orders him to be given psychiatric medication without his, or if he is under age 18, his parent's consent.

The health care guardian must be a licensed health care professional with expertise in treating children with psychiatric disabilities. He must file a report within 30 days of his appointment indicating his findings and recommendations concerning involuntarily medicating the child. The report must include the risks and benefits of such medication, the likelihood and seriousness of any adverse side effects, and the prognosis with and without such medication.

***Indemnification.*** The state must indemnify health care guardians sued for actions undertaken in the course of their appointment, if their conduct is not found to have been wanton, reckless, or malicious.

### ***Court Hearing***

The court must hold a hearing not later than 10 days after receiving the guardian's report. It may order involuntary medication if it finds by clear and convincing evidence that:

1. to a reasonable degree of medical certainty, involuntary medication of the child will make render him competent to stand trial;
2. adjudication or conviction cannot be achieved using less intrusive means;
3. the proposed treatment plan is narrowly tailored to minimize intrusion on the child's liberty and privacy interests;
4. the proposed drug regimen will not cause an unnecessary risk to his health; and
5. the seriousness of the pending allegations is such that the state's interest overrides the child's interest in self-determination.

The court must take into account the health care guardian's opinion on the health care interests of the child, but it cannot consider his opinion about the strength of the state's interest in trying the child.

### **AGENCY COSTS**

The agency conducting the competency examination is responsible for its cost and expert witness fees. The public defender's office must pay for observation costs and expert witness fees for indigent children. And agency treatment costs for civilly committed children are allocated under the existing probate court formula.

## **BACKGROUND**

### ***Civil Commitment Criteria***

Probate courts have exclusive jurisdiction over applications to civilly commit a person claimed to have psychiatric disabilities. A court may grant applications if, after a hearing, it finds by clear and convincing evidence that the person has psychiatric disabilities and is either (1) dangerous to himself or others or (2) gravely disabled. A person is gravely disabled if, as a result of his mental illness, he is in danger of serious harm due to his inability or failure to provide for his basic needs and is incapable of determining whether to accept necessary hospital treatment because his judgment is impaired by his psychiatric disabilities (CGS § 17a-495).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 38    Nay 0    (03/24/2006)