

## Juvenile Competency Guidelines

### **I. Background:**

In **October 2012** a new Connecticut state law, (**CGS § 46b-128a**) took effect, which set up new standards and processes for the way Competency To Stand Trial examinations occur in the Superior Court for Juvenile Matters. Prior to the establishment of this law, there was not a separate juvenile statute. The new law differs in many significant ways from the adult statute. The new statute recognizes the developing maturity of children involved in the juvenile court.

Sec. 46b-128a. Competency determinations in juvenile matters.

- (a) In any juvenile matter, as defined in section 46b-121, in which a child or youth is alleged to have committed a delinquent act or an act or omission for which a petition may be filed under section 46b-149, the child or youth shall not be tried, convicted, adjudicated or subject to any disposition pursuant to section 46b-140 or 46b-149 while the child or youth is not competent. For the purposes of this section, a transfer to the regular criminal docket of the Superior Court pursuant to section 46b-127 shall not be considered a disposition. A child or youth is not competent if the child or youth is unable to understand the proceedings against him or her or to assist in his or her own defense.
- (b) If, at any time during a proceeding on a juvenile matter, it appears that the child or youth is not competent, counsel for the child or youth, the prosecutorial official, or the Court, on its own motion, may request an examination to determine the child's or youth's competency. Whenever a request for a competency examination is under consideration by the Court, the child or youth shall be represented by counsel in accordance with the provisions of sections 46b-135 and 46b-136.
- (c) A child or youth alleged to have committed an offense is presumed to be competent. The age of the child or youth is not a per se determinant of incompetency. The burden of going forward with the evidence and proving that the child or youth is not competent by a *preponderance of the evidence shall be on the party raising the issue* of competency, except that if the Court raises the issue of competency, the burden of going forward with the evidence shall be on the State. The Court may call its own witnesses and conduct its own inquiry.

### **II. Juvenile Competency Statute:**

The new state statute, CGS § 46b-128a, gives the Chief Court Administrator responsibility for arranging all competency examinations ordered by Superior Court for Juvenile Matters. (In Adult Court, the DMHAS Office of Forensic Evaluations continues to be responsible for these evaluations). As a result, Court Support Services Division contracted with Charter Oak Forensic Consultants (contract went into effect February 2013) to complete all court-ordered competency

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examinations **and** re-examinations, if restorations are ordered. Once the Competency to Stand Trial examination is complete, the Court needs to rule whether the individual is **competent, not competent but restorable, or not competent to stand trial.**

**Credentials and qualifications of those professionals who can conduct the evaluation:**

The examination may be performed by professionals with either of two arrangements:

- (A) By a “clinical team”, or (B) “If agreed by all parties,” by a “physician specialized in psychiatry who has experience in conducting forensic interviews and in child and adolescent psychiatry.” The clinical team would consist of three persons: a clinical psychologist with experience in child and adolescent psychology, and two of the following three types of professionals: (a) a licensed clinical social worker, (b) a child and adolescent psychiatric nurse clinical specialist holding a master’s degree in nursing, or (c) a physician specializing in psychiatry. At least one member of the clinical team shall have experience in conducting forensic interviews.

The clinical team will need to determine if the child/youth is competent and if not whether the child/youth can attain or regain competency within ninety days of an intervention being ordered. The examiners also will need to provide “the nature and type of intervention, in the least restrictive setting possible, recommended to attain or regain competency.

DCF has always been responsible for restoring to competency those children/youth found by the Court to be “incompetent to stand trial with a *substantial* probability that they can be restored”. Restorations were completed on an inpatient basis **only** (at Riverview Hospital) until **2006** when DCF’s Medical Director set up a process for outpatient restorations. If the defendant is over age 18 at the time restoration is ordered, the defendant should be placed in the custody of the Commissioner of DMHAS or DDS, depending on the finding for restoration services.

**a) What if the Court finds child/youth not competent, not restorable?**

If the Court finds that there is not a substantial probability that the child/youth will attain or regain competency, or that further intervention to attain or regain competency is not appropriate, the Court shall: (a) dismiss the petition; (b) vest temporary custody of the child/youth in the Commissioner of DCF and notify the Office of the Public Defender, which shall assign an attorney to serve as guardian ad litem and investigate whether a child protection petition should be filed; or (c) order that DCF or some other person, agency, mental health facility or treatment program, or such child’s/youth’s probation office, conduct or obtain an appropriate assessment and where appropriate, propose a plan for service that can appropriately address the child’s/youth’s needs in the least restrictive setting available and appropriate. If the Court issues an order pursuant to subparagraph (b) or (c) of this section DCF is notified by the Clinical Coordinator, receives the competency report, and has **5 business days** to present a service plan to the Court. If there is no DCF involvement, a case needs to be opened (the Clinical Coordinator will alert the DCF Court Liaison

to make needed arrangements). A DCF representative from the area office will present the service plan to the Court.

**b) What if the Court finds child/youth not competent, but restorable?**

If the Court finds that there is a substantial probability that the child/youth will attain or regain competency within ninety days, if provided an appropriate intervention, DCF is notified by the Clinical Coordinator, receives the competency report, and has **5 business days** to present a restoration plan to the Court. If the Court finds the child/youth restorable, the DCF restoration plan can be either inpatient or outpatient, and will be made based on recommendations from the Charter Oak Competency to Stand Trial Report, plus any other collateral information available to DCF. The restoration plan is the joint responsibility of the Area Office and the DCF Chiefs of Psychiatry (Solnit and Community Services). The letter describing the restoration plan will be written by the DCF worker, reviewed by the DCF Clinical Manager, and approved by the Chief of Psychiatry (or designee). The restoration plan will be presented in court by the DCF worker. DCF is still responsible for youth above age 18 if they are still involved with juvenile court. DCF will make arrangements with DMHAS and DDS, if necessary.

**Restoration to competency:**

Recommendations regarding inpatient or outpatient restorations are based on the intensity of the restoration services needed (roughly twice a day on an inpatient basis versus generally once or twice a week on an outpatient basis), plus the possible need for additional evaluations, and other extenuating factors (safety of the client in an inpatient vs. an outpatient setting, need for multidisciplinary inpatient treatment, etc.). Although the underlying assumption with adults is that mental health **treatment** is required to **restore** an individual so that the court proceedings can continue, with juveniles there is general recognition that there are developmental aspects to a juvenile's ability to be considered competent to stand trial that need to be taken into consideration. For example, perceptions of risk, time, and autonomy differ during different developmental stages, and the ability to develop abstract thinking or exercise judgment develops through young adulthood. The literature regarding juvenile adjudicative competence is replete with in-depth descriptions of these concepts and developmental differences. In terms of perception of risk, youth may experience a "long time" differently than adults. Youth are much less likely to consider longer-range consequences of decisions, and may be unable to balance longer-term potential loss against shorter-term gains, a key concept of plea-bargaining.

Despite the legal community's acceptance of the developmental immaturity of most juveniles, and thereby the differences in what it means for a juvenile to be competent to stand trial versus an adult, there are no nationally accepted **minimal standards** regarding juvenile capacity, judgment, developmental maturity, etc. to be considered competent other than a generally accepted standard for the minimal age (i.e. roughly above age 8). There are also no national or state standards available for distinguishing the need for an inpatient or an outpatient restoration,

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although CGS § 46b-128a does state that attempts should be made in the **least restrictive setting possible**. There are also **no national standards for outpatient restoration to competency procedures**. Finally, while restorations are initially ordered for up to 90 days, the Court should be notified if the work is completed earlier, or if additional time is needed. **There is no state or national standards regarding how long one should continue to work with a juvenile to attempt to restore him/her to competency.**

### III. Definitions and Notes:

- a) **Competency Hearing-** This is the hearing in which the Court finds if the child/youth is competent or not based on the evaluation report. **Note: The competency hearing should be a separate hearing (within ten business days of receipt of the competency report).** DCF representative may be present at the hearing if all parties agree. DCF's attendance is not mandatory. If the competency report is introduced as evidence, per statute, at least one member of the competency examination team (this can include social worker, psychologist, or psychiatrist) shall be present to testify as to the determinations in the report, unless the competency examination team's presence is waived by the child/youth and the state. Testimony will typically be provided by the evaluating team's social worker as allowed by statute. The testimony by a representative of the competency examination team can provide clarification and justification of the recommendation.

-If the Court, after the competency hearing, finds by a preponderance of the evidence that the child/youth is competent, the Court shall continue with the prosecution of the juvenile matter.

-If the Court, after the competency hearing, finds that the child/youth is not competent and that intervention to attain or regain competency is not appropriate, the Court will schedule a hearing regarding the implementation of a service intervention.

-If the Court finds that there is substantial probability that the child/youth will attain or regain competency within 90 days, the Court will schedule a hearing on the implementation of a restoration intervention. The Court will release the competency report to DCF if appropriate (found not competent).

- b) **Implementation Hearing-** This is the hearing in which DCF presents a plan for restoration intervention if child/youth was found not competent but restorable, or a service plan if the child/youth was found not competent, not restorable (**no later than five business days** following Competency Hearing). A DCF representative must be present for the hearing to provide a description of the service/intervention

plan, services that will be provided, name(s) of provider, if known, and the location of the intervention services. The competency examination team does not need to be present. **Note: The Implementation Hearing cannot be waived.**

- c) **Restoration**-During the restoration period, the restoration team will be in contact with the parties via progress reports which the Clinical Coordinator will distribute. If the restoration team decides that the child/youth requires a different setting for the restoration (i.e. moving inpatient to outpatient or vice versa), the Court will be notified by the Clinical Coordinator via the DCF Court Liaison. The restoration intervention can be up to 90 business days. The Court shall set a date for a hearing, within **ten business days** after the completion of the intervention period, for the purpose of reassessing the child/youth's competency.
- d) **Reassessment Hearing**- This is the hearing in which the Court rules if the child/youth has attained or regained competency within the period covered by the intervention order. The child/youth shall be reassessed by the original clinical team or examining physician, except that if the original team or examining physician is unavailable, the Court may appoint a new clinical team that, where possible, shall include at least one member of the original team, or a new examining physician. The reassessment report should be submitted to the Court no later than **two business days** prior to the scheduled hearing. A member of the **initial competency examination team** must be present at the hearing and report findings on whether the child/youth is restored to competence or not.

-If the Court finds after the period covered by the intervention ordered that the child/youth attained or regained competency, the Court shall continue with the prosecution of the juvenile matter.

-If the Court finds that the child/youth has not attained or regained competency within the period covered by the intervention but that further intervention to attain or regain competency is appropriate, an Implementation Hearing will need to be scheduled **five business days** later in which the Court shall order a new period for restoration of competency not to exceed ninety days.

-If the Court finds that further intervention to attain or regain competency is not appropriate, an Implementation Hearing will need to be scheduled **five business days** later in which the Court shall either (a) dismiss the petition if it is a delinquency or family with service needs petition; (b) vest temporary custody of the child/youth in the Commissioner of DCF and have the Office of the Chief Public Defender assign an attorney to serve as Guardian Ad Litem for the child/youth and investigate whether a child protection petition should be filed; or (c) order that DCF or some other person, agency, mental health facility or

treatment program, or such child's/youth's probation office, conduct or obtain an appropriate assessment and where appropriate, propose a plan for service that can appropriately address the child's/youth's needs in the least restrictive setting available and appropriate. A DCF representative must be present for the Reassessment Hearing.

If you have questions or require any assistance, please don't hesitate to contact John Torello, Program Manager, at (860) 836-0750

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