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COMMITTEE ON THE JUDICIARY
APRIL 1, 2011
R. B. No. 6637, AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE AND YOUTH IN CRISIS MATTERS.

The Office of the Chief Public Defender supports passage of ***Raised Bill No. 6637, An Act Concerning Determinations of Competency in Juvenile and Youth in Crisis Matters.***

This proposal is an effort to create a specialized system for competency determinations in juvenile proceedings. Under current law, there is no established procedure to be followed when competence of a juvenile is in question. The court follows the law and the criteria set out for adults. Current scientific research shows that children are different from adults and thus must be evaluated for competency in different ways. Children, for example can be too young, too developmentally immature or too mentally ill to meaningfully participate in a case against them.

This proposal is substantially the same as *Raised Bill 05-1087* and *Raised Bill 06-667* which were raised in the 2005 and 2006 legislative sessions respectively. Those bills met with opposition from some advocates who believed that the minimum age proposed for competency (nine) was too low. The current proposal, which results from the continued collaboration of professionals from the judicial, advocacy and mental health fields, including representatives from the Public Defender's Office, seeks to address the concerns that led to the prior bills being rejected. This proposal will allow the court to treat children whose competence to stand trial is questioned in the most appropriate manner and should ensure that competency evaluations on children apply meaningful age appropriate standards. This proposal sets seven as the age of capacity. This means that children under the age of seven will be deemed incapable of forming the intent to commit a crime and thus will not be prosecuted.

This proposal does not change the standard for determining competence in juveniles. A child will still be held to the standards set out in Dusky v. United States, 362 U.S. 402 (1960), where the United States Supreme Court held that a criminal defendant must be able to understand the proceedings against him or her and to assist is his own defense. What will change are the procedures by which a child is evaluated for competency and the options available to the juvenile court in deciding how to handle cases where a child is not competent or not restorable.

The new procedures would require that a team of professionals, including at least one person who is experienced in child development conduct the evaluation. The judge would be able to divert cases, where the continuations of the proceedings were not in the best interest of the child or the community. Current law mandates that a child found not competent and not restorable be committed to the Department of Children and Families. This proposal allows the judge flexibility in determining if there are services that can be provided to the child short of a full commitment to DCF. There would also be a review process for more serious cases where a child had been found not competent and not restorable.

This effort to create a special procedure for competency in delinquency matters increases the likelihood that a child will be developmentally able to understand the complex legal proceedings involved in juvenile court and provides the court with more options to help achieve competence in a child. It is an effort to improve the way we service the most vulnerable children in the juvenile justice system-the very young, the developmentally compromised and the mentally ill.

The Office of Chief Public Defender respectfully requests that this committee approve this proposal.