



House of Representatives

General Assembly

File No. 705

January Session, 2011

Substitute House Bill No. 6637

House of Representatives, May 3, 2011

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE AND YOUTH IN CRISIS MATTERS.

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

1 Section 1. Subdivision (1) of section 46b-120 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2011*):

4 (1) "Child" means any person under eighteen years of age who has
5 not been legally emancipated, except that (A) for purposes of
6 delinquency matters and proceedings, "child" means any person who
7 is (i) at least seven years of age at the time of the alleged commission of
8 a delinquent act and who is (I) under seventeen years of age [who] and
9 has not been legally emancipated, or [(ii)] (II) seventeen years of age or
10 older [who,] and committed a delinquent act prior to attaining
11 seventeen years of age, [has committed a delinquent act or,] or (ii)
12 subsequent to attaining seventeen years of age, (I) violates any order of
13 the Superior Court or any condition of probation ordered by the
14 Superior Court with respect to a delinquency proceeding, or (II)

15 wilfully fails to appear in response to a summons under section 46b-
16 133 or at any other court hearing in a delinquency proceeding of which
17 the child had notice, and (B) for purposes of family with service needs
18 matters and proceedings, child means a person who is at least seven
19 years of age and is under seventeen years of age;

20 Sec. 2. Subdivision (7) of section 46b-120 of the general statutes is
21 repealed and the following is substituted in lieu thereof (*Effective*
22 *October 1, 2011*):

23 (7) "Family with service needs" means a family that includes a child
24 who is at least seven years of age and is under seventeen years of age
25 who (A) has without just cause run away from the parental home or
26 other properly authorized and lawful place of abode, (B) is beyond the
27 control of the child's or youth's parent, parents, guardian or other
28 custodian, (C) has engaged in indecent or immoral conduct, (D) is a
29 truant or habitual truant or who, while in school, has been
30 continuously and overtly defiant of school rules and regulations, or (E)
31 is thirteen years of age or older and has engaged in sexual intercourse
32 with another person and such other person is thirteen years of age or
33 older and not more than two years older or younger than such child or
34 youth;

35 Sec. 3. Subdivision (1) of section 46b-120 of the general statutes, as
36 amended by section 82 of public act 09-7 of the September special
37 session, is repealed and the following is substituted in lieu thereof
38 (*Effective July 1, 2012*):

39 (1) "Child" means any person under sixteen years of age who has
40 not been legally emancipated, except that (A) for purposes of
41 delinquency matters and proceedings, "child" means any person who
42 is (i) at least seven years of age at the time of the alleged commission of
43 a delinquent act and who is (I) under eighteen years of age [who] and
44 has not been legally emancipated, or [(ii)] (II) eighteen years of age or
45 older [who,] and committed a delinquent act prior to attaining
46 eighteen years of age, [has committed a delinquent act and,] or (ii)
47 subsequent to attaining eighteen years of age, (I) violates any order of

48 the Superior Court or any condition of probation ordered by the
49 Superior Court with respect to such delinquency proceeding, or (II)
50 wilfully fails to appear in response to a summons under section 46b-
51 133 [with respect to such delinquency proceeding] or at any other
52 court hearing in a delinquency proceeding of which the child had
53 notice, and (B) for purposes of family with service needs matters and
54 proceedings, child means a person who is at least seven years of age
55 and is under eighteen years of age;

56 Sec. 4. Subdivision (7) of section 46b-120 of the general statutes, as
57 amended by section 82 of public act 09-7 of the September special
58 session, is repealed and the following is substituted in lieu thereof
59 (*Effective July 1, 2012*):

60 (7) "Family with service needs" means a family that includes a child
61 who is at least seven years of age or a youth who (A) has without just
62 cause run away from the parental home or other properly authorized
63 and lawful place of abode, (B) is beyond the control of the child's or
64 youth's parent, parents, guardian or other custodian, (C) has engaged
65 in indecent or immoral conduct, (D) is a truant or habitual truant or
66 who, while in school, has been continuously and overtly defiant of
67 school rules and regulations, or (E) is thirteen years of age or older and
68 has engaged in sexual intercourse with another person and such other
69 person is thirteen years of age or older and not more than two years
70 older or younger than such child or youth;

71 Sec. 5. (NEW) (*Effective October 1, 2011*) (a) In any juvenile matter, as
72 defined in section 46b-121 of the general statutes, or youth in crisis
73 matter pursuant to section 46b-150f of the general statutes, in which a
74 child or youth is alleged to have committed a delinquent act or an act
75 or omission for which a petition may be filed under section 46b-149 or
76 46b-150f of the general statutes, the child or youth shall not be tried,
77 convicted, adjudicated or subject to any disposition pursuant to section
78 46b-140, 46b-149 or 46b-150f of the general statutes while the child or
79 youth is not competent. For the purposes of this section, a transfer to
80 the regular criminal docket of the Superior Court pursuant to section

81 46b-127 of the general statutes shall not be considered a disposition. A
82 child or youth is not competent if the child or youth is unable to
83 understand the proceedings against him or her or to assist in his or her
84 own defense.

85 (b) If, at any time during a proceeding on a juvenile or youth in
86 crisis matter, it appears that the child or youth is not competent,
87 counsel for the child or youth, the prosecutorial official, or the court,
88 on its own motion, may request an examination to determine the
89 child's or youth's competency. Whenever a request for a competency
90 examination is under consideration by the court, the child or youth
91 shall be represented by counsel in accordance with the provisions of
92 sections 46b-135 and 46b-136 of the general statutes.

93 (c) A child or youth alleged to have committed an offense is
94 presumed to be competent. The age of the child or youth is not a per se
95 determinant of incompetency. The burden of going forward with the
96 evidence and proving that the child or youth is not competent by a
97 preponderance of the evidence shall be on the party raising the issue of
98 competency, except that if the court raises the issue of competency, the
99 burden of going forward with the evidence shall be on the state. The
100 court may call its own witnesses and conduct its own inquiry.

101 (d) If the court finds that the request for a competency examination
102 is justified and that there is probable cause to believe that the child or
103 youth has committed the alleged offense, the court shall order a
104 competency examination of the child or youth. Competency
105 examinations shall be conducted by (1) a clinical team constituted
106 under policies and procedures established by the Chief Court
107 Administrator, or (2) if agreed to by all parties, a physician specializing
108 in psychiatry who has experience in conducting forensic interviews
109 and in child and adult psychiatry. Any clinical team constituted under
110 this section shall consist of three persons: A clinical psychologist with
111 experience in child and adolescent psychology, and two of the
112 following three types of professionals: (A) A clinical social worker
113 licensed pursuant to chapter 383b of the general statutes, (B) a child

114 and adolescent psychiatric nurse clinical specialist holding a master's
115 degree in nursing, or (C) a physician specializing in psychiatry. At
116 least one member of the clinical team shall have experience in
117 conducting forensic interviews and at least one member of the clinical
118 team shall have experience in child and adolescent psychology. The
119 court may authorize a physician, a clinical psychologist, a child and
120 adolescent psychiatric nurse specialist or a clinical social worker
121 licensed pursuant to chapter 383b of the general statutes, selected by
122 the child or youth, to observe the examination, at the expense of the
123 child or youth or, if the child or youth is represented by counsel
124 appointed through the Public Defender Services Commission, the
125 Office of the Chief Public Defender. In addition, counsel for the child
126 or youth, his or her designated representative and, if the child or youth
127 is represented by a public defender, a social worker from the Division
128 of Public Defender Services, may observe the examination.

129 (e) The examination shall be completed not later than fifteen
130 business days after the date it was ordered, unless the time for
131 completion is extended by the court for good cause shown. The
132 members of the clinical team or the examining physician shall prepare
133 and sign, without notarization, a written report and file such report
134 with the court not later than twenty-one business days after the date of
135 the order. The report shall address the child's or youth's ability to
136 understand the proceedings against such child or youth and such
137 child's or youth's ability to assist in his or her own defense. If the
138 opinion of the clinical team or the examining physician set forth in
139 such report is that the child cannot appreciate the proceedings against
140 such child or youth or is not able to assist in his or her own defense,
141 the members of the team or the examining physician must determine
142 and address in their report: (1) Whether there is a substantial
143 probability that the child or youth will attain or regain competency
144 within ninety days of an intervention being ordered by the court; and
145 (2) the nature and type of intervention, in the least restrictive setting
146 possible, recommended to attain or regain competency. On receipt of
147 the written report, the clerk of the court shall cause copies of such
148 written report to be delivered to counsel for the state and counsel for

149 the child or youth at least forty-eight hours prior to the hearing held
150 under subsection (f) of this section.

151 (f) The court shall hold a hearing as to the competency of the child
152 or youth not later than ten business days after the court receives the
153 written report of the clinical team or the examining physician pursuant
154 to subsection (e) of this section. A child or youth may waive such
155 evidentiary hearing only if the clinical team or examining physician
156 has determined without qualification that the child or youth is
157 competent. Any evidence regarding the child's or youth's competence,
158 including, but not limited to, the written report, may be introduced in
159 evidence at the hearing by either the child or youth or the state. If the
160 written report is introduced as evidence, at least one member of the
161 clinical team or the examining physician shall be present to testify as to
162 the determinations in the report, unless the clinical team's or the
163 examining physician's presence is waived by the child or youth and
164 the state. Any member of the clinical team shall be considered
165 competent to testify as to the clinical team's determinations.

166 (g) (1) If the court, after the competency hearing, finds by a
167 preponderance of the evidence that the child or youth is competent,
168 the court shall continue with the prosecution of the juvenile or youth
169 in crisis matter.

170 (2) If the court, after the competency hearing, finds that the child or
171 youth is not competent, the court shall determine: (A) If there is a
172 substantial probability that the child or youth will attain or regain
173 competency within ninety days of an intervention being ordered by
174 the court; and (B) whether the recommended intervention to attain or
175 regain competency is appropriate. In making its determination on an
176 appropriate intervention, the court may consider: (i) The nature and
177 circumstances of the alleged offense; (ii) the length of time the clinical
178 team or examining physician estimates it will take for the child or
179 youth to attain or regain competence; (iii) whether the child or youth
180 poses a substantial risk to reoffend; and (iv) whether the child or youth
181 is able to receive community-based services or treatment that would

182 prevent the child or youth from further offending.

183 (h) If the court finds that there is not a substantial probability that
184 the child or youth will attain or regain competency within ninety days
185 or that the recommended intervention to attain or regain competency
186 is not appropriate, the court may issue an order in accordance with
187 subsection (k) of this section.

188 (i) (1) If the court finds that there is a substantial probability that the
189 child or youth will attain or regain competency within ninety days or
190 less if provided an appropriate intervention, the court shall schedule a
191 hearing on the implementation of such intervention within five
192 business days.

193 (2) The provision of an intervention for the purpose of rendering a
194 child or youth competent shall comply with the following conditions:
195 (A) The period of intervention shall not exceed ninety days, unless
196 extended for an additional ninety days in accordance with the criteria
197 set forth in subsection (j) of this section; and (B) the intervention shall
198 be provided by the Department of Children and Families or, if the
199 child's or youth's parent or guardian agrees to pay for such services, by
200 any appropriate person, agency, mental health facility or treatment
201 program that agrees to provide an appropriate intervention in the least
202 restrictive setting available to the child or youth and comply with the
203 requirements of this section.

204 (3) Prior to the hearing, the court shall notify the Commissioner of
205 Children and Families, the commissioner's designee or the appropriate
206 person, agency, mental health facility or treatment program that has
207 agreed to provide an appropriate intervention to the child or youth
208 that an intervention to attain or regain competency will be ordered.
209 The commissioner, the commissioner's designee or the appropriate
210 person, agency, facility or program shall be provided with a copy of
211 the report of the clinical team or examining physician and shall report
212 to the court on a proposed implementation of the intervention prior to
213 the hearing.

214 (4) At the hearing, the court shall review the written report and
215 order an appropriate intervention for no longer than ninety days in the
216 least restrictive setting available to restore competency. In making its
217 determination, the court shall use the criteria set forth in subdivision
218 (2) of subsection (g) of this section. Upon ordering an intervention, the
219 court shall set a date for a hearing, to be held at least ten business days
220 after the completion of the intervention period, for the purpose of
221 reconsidering the child's or youth's competency.

222 (j) (1) At least ten business days prior to the date of any scheduled
223 hearing on the issue of the reconsideration of the child's or youth's
224 competency, the Commissioner of Children and Families, the
225 commissioner's designee or other person, agency, mental health facility
226 or treatment program in charge of an intervention to render a child or
227 youth competent shall report on the progress of such intervention to
228 the clinical team or examining physician.

229 (2) Upon receipt of the report on the progress of such intervention,
230 the child or youth shall be reassessed by the original clinical team or
231 examining physician, except that if the original team or examining
232 physician is unavailable, the court may appoint a new clinical team
233 that, where possible, shall include at least one member of the original
234 team, or a new examining physician. The new clinical team or
235 examining physician shall have the same qualifications as the original
236 team or examining physician, as provided in subsection (d) of this
237 section, and shall have access to clinical information available from the
238 provider of the intervention. Not less than two business days prior to
239 the date of any scheduled hearing on the reconsideration of the child's
240 or youth's competency, the clinical team or examining physician shall
241 submit a report to the court that includes: (A) The clinical findings of
242 the provider of the intervention and the facts upon which the findings
243 are made; (B) the clinical team's or the examining physician's opinion
244 on whether the child or youth has attained or regained competency or
245 is making progress toward attaining or regaining competency within
246 the period covered by the intervention order; and (C) any other
247 information concerning the child or youth requested by the court,

248 including, but not limited to, the method of intervention or the type,
249 dosage and effect of any medication the child or youth is receiving.

250 (3) Within two business days of the filing of a reassessment report,
251 the court shall hold a hearing to determine if the child or youth has
252 attained or regained competency within the intervention period
253 ordered. If the court finds that the child or youth has attained or
254 regained competency, the court shall continue with the prosecution of
255 the juvenile or youth in crisis matter. If the court finds that the child or
256 youth has not attained or regained competency within the intervention
257 period ordered, the court shall determine whether further efforts to
258 attain or regain competency are appropriate. The court shall make its
259 determination of whether further efforts to attain or regain
260 competency are appropriate in accordance with the criteria set forth in
261 subdivision (2) of subsection (g) of this section. If the court finds that
262 further intervention to attain or regain competency is appropriate, the
263 court shall order a new period for restoration of competency not to
264 exceed ninety days. If the court finds that further intervention to attain
265 or regain competency is not appropriate or the child or youth has not
266 attained or regained competency after an additional intervention of
267 ninety days, the court shall issue an order in accordance with
268 subsection (k) of this section.

269 (k) (1) If the court determines after intervention that the child or
270 youth has not attained or regained competency and that there is not a
271 substantial probability that the child or youth will attain or regain
272 competency, or that further intervention to attain or regain
273 competency is not appropriate based on the criteria set forth in
274 subdivision (2) of subsection (g) of this section, the court shall: (A)
275 Dismiss the petition if it is a delinquency, family with service needs or
276 youth in crisis petition; (B) vest temporary custody of the child or
277 youth in the Commissioner of Children and Families and notify the
278 Chief Child Protection Attorney, who shall assign an attorney to serve
279 as guardian ad litem for the child or youth and investigate whether a
280 petition should be filed under section 46b-129 of the general statutes;
281 or (C) order that the Department of Children and Families or some

282 other person, agency, facility or program, or such child's or youth's
283 probation officer, conduct or obtain an appropriate assessment and,
284 where appropriate, propose a plan for services that can appropriately
285 address the child's or youth's needs in the least restrictive setting
286 available and appropriate. Any plan for services may include a plan
287 for interagency collaboration for the provision of appropriate services
288 after the child or youth attains the age of eighteen.

289 (2) Not later than ten business days after the issuance of an order
290 pursuant to subparagraph (B) or (C) of subdivision (1) of this
291 subsection, the court shall hold a hearing to review the order of
292 temporary custody or any recommendations of the Department of
293 Children and Families, such probation officer or such attorney or
294 guardian ad litem for the child or youth.

295 (3) If the child or youth is adjudicated neglected, dependent or
296 uncared for subsequent to such a petition being filed, or if a plan of
297 services pursuant to subparagraph (C) of subdivision (1) of this
298 subsection has been approved by the court and implemented, the court
299 may dismiss the delinquency, family with service needs or youth in
300 crisis petition, or, in the discretion of the court, order that the
301 prosecution of the case be suspended for a period of up to eighteen
302 months. During the period of suspension, the court may order the
303 Department of Children and Families to provide periodic reports to
304 the court to ensure that appropriate services are being provided to the
305 child or youth. If during the period of suspension, the child or youth or
306 the parent or guardian of the child or youth does not comply with the
307 requirements set forth in the service plan, the court may hold a hearing
308 to determine whether the court should follow the procedure for
309 instituting a neglect, dependent or uncared for petition pursuant to
310 subparagraph (B) of subdivision (1) of this subsection. Whenever the
311 court finds that the need for the suspension of prosecution is no longer
312 necessary, but not later than the expiration of such period of
313 suspension, the delinquency, family with service needs or youth in
314 crisis petition shall be dismissed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	46b-120(1)
Sec. 2	<i>October 1, 2011</i>	46b-120(7)
Sec. 3	<i>July 1, 2012</i>	46b-120(1)
Sec. 4	<i>July 1, 2012</i>	46b-120(7)
Sec. 5	<i>October 1, 2011</i>	New section

Statement of Legislative Commissioners:

Sections 2 and 4 were inserted for statutory consistency with the definition of "family with service needs".

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Judicial Dept.	GF - Cost	72,750	97,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes procedures for determining competency of a child or youth in a juvenile matter.

The Judicial Department will incur costs to provide competency evaluations for an estimated 35 children and youth a year, at an annual expense of approximately \$72,750 in FY 12¹ and \$97,000 in FY 13. This function is currently performed by staff at the Department of Mental Health and Addiction Services (DMHAS). Transferring responsibility to the Judicial Department will reduce DMHAS employees' workload, but will not lead to direct operational savings as the 35 evaluations represent only about 6% of DMHAS' total annual evaluations.

The bill, which expands the scope of Department of Children and Families (DCF) competency restoration services to children involved with the juvenile court² and sets the minimum delinquency/family with service needs (FWSN) age at seven years-of-age, does not result in a fiscal impact to DCF as: (1) existing DCF staffing resources are anticipated to be sufficient to meet the expanded competency

¹ This FY 12 figure reflects an October 1, 2011 effective date.

² The bill is anticipated to expand the number of these cases by up to five in FY 12, and an additional five commencing in FY 13. The number of individuals requiring restoration services will increase starting in FY 13, as the age of juvenile jurisdiction will be raised to include seventeen year olds on 7/1/12.

restoration requirements, and (2) no change in contracted community-based programming for FWSN cases is anticipated.

The Out Years

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

OLR Bill Analysis

sHB 6637

AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE AND YOUTH IN CRISIS MATTERS.

SUMMARY:

This bill establishes age seven as the youngest age at which a child can be prosecuted for juvenile delinquency or for being a child in a Family with Service Needs (FWSN). It also creates a procedure, including mental health examinations, court hearings, and treatment planning, for children involved in the juvenile justice system incapable of understanding the delinquency or FWSN charges against them or participating in their legal defense (i.e., legally incompetent). Many of the bill's provisions are similar to the laws that apply to adults.

There is currently no statutory minimum age for delinquency findings nor a specific procedure applicable to children and youth whose mental competency is at issue.

EFFECTIVE DATE: October 1, 2011, except that the sections applicable when the maximum delinquency age rises to 17 are applicable on July 1, 2012.

COMPETENCY DETERMINATION

By law, a person charged with a criminal offense is presumed to be competent, but may not be prosecuted or convicted while he or she is not competent. Age is not a per se determinant of competency. Under the bill, no child or youth (hereafter "child" unless the context requires otherwise) who is charged with a delinquent act or an act or omission for which a petition for a FWSN (for children up to age 16; after July 1, 2012, for children up to age 17) or Youth in Crisis (currently, 17-year-olds) has been filed may be tried, convicted, adjudicated, or subjected to any disposition while he or she is not competent. The bill provides

that a transfer from the juvenile to the regular adult criminal docket is not considered a disposition, and thus may go forward despite the child's or youth's incompetency.

INITIAL COMPETENCY EXAMINATION

Under the bill, if at any time during a proceeding on a juvenile or youth in crisis matter it appears that the child is not competent, his or her counsel or the court, on its own motion, may request an examination to determine whether the child understands the nature of the proceedings and can participate in his or her own defense. The child has the right to be represented by counsel when this question is taken up. The court must provide counsel if the child and his or her guardian or parent cannot afford counsel.

A child is presumed competent. The burden of going forward with the evidence to prove by a preponderance of the evidence that the child is not competent is borne by the party raising the issue. If the court raises the issue on its own motion, the burden rests with the prosecutor. The bill permits the court to call its own witnesses and conduct its own inquiry.

If the court finds that the request for a competency examination is justified and that there is probable cause to believe that the child committed the offenses with which he or she is charged, the bill requires the court to order a competency examination. Competency examinations are conducted by (1) a psychiatrist with experience in conducting forensic interviewing and in child and adult psychiatry, if all parties agree or (2) a three-person clinical team, constituted under the chief court administrator's policies and procedures. Under the bill, the team is composed of (1) a clinical psychologist with experience in child and adolescent psychology and (2) two of the following: (a) a licensed clinical social worker, (b) a master's level adolescent psychiatric nurse clinical specialist, or (c) a psychiatrist. At least one team member must have experience in (1) conducting forensic examinations and (2) child and adolescent psychology.

Observers

Under the bill, the court may allow the child to select a physician, clinical psychologist, child and adolescent psychiatric nurse specialist, or licensed clinical social worker to observe the examination at the child's own expense. If the child is indigent, the Office of the Chief Public Defender pays. The child's counsel and, if represented by a public defender, a social worker from that office, may also be observers.

Examination and Examination Report

The bill requires that the examination be completed in 15 business days after the date it was ordered, unless the court extends the deadline for good cause. The examining team members or the psychiatrist, as the case may be, must prepare, sign, and file a written report on the child's mental state within five business days after the examination.

Contents. The report must address the child's ability to (1) understand the proceedings against him or her and (2) assist in his or her own defense. If the opinion of the clinical team or examining physician is that the child cannot appreciate the proceedings or is unable to assist in his or her defense, the team or physician must address and determine:

1. whether there is a substantial probability that the child will attain or regain competency within 90 days after a court-ordered intervention and
2. the nature and type of recommended intervention and the least restrictive setting possible for conducting it.

The child's counsel and the prosecutor must get copies of the report at least 48 hours before the next scheduled hearing.

COMPETENCY HEARING

The court must hold an evidentiary hearing within 10 business days after receiving the competency examination report. The child may waive this hearing only if the examining physician or clinical team

found the child to be unqualifiedly competent.

Either the child or the state may introduce evidence, including the competency report, at the hearing. Unless waived by the child, if the report is introduced into evidence, the examining physician or at least one member of the clinical team must be present to testify about the report's determinations. The bill provides that any member of the clinical team is competent to testify about the team's determinations.

Child or Youth Found Competent

Under the bill, if the court determines that the child or youth is competent, it must continue with the prosecution of the juvenile or Youth in Crisis petition.

Child or Youth Found Incompetent

If, after the hearing, the court finds that the child is not competent, it must determine:

1. if there is a substantial probability that the child will attain or regain competency within 90 days of a court-ordered intervention or
2. whether an intervention recommended to attain or regain competency is appropriate.

In deciding on an appropriate intervention, the court may consider:

1. the nature and circumstances of the offense charged,
2. the length of time the clinical team or examining physician estimates it will take for the child to attain or regain competence,
3. whether the child poses a substantial risk of reoffending, and
4. whether the child is able to receive community-based services or treatment that would prevent him or her from further offending.

Regaining Competency Unlikely

If the court finds that there is not a substantial probability that the

child will regain competency within 90 days or that the recommended intervention is not appropriate, the bill permits it to order that (1) the juvenile matter be dismissed, if it consists of a delinquency, FWSN or Youth in Crisis matter; (2) the child be temporarily placed with the Department of Children and Families (DCF) for an investigation as to whether to file an abuse or neglect petition; or (3) the child be placed with DCF or some other appropriate entity propose a plan for services that can address the child's needs in the least restrictive setting. These options are more fully described below.

Regaining Competency Likely

Under the bill, if the court finds that there is a substantial probability that the child will become competent within 90 days if provided an appropriate intervention, it must schedule a hearing on the intervention within five business days. DCF must provide the intervention, or, if the child's parent or guardian agrees to pay, it may be provided by any appropriate person, agency, mental health facility, or treatment program. The treatment provider must agree to provide an appropriate intervention in the least restrictive setting available and comply with the bill's conditions.

Before holding the hearing on the intervention, the bill requires the court to notify the (1) DCF commissioner or designee or (2) third party treatment provider, as appropriate, that it will be ordering the intervention. Before the hearing, the provider must be given a copy of the court report that the examining physician or committee filed describing their proposed action and the court's proposed intervention plan.

At the hearing, the court must review the examiner's (or examiners') report and order an appropriate intervention that lasts no more than 90 days with the possibility of a 90-day extension, in the least restrictive setting available. In making its determination, the court must consider the same factors as described above (i.e., the nature of the charges, the period needed for restoration, risk assessment, and availability of effective community-based services).

The court must set up another hearing, at least 10 business days after the intervention is completed, to reconsider the youth's competency.

Progress Report and Reassessment Hearing. Under the bill, at least 10 business days before the reconsideration hearing, DCF or its designee or the private treatment provider, as appropriate, in charge of the intervention must report to the original examining psychiatrist or clinical team on the child's progress. Under the bill, the court may appoint a new examining psychiatrist or new members of the clinical team using the same qualifying criteria if an original clinician is not available. At least one member of the original team must be on a newly-constituted team. After receiving the report, the examining psychiatrist or clinical team must reassess the child's or youth's competency.

The new team must have access to clinical information available from the intervention provider.

Not less than two business days before the hearing, the clinical team or examining physician must submit a court report. The report must include:

1. the intervention provider's clinical findings and their factual basis;
2. the clinical team's or examining physician's opinion on whether the child or youth has attained or regained competency or is making progress toward it within the period covered by the intervention order; and
3. any other information about the child or youth the court requests, including the intervention method or the type, dosage, and effect of any medication he or she is taking.

Under the bill, the court must hold a reassessment hearing to determine if the child or youth has attained or regained competency. If the court finds that he or she has done so, it must continue the

prosecution of the juvenile or Youth in Crisis matter.

If the court finds that the child has not attained or regained competency, the judge must determine whether further efforts are appropriate, considering the factors described above.

If the judge determines that further action is appropriate, he or she must order up to 90 days of further intervention.

Further Intervention Unlikely to Restore Competency

Under the bill, if the court determines that there is not a substantial probability that the child will attain or regain competency, or that further intervention is not appropriate based on the clinical findings, it must:

1. order that the juvenile matter be dismissed if it is a delinquency, FWSN, or Youth in Crisis matter;
2. vest temporary custody in DCF and notify the chief child protection attorney to assign an attorney to serve as the child's guardian ad litem (advocate for the child's best interests) for the purpose of investigating whether to file an abuse or neglect petition; or
3. order that DCF, some other entity, or the child's probation officer conduct or obtain an appropriate assessment and, where appropriate, propose a plan for services that can appropriately address the child's needs in the least restrictive setting available and appropriate.

The service plan may include a plan for interagency collaboration to continue services after the child turns age 18, such as transition to the Department of Mental Health and Addiction Services for continued treatment.

The court must hold a hearing to review the temporary custody order and any recommendations made as a result of the investigation or assessment. The hearing must be held within 10 business days after

the order described above.

CHILD OR YOUTH FOUND TO BE NEGLECTED, DEPENDENT, OR UNCARED FOR

Under the bill, if the child is found to be neglected, dependent, or uncared for, or if a plan for services is approved and implemented, the court may dismiss the delinquency, FWSN or Youth in Crisis petition. It may, alternatively, order that the prosecution be suspended for up to 18 months, during which time the court may order DCF to file periodic reports to assure the court that the child is receiving appropriate services. The bill requires the court to dismiss the delinquency, FWSN, or Youth in Crisis petition when it determines that the need for the suspension of prosecution is no longer necessary or when the original suspension expires, whichever occurs first.

If the child or a parent or guardian does not comply with the requirements contained in the service plan, the court may hold another hearing to determine whether the court should file a dependent, neglect, or uncared-for petition.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/14/2011)