

Juvenile Competency

Under Michigan law, youth have a due process right to be competent during courtroom proceedings.¹ To determine a youth’s competency to proceed in delinquency hearings, the evaluation must be made “in light of juvenile, rather than adult norms.”² Yet, many unanswered questions still remain: *Who is qualified to conduct juvenile competency evaluations? What should be reported back to the court? What should happen when a child is found incompetent?*

There are no guidelines to assist the court in deciding these key constitutional rights. **As a result, deeply troubled youth are lingering in detention, staff unequipped to deal with serious symptoms, courts are left without guidance, and families are left without options.**

Conventional standards for competency typically focused only on the effects of mental illness or developmental disability on an individual’s ability to understand and participate in his/ her defense. However, emerging research reveals that the age of a child is also a factor in the ability to understand and participate. The younger the child, the less able the child is to understand the court process based on their normal developmental stage.³

In June 2012, the Michigan Senate unanimously passed juvenile competency legislation (SB 246, 247). Mirroring those Senate bills, House bills 4555 and 4556 define a comprehensive process for addressing juvenile competency:

- **Incompetent to proceed** means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceedings or is unable to 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.⁴
- **A juvenile 10 years of age or older is presumed competent** to proceed unless the issue of competency is raised by a party. A juvenile less than 10 years of age is presumed incompetent to proceed.
- **Ultimately, a judge determines competency**, with consideration of documentation and expert witnesses. The court orders a competency evaluation to be conducted by a qualified forensic mental health examiner – a psychiatrist, psychologist, or DCH-certified social worker who meets ALL criteria. The evaluation shall be based on the juvenile adjudicative competence interview (JACI) or another interview method approved by the court.
- **Restoration** is the process by which education or services result in the child becoming competent to proceed in court. If the child is unable able to be restored, the court shall dismiss the charges against the juvenile.
- **Treatment** may be ordered by the court for a juvenile that is unable to be restored to competency. Treatment is narrowly defined for this population, limited only to those who are unable to be restored due to a serious emotional disturbance and after the court has dismissed the charges. If necessary, the court may order mental health services for 60 days, with potential for a 60 day extension.



“In juvenile competency hearings, competency evaluations should be made in light of juvenile, rather than adult norms.”

¹ *In re Carey*

² *In re Carey*

³ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief 1: Adolescent Legal Competence in Court.

⁴ Dusky Standard; *In re Carey*.

Frequently Asked Questions

Evaluating Juvenile Competency

- *Who may raise competency?* The defense attorney, prosecutor, or judge may raise the issue of competency at any time during the proceeding. At the time the question of the juvenile's competency is raised, the delinquency proceeding shall temporarily cease.
- *Who is a qualified forensic mental health examiner?* (a) a psychiatrist or psychologist who possesses experience or training in ALL of the following: 1) forensic evaluation procedures for juveniles; 2) evaluation or treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities; 3) clinical understanding of child and adolescent development; 4) familiarity with competency standards in this state.
- *What type of training is available to examiners?* The Michigan Department of Community Health shall review and endorse a training program for forensic mental health examiners who provide juvenile competency exams. The training is not mandatory for psychiatrists and psychologists. Licensed master's social workers, licensed professional counselors, and limited licensed psychologists can be considered a qualified mental health examiner IF they meet the qualifications AND successfully complete the DCH training.
- *What is reported back to the court?* - The evaluation shall be based on a juvenile adjudicative competence interview (JACI) or another interview method approved by the court. Based on that evaluation, the qualified forensic mental health examiner shall provide the court with an opinion as to whether the juvenile is competent to proceed, is incompetent to proceed, or is believed to be able to be restored to competency within a reasonable time period. The court has the final determination of an expert witness serving as a qualified forensic mental health examiner.

Restoration

Restoration is the process by which education or treatment results in a juvenile becoming competent to proceed.

- *How is restoration determined?* Before issuing a restoration order, the court shall hold a hearing to determine the least restrictive environment for completion of restoration order. The court may issue a restoration order that is valid for 60 days from the date of the initial finding of incompetency, with a potential 60-day extension.
- *Who is a qualified restoration provider?* An individual who the court determines, as a result of the opinion provided by the qualified forensic mental health examiner, has the skills and training necessary to provide restoration services.
- *What does the restoration provider report to the court?* The qualified restoration provider shall submit a report to the court and the qualified mental health examiner every 30 days, or sooner, updating on the progress of the restoration services.
 - *If able to be restored...* Resume the proceedings.
 - *If unable to be restored...* The court shall determine custody of the juvenile AND dismiss the charges against the juvenile.

Treatment

If a youth is found incompetent due to serious emotional disturbance, the court may in its discretion, order that mental health services be provided for 60 days, with potential for a 60 day extension.

- *Who pays for treatment?* The county in which the child resides is responsible for payment for treatment but it is expected that the majority of youth will qualify for Medicaid based on their serious emotional disturbance.