



General Assembly

February Session, 2006

Raised Bill No. 667

LCO No. 2864

* SB00667JUD__032706__*

Referred to Committee on Judiciary

Introduced by:
(JUD)

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 nolleed 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*