

CHAPTER 241
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 253
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE COMPETENCY.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend subchapter III, Chapter 9, Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1007A. Determination of competency of child.

(a) Definitions. -- For the purpose of this section, the following definitions shall apply:

(1) "Not competent" shall mean a child who is unable to understand the nature of the proceedings against the child, or to give evidence in the child's own defense or to instruct counsel on the child's own behalf.

(2) "Competency evaluator" shall mean an expert qualified by training and experience to conduct juvenile competency evaluations, familiar with juvenile competency standards, and familiar with juvenile treatment programs and services.

(b) Procedure to determine competency; competency evaluation. --

(1) The issue of whether a child within Family Court jurisdiction, and not subject to sections 1010(a) or 1010(c)(3) of this title, is competent to proceed to trial may be raised by any party by the filing of a written motion or may be raised by the Court *sua sponte*. The motion shall state with specificity the facts that support the request for a competency evaluation. Any issues related to competency that are raised post adjudication shall be raised and decided by the Court based on applicable Family Court Rules and case law. The issue of whether a child subject to § 1010(a) or § 1010(c)(3) of this title is competent to proceed shall be determined by the Superior Court consistent with the rules and procedures of that court and any other applicable law.

(2) If the Court determines that there are facts that support the completion of a competency evaluation, the prosecution of the case shall be stayed and the Court shall order that a competency evaluation be performed by a competency evaluator.

(3) The competency evaluation shall be performed and submitted to the Court within 30 days of the date that the competency evaluation is ordered by the Court if the child is in secure or non-secure detention, and within 60 days if the child is not detained. Pending completion of the competency evaluation and a final determination of competency by the Court, the child's bail, placement, and conditions of bail shall continue to be determined pursuant to § 1007 of this title, and the applicable bail guidelines. The Court may order the competency evaluation to be performed on an outpatient basis or may place the child in a secure or non-secure facility in order to facilitate the completion of the evaluation after considering less restrictive alternatives pursuant to § 1007 of this title.

(4) The competency evaluation submitted by the competency evaluator to the Court shall:

(A) specifically address the child's ability to understand the nature of the proceedings against the child, the ability of the child to give evidence in the child's own behalf, and the ability of the child to instruct counsel on the child's own behalf; and

(B) note any mental illnesses, developmental disabilities, cognitive impairments, and/or chronological immaturity or any other factor affecting competency, and recommend appropriate treatment or services; and

(C) specify any conditions that will not result in the restoration or acquisition of competency even with treatment.

Statements made by the child as part of the competency evaluation may not later be admitted as evidence at trial.

(5) Upon completion of the competency evaluation:

(A) the parties may stipulate that the child is either competent or not competent and submit a stipulation to the Court for approval; or

(B) either party may retain their own competency evaluator to perform an additional evaluation; or

(C) either party may request that the Court hold a competency hearing.

(c) Court findings.

(1) If the Court rules after a stipulation or competency hearing that a child is competent, the prosecution of the case shall resume. If the Court rules that the child is not competent, the Court shall then make a finding of whether competency can be timely restored or acquired. If there is a reasonable expectation that competency can be timely restored or acquired, the Court shall order appropriate treatment or services based on the findings and recommendations contained in the competency evaluation. The underlying bases for a finding that a child is not competent may include, but are not limited to, significant mental illness, significant developmental disability, significant cognitive impairment, and/or chronological immaturity. A child's age alone may not serve as the basis for a finding that a child is not competent. The finding must be based on the individual child's capacities for competency.

(2) While the child undergoes treatment or services, bail, conditions of bail and placement shall continue to be determined pursuant to § 1007 of this title, and applicable bail guidelines. Prior to making a bail decision, the Court shall consider less restrictive alternatives pursuant to § 1007 of this title, and if the Court places or continues to place a child in secure detention, the Court shall state in writing the basis for its detention decision. The Court shall schedule review hearings to evaluate whether competency has been restored or acquired at least every six months. The Court may order further competency evaluations to assist the Court in determining whether competency has been restored or acquired. When the Court determines that competency has been restored or acquired, the prosecution of the case shall resume.

(3) If the Court finds that a child is not competent and is unable to have competency timely restored or acquired, the Court, after a hearing to consider the best interests of the child and the safety of the community, shall:

(A) Dismiss non-violent misdemeanor charges within six to twelve months;

(B) Dismiss violent misdemeanor or non-violent felony charges within twelve to twenty-four months;

(C) Dismiss violent felony charges at age 18, unless the child was under age 14 at the time of arrest for violent felonies in which case the Court shall consider dismissal of violent felonies within eighteen to thirty-six months.

The Court shall hold review hearings at least every six months until the case is dismissed, and may continue to order appropriate services until the case is dismissed.

(d) Limitation on competency finding. -- Any finding by the Court regarding the competency of a child is limited to the specific delinquency proceedings at issue when competency is raised, and that finding shall not be the basis for any determination of competency in another court, competency as a witness in any proceeding, or competency to be proceeded against in another delinquency proceedings or any other proceedings in this Court.

Approved May 21, 2012