

JUVENILE COMPETENCY

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COMPETENCY

MCL §712A.18n (effective March 28, 2013)

- **What does competence mean?**
- **Presumption.** Although a juvenile 10 years of age or older is still presumed competent for purposes of a delinquency petition, statutory provisions have been added to require an evaluation regarding a juvenile's competency to proceed in juvenile court. MCL §712A.18n(1).

- ***Incompetence.*** A juvenile is incompetent if, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do one or more of the following:
 - -Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner, or
 - -Sufficiently understand the charges against him or her. MC§71 2A.1 (g)(i) and (ii).

Raising Competency

- The court may order on its own motion, or at the request of the juvenile, the juvenile's lawyer, or the prosecuting attorney, a competency evaluation to determine whether the juvenile is incompetent to proceed. MCL §712A.18n(2). The issue of competency may be raised at any time during the proceedings. MCL §712A.18n(1).
- ▣ ***Stay of Proceedings.*** Once a juvenile's competency is raised, the delinquency proceeding must be temporarily put on hold until a determination is made about the juvenile's competency. MCL §712A.18n(3); (MCL §712A.180(1)).

Qualified Juvenile Forensic Mental Health Examiner

- A competency evaluation must be conducted by a qualified juvenile forensic mental health examiner. The court makes the final determination of an expert witness serving as a qualified juvenile forensic mental health examiner. MCL §712A.180(1).
- The qualified juvenile forensic mental health examiner appointed by the court is entitled to reasonable fees for services rendered. MCL §712A,18q(3).

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- A party may retain its own qualified juvenile forensic mental health examiner to conduct additional evaluations at the party's own expense. MCL §712A.18o(2).

Evaluation

- The competency evaluation shall be conducted in the least restrictive environment. A presumption favors conducting a competency evaluation while the juvenile remains in the custody of a parent or legal guardian, unless removal from the home is necessary for the best interests of the juvenile, for reasons of public safety, or because the parent or guardian has refused to cooperate in the competency evaluation process. MCL §712A.18o(3).

Relevant Material

- The court is required to order the prosecuting attorney to provide the juvenile's attorney all information related to competency. The court is also required to order the prosecuting attorney and juvenile's lawyer to submit to the qualified juvenile forensic mental health examiner, within ten days any information considered relevant to competency. MCL §712A.18p(1) and (2).

- ***The Prosecutor and Juvenile's Lawyer must provide:***
 - ▣ The lawyers' names and addresses, information about the alleged offense, and any information about the juvenile's background that the prosecutor possesses. MCL §712A.18p(1)(a)-(c).
- ***The Juvenile's Lawyer must provide:***
 - ▣ Psychiatric records, school records, medical records, and child protective services records. MCL §712A.18p(2)(a)-(d).
- ***Privilege.*** Work product and attorney-client privileged information is not abrogated or waived. MCL §712A.18p(3).

Examiner's Findings and Report

- The examiner who conducts the competency examination must submit a written report within 30 days of the court order containing factual findings and conclusions. MCL §712A.18p(5) and (6). But on good cause shown, the forensic examiner is entitled to a 30-day extension. MCL §712A.18p(7).

Contents of Report

- A description of the nature, content, and extent of the examination, including, but not limited to, all of the following:
 - 1. A description of assessment procedures, techniques, and tests used.
 - 2. Available medical, educational, and court records reviewed.
 - 3. Social, clinical, developmental, and legal history as available.

A *clinical assessment* that includes, but is not limited to, the following:

- 1. A mental status examination.
- 2. The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the juvenile is taking medication, the impact of the medication on the juvenile's mental state and behavior.
- 3. An assessment of the juvenile's intelligence.
- 4. The juvenile's age, maturity level, developmental stage, and decision-making abilities.
- 5. Whether the juvenile has any other factor that affects competence.

A description of abilities and deficits in the following mental competency functions related to the juvenile's competence to proceed:

- 1. The ability to factually as well as rationally understand and appreciate the nature and object of the proceedings, including, but not limited to, all of the following:
 - a. An ability to understand the role of the participants in the court process, including, the roles of the judge, the juvenile's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process.
 - b. An ability to appreciate the charges and understand the seriousness of the charges.
 - c. An ability to understand and realistically appraise the likely outcomes.
 - d. An ability to extend thinking into the future.

Ability to render meaningful assistance

- The ability to render meaningful assistance to the juvenile's attorney in the preparation of the case, including, but not limited to, all of the following:
 - a. An ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the juvenile.
 - b. An ability to consider the impact of his or her action on others.
 - c. Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner.
 - d. Logical decision-making abilities, particularly multi-factored problem-solving or the ability to take several factors into consideration in making a decision.
 - e. An ability to reason about available options by weighing the consequences, including weighing pleas, waivers, and strategies.
 - f. An ability to display appropriate courtroom behavior. MCL §712A.18p(5).

Disclosure of Report

- The court must provide the juvenile's attorney, the prosecutor, and any guardian ad litem for the juvenile the written report within five working days of receiving the report. MCL §712A.18p(8).

Hearing

- The court must hold a hearing to determine if the juvenile is competent to proceed within 30 days after the examiner's report is filed. Other evidence (or stipulations thereto) may be introduced at the hearing. MCL §712A.18q(1).
- **Incompetent.** If the court finds the juvenile incompetent to proceed and there is a substantial probability that the juvenile will remain incompetent to proceed for the foreseeable future or within the period of the restoration order, the court shall dismiss **with prejudice** the charges against the juvenile and may determine custody of the juvenile. MCL §712A.18q(2).

Evidentiary Issues

- The constitutional protections against self-incrimination apply to all competency evaluations. Any evidence or statement obtained during a competency evaluation is not admissible in any proceeding to determine the juvenile's responsibility (or for any other charges based on those events or transactions. MCL §712A.18r(1)-(3).
- But, the juvenile or the juvenile's guardian may consent to use of statements after being given opportunity to consult with lawyer. MCL §712A.18r(4).

Sealing Records

- After adjudication or the juvenile is found to be unable to regain competence the court must order all of the reports submitted to be sealed. The reports can only be opened for further competency or criminal responsibility evaluations, statistical analysis, reports are necessary for mental health treatment, data gathering, scientific study or other legitimate research. MCL §712A.18r(5)(a)-(e). The records remain confidential, even if opened. MCL §712A.18r(6).
- Juvenile's statements made during a competency evaluation are not subject to disclosure. MCL §712A.18r(7).

Judicial Action if Juvenile Found Incompetent, but may be Restored to Competency in the Foreseeable Future

- ***If the offense is:***
- 1. Traffic offense or a non—serious misdemeanor, the court must dismiss the matter. MCL §712A.18s(1)(a).
- 2. Serious misdemeanor, the court may dismiss the case or suspend the proceedings against the juvenile. MCL §712A.18s(1)(b).
- 3. Felony, the proceedings against the juvenile must be suspended. MCL §712A.18s(1)(c).

Possible restoration of competency

- If proceedings are suspended because the juvenile is incompetent to proceed but the court finds that the juvenile may be restored to competency in the foreseeable future, ***all*** of the following apply:
 - ▣ Before issuing a restoration order, the court shall hold a hearing to determine the least restrictive environment for completion of the restoration.

- The court may issue a restoration order that is valid for 60 days from the date of the initial finding of incompetency or until 1 of the following occurs, whichever occurs first:
 - 1. The qualified juvenile forensic mental health examiner, based on information provided by the qualified restoration provider, submits a report that the juvenile has regained competency or that there is no substantial probability that the juvenile will regain competency within the period of the order.
 - 2. The charges are dismissed.
 - 3. The juvenile reaches 18 years of age. MCL §712A.18s(2)(a) and (b).

Report regarding restoration efforts

- Following issuance of the restoration order, the qualified restoration provider shall submit a report to the court and the qualified juvenile forensic mental health examiner. The report shall be submitted to the court and the qualified juvenile forensic mental health examiner every 30 days, or sooner if and at the time either of the following occurs:
 - ▣ 1. The qualified restoration provider determines that the juvenile is no longer incompetent to proceed.
 - ▣ 2. The qualified restoration provider determines that there is no substantial probability that the juvenile will be competent to proceed within the period of the order. MCL §712A.18s(1)(c).

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Extension of Restoration Order

- Not later than 14 days before the expiration of the initial 60-day order, the qualified restoration provider may recommend to the court and the qualified juvenile forensic mental health examiner that the restoration order be renewed by the court for another 60 days, if there is a substantial probability that the juvenile will not be incompetent to proceed within the period of that renewed restoration order. The restoration order and any renewed restoration order shall not exceed a total of 120 days. MCL §712A.18s(3).

Long-term or Permanent Incompetency

- Except as otherwise provided in this section, upon receipt of a report that there is a substantial probability that the juvenile will remain incompetent to proceed for the foreseeable future or within the period of the restoration order, the court shall do both of the following:
 - (a) Determine custody of the juvenile as follows:
 - (i) The court may direct that civil commitment proceedings be initiated, as allowed under the mental health code,
 - (ii) If the court determines that commitment proceedings are inappropriate, the juvenile shall be released to the juvenile's parent, legal guardian, or legal custodian under conditions considered appropriate to the court.
 - (b) Dismiss the charges against the juvenile.

Mental Health Services

- Upon receipt of a report from a qualified juvenile forensic mental health examiner that there is a substantial probability that the juvenile is unable to be restored due to serious emotional disturbance,
 - ▣ The court may in its discretion, except as otherwise provided, order that mental health services be provided to the juvenile by the department of community health, subject to the availability of inpatient care, a community mental health services program, the department of human services, a county department of human services, or another appropriate mental health services provider for a period not to exceed 60 days.
 - ▣ The court shall retain jurisdiction over the juvenile throughout the duration of the order. The entity ordered to provide services under this subsection shall continue to provide services for the duration of the period of treatment ordered by the court. MCL §712A.18s(5)

Mental Health Treatment Report

- Not later than 14 days before the expiration of an order for treatment under this subsection or subsection (5), the entity providing mental health services under that order shall submit a report to the court and the qualified juvenile forensic mental health examiner regarding the juvenile. Upon receipt of the report, the court shall review the report and do either of the following:

- (a) Renew the order for another period of treatment not to exceed 60 days. The order for treatment and any renewed order shall not exceed a total of 120 days.
- (b) Determine custody of the juvenile and dismiss the charges against the juvenile. MCL §712A.18s(6)(a) and (b)

Statistical records

- The department of community health shall maintain a record of the number of juveniles for whom the court ordered that mental health services be provided under subsection (5) or (6). MCL §712A.18s(7).