

**§3318-A. Determination of competency of a juvenile to proceed in a juvenile proceeding**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chronological immaturity" means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or mental retardation. [PL 2011, c. 282, §4 (NEW).]

B. "Mental illness" means any diagnosable mental impairment supported by the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. [PL 2011, c. 282, §4 (NEW).]

C. "Mental retardation" means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills. [PL 2011, c. 282, §4 (NEW).]

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**2. Competency to proceed in a juvenile proceeding.** A juvenile is competent to proceed in a juvenile proceeding if the juvenile has:

A. A rational as well as a factual understanding of the proceedings against the juvenile; and [PL 2011, c. 282, §4 (NEW).]

B. A sufficient present ability to consult with legal counsel with a reasonable degree of rational understanding. [PL 2011, c. 282, §4 (NEW).]

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**3. Determination of competency.** The issue as to a juvenile's competency to proceed may be raised by the juvenile, by the State or sua sponte by the Juvenile Court at any point in the juvenile proceeding after a finding of probable cause and prior to the imposition of a final order of disposition. A competency determination is necessary only when the Juvenile Court has a reasonable doubt as to a juvenile's competency to proceed.

[PL 2011, c. 282, §4 (NEW).]

**4. Competency examination.** If the Juvenile Court determines that a competency determination is necessary, it shall order that a juvenile be examined by the State Forensic Service to evaluate the juvenile's competency to proceed. The examination must take place within 21 days of the court's order.

[PL 2011, c. 282, §4 (NEW).]

**5. Suspension of juvenile proceedings.** Pending a competency examination, the Juvenile Court shall suspend the proceeding on the petition. All juvenile case records, including a petition that is otherwise open to public inspection under section 3308-C, subsection 2, are confidential and are not subject to inspection, dissemination or release by the court. The suspension remains in effect pending the outcome of a competency determination hearing pursuant to subsection 7. Suspension of the proceeding does not affect the Juvenile Court's ability to detain or release the juvenile pursuant to section 3203-A, subsection 5.

[PL 2021, c. 365, §21 (AMD); PL 2021, c. 365, §37 (AFF).]

**6. Criteria for State Forensic Service examiner's report.** The following provisions govern criteria for the State Forensic Service examiner's report.

A. To assist the court's determination of competency, the State Forensic Service examiner's report must address the juvenile's capacity and ability to:

- (1) Appreciate the allegations of the petition;
- (2) Appreciate the nature of the adversarial process including:

- (a) Having a factual understanding of the participants in the juvenile's proceeding, including the judge, defense counsel, attorney for the State and mental health expert; and
- (b) Having a rational understanding of the role of each participant in the juvenile's proceeding;

(3) Appreciate the range of possible dispositions that may be imposed in the proceedings against the juvenile and recognize how possible dispositions imposed in the proceedings will affect the juvenile;

(4) Appreciate the impact of the juvenile's actions on others;

(5) Disclose to counsel facts pertinent to the proceedings at issue including:

- (a) Ability to articulate thoughts;
- (b) Ability to articulate emotions; and
- (c) Ability to accurately and reliably relate to a sequence of events;

(6) Display logical and autonomous decision making;

(7) Display appropriate courtroom behavior;

(8) Testify relevantly at proceedings; and

(9) Demonstrate any other capacity or ability either separately sought by the Juvenile Court or determined by the examiner to be relevant to the Juvenile Court's determination. [PL 2011, c. 282, §4 (NEW).]

B. In assessing the juvenile's competency, the State Forensic Service examiner shall compare the juvenile being examined to juvenile norms that are broadly defined as those skills typically possessed by the average juvenile defendant adjudicated in the juvenile justice system. [PL 2011, c. 282, §4 (NEW).]

C. The State Forensic Service examiner shall determine and report if the juvenile suffers from mental illness, mental retardation or chronological immaturity. [PL 2011, c. 282, §4 (NEW).]

D. If the juvenile suffers from mental illness, mental retardation or chronological immaturity, the State Forensic Service examiner shall report the severity of the impairment and its potential effect on the juvenile's competency to proceed. [PL 2011, c. 282, §4 (NEW).]

E. If the State Forensic Service examiner determines that the juvenile suffers from chronological immaturity, the examiner shall report a comparison of the juvenile to the average juvenile defendant. [PL 2011, c. 282, §4 (NEW).]

F. If the State Forensic Service examiner determines that the juvenile suffers from a mental illness, the examiner shall provide the following information:

- (1) The prognosis of the mental illness; and
- (2) Whether the juvenile is taking any medication and, if so, what medication. [PL 2011, c. 282, §4 (NEW).]

G. The State Forensic Service examiner's report must state an opinion whether there exists a substantial probability that the deficiencies related to competence identified in the report, if any, can be ameliorated in the foreseeable future. [PL 2011, c. 282, §4 (NEW).]

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**7. Post-examination report and hearing.** Following receipt of the competency examination report from the State Forensic Service examiner, the Juvenile Court shall provide copies of the report to the parties and hold a competency determination hearing. All hearings conducted pursuant to this subsection are confidential and not open to the general public or persons listed in section 3308-D,

subsection 4. If the Juvenile Court finds that the juvenile is competent to proceed based upon the burden and standard of proof pursuant to subsection 8, the Juvenile Court shall set a time for the resumption of the proceedings. If the Juvenile Court is not satisfied that the juvenile is competent to proceed, the Juvenile Court shall determine how to proceed pursuant to section 3318-B.

The court may consider the report of the State Forensic Service examiner, together with all other evidence relevant to the issue of competency, in its determination whether the juvenile is competent to proceed. No single criterion set forth in subsection 6 may be binding on the court's determination. [PL 2021, c. 365, §22 (AMD); PL 2021, c. 365, §37 (AFF).]

**8. Allocation of the burden of proof; standard of proof.** The burden of proof of competence is on the State if the juvenile is less than 14 years of age at the time the issue of competence is raised. If the juvenile is at least 14 years of age at the time the issue of competence is raised, the burden of proof is on the juvenile. In the event the State has the burden of proof, it must show by a preponderance of the evidence that the juvenile is competent to proceed. In the event the juvenile has the burden of proof, the juvenile must show by a preponderance of the evidence that the juvenile is not competent to proceed. [PL 2011, c. 282, §4 (NEW).]

**9. Statements made in the course of competency examination.** Statements made by the juvenile in the course of a competency examination may not be admitted as evidence in the adjudicatory stage for the purpose of proving any juvenile crime alleged. [PL 2011, c. 282, §4 (NEW).]

**10. Competency to proceed after bind over.** Notwithstanding a finding by the Juvenile Court that the juvenile is competent to proceed in a juvenile proceeding, if the juvenile is subsequently bound over for prosecution as an adult pursuant to section 3101, subsection 4, the issue of the juvenile's competency may be revisited. [PL 2015, c. 409, §8 (AMD).]

#### SECTION HISTORY

PL 2011, c. 282, §4 (NEW). PL 2015, c. 409, §8 (AMD). PL 2021, c. 365, §§21, 22 (AMD). PL 2021, c. 365, §37 (AFF).

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