



General Assembly

January Session, 2011

Raised Bill No. 6637

LCO No. 5028

05028 _____ JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**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2 repealed and the following is substituted in lieu thereof (*Effective*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 (1) of section 46b-120 of the general statutes, as
21 amended by section 82 of public act 09-7 of the September special
22 session, is repealed and the following is substituted in lieu thereof
23 (*Effective July 1, 2012*):

24 (1) "Child" means any person under sixteen years of age who has
25 not been legally emancipated, except that (A) for purposes of
26 delinquency matters and proceedings, "child" means any person who
27 is (i) at least seven years of age at the time of the alleged commission of
28 a delinquent act and who is (I) under eighteen years of age [who] and
29 has not been legally emancipated, or [(ii)] (II) eighteen years of age or
30 older [who,] and committed a delinquent act prior to attaining
31 eighteen years of age, [has committed a delinquent act and,] or (ii)
32 subsequent to attaining eighteen years of age, (I) violates any order of
33 the Superior Court or any condition of probation ordered by the
34 Superior Court with respect to such delinquency proceeding, or (II)
35 wilfully fails to appear in response to a summons under section 46b-
36 133 [with respect to such delinquency proceeding] or at any other
37 court hearing in a delinquency proceeding of which the child had
38 notice, and (B) for purposes of family with service needs matters and
39 proceedings, child means a person who is at least seven years of age
40 and is under eighteen years of age;

41 Sec. 3. (NEW) (*Effective October 1, 2011*) In any juvenile matter, as
42 defined in section 46b-121 of the general statutes, or youth in crisis
43 matter pursuant to section 46b-150f of the general statutes, in which a
44 child or youth is alleged to have committed a delinquent act or an act
45 or omission for which a petition may be filed under section 46b-149 or
46 46b-150f of the general statutes, the child or youth shall not be tried,
47 convicted, adjudicated or subject to any disposition pursuant to section
48 46b-140, 46b-149 or 46b-150f of the general statutes while the child or

49 youth is not competent. For the purposes of this section, a transfer to
50 the regular criminal docket of the Superior Court pursuant to section
51 46b-127 of the general statutes shall not be considered a disposition. A
52 child or youth is not competent if the child or youth is unable to
53 understand the proceedings against him or her or to assist in his or her
54 own defense.

55 (b) If, at any time during a proceeding on a juvenile or youth in
56 crisis matter, it appears that the child or youth is not competent,
57 counsel for the child or youth, the juvenile prosecutor, or the court, on
58 its own motion, may request an examination to determine the child's
59 or youth's competency. Whenever a request for a competency
60 examination is under consideration by the court, the child or youth
61 shall be represented by counsel in accordance with the provisions of
62 sections 46b-135 and 46b-136 of the general statutes.

63 (c) A child or youth alleged to have committed an offense is
64 presumed to be competent. The age of the child or youth is not a per se
65 determinant of incompetency. The burden of going forward with the
66 evidence and proving that the child or youth is not competent by a
67 preponderance of the evidence shall be on the party raising the issue of
68 competency, except that if the court raises the issue of competency, the
69 burden of going forward with the evidence shall be on the state. The
70 court may call its own witnesses and conduct its own inquiry.

71 (d) If the court finds that the request for a competency examination
72 is justified and that there is probable cause to believe that the child or
73 youth has committed the alleged offense, the court shall order a
74 competency examination of the child or youth. Competency
75 examinations shall be conducted by (1) a clinical team constituted
76 under policies and procedures established by the Chief Court
77 Administrator, or (2) if agreed to by all parties, a physician specializing
78 in psychiatry who has experience in conducting forensic interviewing
79 and in child and adult psychiatry. Any clinical team constituted under
80 this section shall consist of three persons: A clinical psychologist with

81 experience in child and adolescent psychology, and two of the
82 following three professionals: (A) a clinical social worker licensed
83 pursuant to chapter 383b of the general statutes, (B) a child and
84 adolescent psychiatric nurse clinical specialist holding a master's
85 degree in nursing, or (C) a physician specializing in psychiatry. At
86 least one member of the clinical team shall have experience in
87 conducting forensic examinations and at least one member of the
88 clinical team shall have experience in child and adolescent psychology.
89 The court may authorize a physician, a clinical psychologist, a child
90 and adolescent psychiatric nurse specialist or a clinical social worker
91 licensed pursuant to chapter 383b of the general statutes, selected by
92 the child or youth, to observe the examination, at the expense of the
93 child or youth or, if the child or youth is represented by counsel
94 appointed through the Public Defender Services Commission, the
95 Office of the Chief Public Defender. In addition, counsel for the child
96 or youth, his or her designated representative and, if the child or youth
97 is represented by a public defender, a social worker from the Division
98 of Public Defender Services, may observe the examination.

99 (e) The examination shall be completed not later than fifteen
100 business days after the date it was ordered, unless the time for
101 completion is extended by the court for good cause shown. The
102 members of the clinical team or the examining physician shall prepare
103 and sign, without notarization, a written report and file such report
104 with the court not later than twenty-one business days after the date of
105 the order. The report shall address the child's or youth's ability to
106 understand the proceedings against such child or youth and such
107 child's or youth's ability to assist in his or her own defense. If the
108 opinion of the clinical team or the examining physician set forth in
109 such report is that the child cannot appreciate the proceedings against
110 such child or youth or is not able to assist in his or her own defense,
111 the members of the team or the examining physician must determine
112 and address in their report: (1) Whether there is a substantial
113 probability that the child or youth will attain or regain competency
114 within ninety days of an intervention being ordered by the court; and

115 (2) the nature and type of intervention, in the least restrictive setting
116 possible, recommended to attain or regain competency. On receipt of
117 the written report, the clerk of the court shall cause copies of such
118 written report to be delivered to counsel for the state and counsel for
119 the child or youth at least forty-eight hours prior to the hearing held
120 under subsection (f) of this section.

121 (f) The court shall hold a hearing as to the competency of the child
122 or youth not later than ten business days after the court receives the
123 written report of the clinical team or the examining physician pursuant
124 to subsection (e) of this section. A child or youth may waive such
125 evidentiary hearing only if the clinical team or examining physician
126 has determined without qualification that the child or youth is
127 competent. Any evidence regarding the child's or youth's competence,
128 including, but not limited to, the written report, may be introduced in
129 evidence at the hearing by either the child or youth or the state. If the
130 written report is introduced as evidence, at least one member of the
131 clinical team or the examining physician shall be present to testify as to
132 the determinations in the report, unless the team's or the examining
133 physician's presence is waived by the child or youth and the state. Any
134 member of the clinical team shall be considered competent to testify as
135 to the clinical team's determinations.

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

140 (2) If the court, after the competency hearing, finds that the child or
141 youth is not competent, the court shall determine: (A) If there is a
142 substantial probability that the child or youth will attain or regain
143 competency within ninety days of an intervention being ordered by
144 the court; and (B) whether the recommended intervention to attain or
145 regain competency is appropriate. In making its determination on an
146 appropriate intervention, the court may consider: (i) The nature and

147 circumstances of the alleged offense; (ii) the length of time the clinical
148 team or examining physician estimates it will take for the child or
149 youth to attain or regain competence; (iii) whether the child or youth
150 poses a substantial risk to reoffend; and (iv) whether the child or youth
151 is able to receive community-based services or treatment that would
152 prevent the child or youth from further offending.

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

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

163 (2) The provision of an intervention for the purpose of rendering a
164 child or youth competent shall comply with the following conditions:
165 (A) The period of intervention shall not exceed ninety days, unless
166 extended for an additional ninety days in accordance with the criteria
167 set forth in subsection (j) of this section; (B) the intervention shall be
168 provided by the Department of Children and Families or, if the child's
169 or youth's parent or guardian agrees to pay for such services, by any
170 appropriate person, agency, mental health facility or treatment
171 program that agrees to provide an appropriate intervention in the least
172 restrictive setting available to the child or youth and comply to the
173 requirements of this section.

174 (3) Prior to the hearing, the court shall notify the Commissioner of
175 Children and Families, the commissioner's designee, or the
176 appropriate person, agency, mental health facility or treatment
177 program that has agreed to provide an appropriate intervention to the
178 child or youth that an intervention to attain or regain competency will

179 be ordered. The commissioner, designee or appropriate person,
180 agency, facility or program shall be provided with a copy of the report
181 of the clinical team or examining physician and shall report to the
182 court on a proposed implementation of the intervention prior to the
183 hearing.

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

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

199 (2) Upon receipt of the report on the progress of such intervention,
200 the child or youth shall be reassessed by the original clinical team or
201 examining physician, except that if the original team or examining
202 physician is unavailable, the court may appoint a new clinical team
203 that, where possible, must include at least one member of the original
204 team, or a new examining physician. The new clinical team or
205 examining physician shall have the same qualifications as the original
206 team or examining physician, as provided in subsection (d) of this
207 section, and shall have access to clinical information available from the
208 provider of the intervention. Not less than two business days prior to
209 the date of any scheduled hearing on the reconsideration of the child's
210 or youth's competency, the clinical team or examining physician shall

211 submit a report to the court that includes: (A) The clinical findings of
212 the provider of the intervention and the facts upon which the findings
213 are made; (B) the clinical team's or the examining physician's opinion
214 on whether the child or youth has attained or regained competency or
215 is making progress toward attaining or regaining competency within
216 the period covered by the intervention order; and (C) any other
217 information concerning the child or youth requested by the court,
218 including, but not limited to, the method of intervention or the type,
219 dosage and effect of any medication the child or youth is receiving.

220 (3) Within two business days of the filing of a reassessment report,
221 the court shall hold a hearing to determine if the child or youth has
222 attained or regained competency within the intervention period
223 ordered. If the court finds that the child or youth has attained or
224 regained competency, the court shall continue with the prosecution of
225 the juvenile or youth in crisis matter. If the court finds that the child or
226 youth has not attained or regained competency within the intervention
227 period ordered, the court shall determine whether further efforts to
228 attain or regain competency are appropriate. The court shall make its
229 determination of whether further efforts to attain or regain
230 competency are appropriate in accordance with the criteria set forth in
231 subdivision (2) of subsection (g) of this section. If the court finds that
232 further intervention to attain or regain competency is appropriate, the
233 court shall order a new period for restoration of competency not to
234 exceed ninety days. If the court finds that further intervention to attain
235 or regain competency is not appropriate or the child or youth has not
236 attained or regained competency after an additional intervention of
237 ninety days, the court shall issue an order in accordance with
238 subsection (k) of this section.

239 (k) (1) If the court determines after intervention that the child or
240 youth has not attained or regained competency and that there is not a
241 substantial probability that the child or youth will attain or regain
242 competency, or that further intervention to attain or regain
243 competency is not appropriate based on the criteria set forth in

244 subdivision (2) of subsection (g) of this section, the court shall: (A)
245 Order that the juvenile matter be dismissed if it consists of a
246 delinquency, family with service needs or youth in crisis matter; (B)
247 vest temporary custody of the child or youth in the Commissioner of
248 Children and Families and notify the Chief Child Protection Attorney,
249 who shall assign an attorney to serve as guardian ad litem for the child
250 or youth and investigate whether a petition should be filed under
251 section 46b-129 of the general statutes; or (C) order that the
252 Department of Children and Families or some other person, agency,
253 facility or program, or such child's or youth's probation officer,
254 conduct or obtain an appropriate assessment and, where appropriate,
255 propose a plan for services that can appropriately address the child's
256 or youth's needs in the least restrictive setting available and
257 appropriate. Any plan for services may include a plan for interagency
258 collaboration for the provision of appropriate services after the child or
259 youth attains the age of eighteen.

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

266 (3) If the child or youth is adjudicated neglected, dependent or
267 uncared for subsequent to such a petition being filed, or if a plan of
268 services pursuant to subparagraph (C) of subdivision (1) of this
269 subsection has been approved by the court and implemented, the court
270 may dismiss the delinquency, family with service needs or youth in
271 crisis petition, or, in the discretion of the court, order that the
272 prosecution of the case be suspended for a period of up to eighteen
273 months. During the period of suspension, the court may order the
274 Department of Children and Families to provide periodic reports to
275 the court to ensure that appropriate services are being provided to the
276 child or youth. If during the period of suspension, the child or youth or

277 the parent or guardian of the child or youth does not comply with the
278 requirements set forth in the service plan, the court may hold a hearing
279 to determine whether the court should follow the procedure for
280 instituting a neglect, dependent or uncared for petition pursuant to
281 subparagraph (B) of subdivision (1) of this subsection. Whenever the
282 court finds that the need for the suspension of prosecution is no longer
283 necessary, but not later than the expiration of such period of
284 suspension, the delinquency, family with service needs or youth in
285 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>July 1, 2012</i>	46b-120(1)
Sec. 3	<i>October 1, 2011</i>	New section

Statement of Purpose:

To establish a process for determining competency of a child or youth in a juvenile or youth in crisis matter and assisting a child or youth to attain competency in such matter.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]