

JUVENILE COURT  
POLICY/PROCEDURE

**COMPETENCY AND NGI EVALUATIONS**

POLICY

Pursuant to §938.295(2)(a) the court shall order an evaluation of the child if there is probable cause to believe the child has committed the alleged offense and there is reason to doubt the child's competency to proceed, or upon entry of a NGI plea under §938.30(4)(c).

PROCEDURE

Competency and NGI evaluations are not brokered through the contracted provider as is the case for psychological, psychiatric, and AODA evaluations. Therefore, the Court is responsible for assigning evaluators and payment.

The branch ordering the evaluation is responsible for:

1. Appointment of the evaluator.

a. The branch will contact an evaluator to determine if they are willing and able to complete the initial evaluation and written report within the prescribed time limits and if they are willing to complete subsequent three-month re-evaluations (only for Competency evaluations when education to competency is ordered) during the next 12 months, if necessary. Unless special circumstances exist, evaluations will be done on an out-patient basis or virtually. For children in the Detention center, it is preferable for the evaluator to meet with the child in JRC or virtually. If this is not possible, arrangements need to be made with the Sheriffs Office for transportation.

b. A list of evaluators is provided to assist the branch. The list is by no means all-inclusive, but merely an attempt to streamline this process. The listed evaluators have received special training on Competency and NGI evaluations. All are aware of the statutory time limits. Additionally they have expressed a willingness to meet with Detention residents in Detention or virtually. The branch is free to appoint a qualified evaluator not on the list, but would need to ascertain whether the evaluator feels qualified to complete, and testify to if necessary, this type of evaluation on a juvenile and if they are willing to complete subsequent three-month re-evaluations (only for Competency evaluations when education to competency is ordered). If they cannot commit to doing so, other evaluators should be contacted.

2. Preparation of the Order.

- a. Specify, in the order, the date by which the report must be filed so as to give the assigned attorneys a reasonable opportunity to review the report. A formatted order that specifies the questions to be addressed is available on the M: drive.
  - b. Email or fax to the evaluator a copy of the order, the petition, any social worker reports, and/or evaluations contained in the court file. If the court is aware of previous evaluations, it is helpful to inform the evaluator of that information.
  - c. Email or fax to the evaluator a copy of the JIPS order if three month re-evaluations are ordered.
  - d. Other copies of the orders are to be sent to the assigned attorneys, social worker, child, and parent(s)/guardian.
3. Distribution of the completed evaluation.
- a. The evaluator will efile the completed evaluation and their bill for service directly to the branch.
  - b. Copies of the evaluation should be sent to the assigned attorneys and the social worker.
  - c. The bill should be forwarded to the Courts Division Manager-Juvenile of the Clerk of Courts Office for payment.

### EXCEPTIONS

When an attorney requests, and the Court authorizes, an evaluator not on the approved list, it will be the attorney's responsibility to contact the evaluator and ask if the evaluator is qualified and is available to complete the evaluation(s) within the prescribed time limits. The attorney will notify the court of the evaluators acceptance, or refusal, within 24 hours for a child held in secure custody and within 48 hours for a child not held in secure custody. The branch will still be responsible for getting the order and other materials to the assigned evaluator.

### TIME LIMIT GUIDELINE

Competency Hearings should be held within 10 days for a child in secure custody and within 30 days for a child not held in secure custody. If the 10th or 30th day falls on a weekend or holiday, the hearing may be scheduled for the following work day. NGI Hearings are controlled by statutory time limits.

### EDUCATION TO COMPETENCY/ RE-EVALUATIONS

In the case of a competency evaluation being ordered and received wherein the evaluator recommends and the court finds that the juvenile is not competent to proceed but is likely to become competent to proceed within 12 months or within the time period of the maximum sentence that may be imposed on an adult for the most serious delinquent act with which the juvenile is charged, whichever is less, the court may proceed under a JIPS petition (or in certain circumstances, a Chapter 51 petition). The Court may elect to include a provision in the JIPS dispositional order that the juvenile cooperate with competency education. The Court must include a provision in the JIPS dispositional order that the juvenile be periodically re-evaluated with written reports every three months, as provided in § 938.30(5)(e). Every effort should be made to insure that the same evaluator who did the initial competency evaluation will do these periodic re-evaluations. As soon as possible after the JIPS dispositional hearing, clerks will notify the contracted provider of the need for competency education, will forward the court order for competency education and the evaluation to the provider, and will also forward the court order for re-evaluation to the assigned evaluator.

The contracted provider may communicate with the Social Worker to gather copies of the court report and any other pertinent documents, and will communicate with the Social Worker as the education process occurs. The education is complete when the juvenile can demonstrate an understanding of the court process to the educator and further demonstrate that the juvenile can likely assist in their defense. A variety of materials are utilized with the juvenile to assist in the education process.

The DCDHS Social Worker working with the juvenile will track timelines and contact the evaluator to insure that the re-evaluations are completed at three month intervals. The Social Worker will also coordinate with the branch clerk every three months to be sure that the re-evaluation report has been received. Once received, branch staff will provide the DA, the defense attorney and Social Worker with the re-evaluation report.

If the re-evaluation report indicates that the evaluator believes the juvenile has become competent, the court shall hold a hearing as soon as possible, no more than 10 days after the court receives the report. The clerk will schedule the hearing and notice all parties.

While not mandated by statute, consideration should also be given to scheduling a hearing under either of the following scenarios. First, if the evaluator believes that the juvenile is not yet competent, but still able to attain competence within the time that remains, and if the competency education has been deemed complete by the educator, the Court may wish to hold a hearing to review the matter. Alternatively, the Court may contact the contracted provider with the directive to have the competency education continue. The second scenario is if the evaluator believes that the juvenile is not yet competent and is unlikely to attain competence in the time that remains, the branch should consider holding a hearing to deal with the possible dismissal of the underlying delinquency petition and to discuss the status of the ongoing JIPS supervision.