

985.19 Incompetency in juvenile delinquency cases.--

(1) If, at any time prior to or during a delinquency case, the court has reason to believe that the child named in the petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.

(a) Any motion questioning the child's competency to proceed must be served upon the child's attorney, the state attorney, the attorneys representing the Department of Juvenile Justice, and the attorneys representing the Department of Children and Family Services. Thereafter, any motion, notice of hearing, order, or other legal pleading relating to the child's competency to proceed with the hearing must be served upon the child's attorney, the state attorney, the attorneys representing the Department of Juvenile Justice, and the attorneys representing the Department of Children and Family Services.

(b) All determinations of competency shall be made at a hearing, with findings of fact based on an evaluation of the child's mental condition made by not less than two nor more than three experts appointed by the court. The basis for the determination of incompetency must be specifically stated in the evaluation. In addition, a recommendation as to whether residential or nonresidential treatment or training is required must be included in the evaluation. Experts appointed by the court to determine the mental condition of a child shall be allowed reasonable fees for services rendered. State employees may be paid expenses pursuant to s. 112.061. The fees shall be taxed as costs in the case.

(c) All court orders determining incompetency must include specific written findings by the court as to the nature of the incompetency and whether the child requires secure or nonsecure treatment or training environments.

(d) For incompetency evaluations related to mental illness, the Department of Children and Family Services shall maintain and annually provide the courts with a list of available mental health professionals who have completed a training program approved by the Department of Children and Family Services to perform the evaluations.

(e) For incompetency evaluations related to mental retardation or autism, the court shall order the Agency for Persons with Disabilities to examine the child to determine if the child meets the definition of "retardation" or "autism" in s. 393.063 and, if so, whether the child is competent to proceed with delinquency proceedings.

(f) A child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings. The report must address the child's capacity to:

1. Appreciate the charges or allegations against the child.
2. Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
3. Understand the adversarial nature of the legal process.
4. Disclose to counsel facts pertinent to the proceedings at issue.
5. Display appropriate courtroom behavior.
6. Testify relevantly.

(g) Immediately upon the filing of the court order finding a child incompetent to proceed, the clerk of the court shall notify the Department of Children and Family Services and the Agency for Persons with Disabilities and fax or hand deliver to the department and to the agency a referral packet that includes, at a minimum, the court order, the charging documents, the petition, and the court-appointed evaluator's reports.

(h) After placement of the child in the appropriate setting, the Department of Children and Family Services in consultation with the Agency for Persons with Disabilities, as appropriate, must, within 30 days after placement of the child, prepare and submit to the court a treatment or training plan for the child's restoration of competency. A copy of the plan must be served upon the child's attorney, the state attorney, and the attorneys representing the Department of Juvenile Justice.

(2) A child who is adjudicated incompetent to proceed, and who has committed a delinquent act or violation of law, either of which would be a felony if committed by an adult, must be committed to the Department of Children and Family Services for treatment or training. A child who has been adjudicated incompetent to proceed because of age or immaturity, or for any reason other than for mental illness or retardation or autism, must not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services. For purposes of this section, a child who has committed a delinquent act or violation of law, either of which would be a misdemeanor if committed by an adult, may not be committed to the department or to the Department of Children and Family Services for restoration-of-competency treatment or training services.

(3) If the court finds that a child has mental illness, mental retardation, or autism and adjudicates the child incompetent to proceed, the court must also determine whether the child meets the criteria for secure placement. A child may be placed in a secure facility or program if the court makes a finding by clear and convincing evidence that:

(a) The child has mental illness, mental retardation, or autism and because of the mental illness, mental retardation, or autism:

1. The child is manifestly incapable of surviving with the help of willing and responsible family or friends, including available alternative services, and without treatment or training the child is likely to either suffer from neglect or refuse to care for self, and such neglect or refusal poses a real and present threat of substantial harm to the child's well-being; or

2. There is a substantial likelihood that in the near future the child will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive alternatives, including treatment or training in community residential facilities or community settings which would offer an opportunity for improvement of the child's condition, are inappropriate.

(4) A child who is determined to have mental illness, mental retardation, or autism, who has been adjudicated incompetent to proceed, and who meets the criteria set forth in subsection (3), must be committed to the Department of Children and Family Services and receive treatment or training in a secure facility or program that is the least restrictive alternative consistent with public safety. Any placement of a child to a secure residential program must be separate from adult forensic programs. If the child attains competency, then custody, case management, and supervision of the child will be transferred to the department in order to continue delinquency proceedings; however, the court retains authority to order the Department of Children and Family Services to provide continued treatment or training to maintain competency.

(a) A child adjudicated incompetent due to mental retardation or autism may be ordered into a secure program or facility designated by the Department of Children and Family Services for children with mental retardation or autism.

(b) A child adjudicated incompetent due to mental illness may be ordered into a secure program or facility designated by the Department of Children and Family Services for children having mental illnesses.

(c) Whenever a child is placed in a secure residential facility, the department will provide transportation to the secure residential facility for admission and from the secure residential facility upon discharge.

(d) The purpose of the treatment or training is the restoration of the child's competency to proceed.

(e) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure not later than 6 months after the date of commitment, or at the end of any period of extended treatment or training, and at any time the Department of Children and Family Services, through its service provider determines the child has attained competency or no longer meets the criteria for secure placement, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court and with the state attorney, the child's attorney, the department, and the Department of Children and Family Services.

(5)(a) If a child is determined to be incompetent to proceed, the court shall retain jurisdiction of the child for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency.

(b) Whenever the provider files a report with the court informing the court that the child will never become competent to proceed, the Department of Children and Family Services will develop a discharge plan for the child prior to any hearing determining whether the child will ever become competent to proceed and send the plan to the court, the state attorney, the child's attorney, and the attorneys representing the Department of Juvenile Justice. The provider will continue to provide services to the child until the court issues the order finding the child will never become competent to proceed.

(c) If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition. If, at the end of the 2-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency petition. If appropriate, the court may order that proceedings under chapter 393 or chapter 394 be instituted. Such proceedings must be instituted not less than 60 days prior to the dismissal of the delinquency petition.

(6)(a) If a child is determined to have mental illness, mental retardation, or autism and is found to be incompetent to proceed but does not meet the criteria set forth in subsection (3), the court shall commit the child to the Department of Children and Family Services and shall order the Department of Children and Family Services to provide appropriate treatment and training in the community. The purpose of the treatment or training is the restoration of the child's competency to proceed.

(b) All court-ordered treatment or training must be the least restrictive alternative that is consistent with public safety. Any placement by the Department of Children and Family Services to a residential program must be separate from adult forensic programs.

(c) If a child is ordered to receive competency restoration services, the services shall be provided by the Department of Children and Family Services. The department shall continue to provide case management services to the child and receive notice of the competency status of the child.

(d) The service provider must file a written report with the court pursuant to the applicable Florida Rules of Juvenile Procedure, not later than 6 months after the date of commitment, at the end of any period of extended treatment or training, and at any time the service provider determines the child has attained competency or will never attain competency, or at such shorter intervals as ordered by the court. A copy of a written report evaluating the child's competency must be filed by the provider with the court, the state attorney, the child's attorney, the Department of Children and Family Services, and the department.

(7) The provisions of this section shall be implemented only subject to specific appropriation.

History.--s. 4, ch. 96-398; s. 164, ch. 97-101; s. 31, ch. 97-238; s. 16, ch. 98-207; s. 72, ch. 2000-139; s. 30, ch. 2006-120; s. 24, ch. 2006-195.

Note.--Former s. 39.0517; s. 985.223.