

2152.51 Definitions regarding child competency proceedings.

(A) As used in sections 2152.51 to 2152.59 of the Revised Code:

(1) "Competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense. A child is incompetent if, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.

(2) "Delinquent child proceeding" means any proceeding under this chapter.

(3) "A person who is at least moderately intellectually disabled" means "a person who is at least moderately mentally retarded," as defined in section 5123.01 of the Revised Code.

(4) "Person with intellectual disability" has the same meaning as in section 2951.041 of the Revised Code.

(B) Each juvenile court shall adopt rules to expedite proceedings under sections 2152.51 to 2152.59 of the Revised Code. The rules shall include provisions for giving notice of any hearings held under those sections and for staying any proceedings on the underlying complaint pending the determinations under those sections.

(C) At a competency-related hearing held under section 2152.53 or 2152.58 of the Revised Code, the child shall be represented by an attorney. If the child is indigent and cannot obtain counsel, the court shall appoint an attorney under Chapter 120. of the Revised Code or the Rules of Juvenile Procedure.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.52 Determination of competency.

(A)(1) In any proceeding under this chapter other than a proceeding alleging that a child is a juvenile traffic offender, any party or the court may move for a determination regarding the child's competency to participate in the proceeding.

(2) In any proceeding under this chapter other than a proceeding alleging that a child is a juvenile traffic offender, if the child who is the subject of the proceeding is fourteen years of age or older and if the child is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, it is rebuttably presumed that the child does not have a lack of mental capacity. This presumption applies only in making a determination as to whether the child has a lack of mental capacity and shall not be used or applicable for any other purpose.

(B) The court may find a child incompetent to proceed without ordering an evaluation of the child's competency or holding a hearing to determine the child's competency if either of the following applies:

(1) The prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination.

(2) The court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to participate in competency attainment services.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.53 Time periods for determination; hearing.

(A) Within fifteen business days after a motion is made under section 2152.52 of the Revised Code, the court shall do one of the following:

(1) Make a determination of incompetency under division (B) of section 2152.52 of the Revised Code;

(2) Determine, without holding a hearing, whether there is a reasonable basis to conduct a competency evaluation;

(3) Hold a hearing to determine whether there is a reasonable basis to conduct a competency evaluation.

(B) If the court holds a hearing, it shall make its determination within ten business days after the conclusion of the hearing. If the court determines that there is a reasonable basis for a competency evaluation or if the prosecuting attorney and the child's attorney agree to an evaluation, the court shall order a competency evaluation and appoint an evaluator.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.54 Evaluators; qualifications.

(A) An evaluation of a child who does not appear to the court to be a person who is at least moderately intellectually disabled shall be made by an evaluator who is one of the following:

(1) A professional employed by a psychiatric facility or center certified by the department of mental health to provide forensic services and appointed by the director of the facility or center to conduct the evaluation;

(2) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents.

(B) An evaluation of a child who appears to the court to be a person who is at least moderately intellectually disabled shall be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disability.

(C) If an evaluation is conducted by an evaluator of the type described in division (A)(1) or (2) of this section and the evaluator concludes that the child is a person who is at least moderately intellectually disabled, the evaluator shall discontinue the evaluation and notify the court within one business day after reaching the conclusion. Within two business days after receiving notification, the court shall order the child to undergo an evaluation by an evaluator of the type described in division (B) of this section. Within two business days after the appointment of the

new evaluator, the original evaluator shall deliver to the new evaluator all information relating to the child obtained during the original evaluation.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.55 Evaluation process.

(A) If a court orders a child to receive an evaluation under section 2152.53 of the Revised Code, the child and the child's parents, guardians, or custodians shall be available at the times and places established by the evaluator who conducts the evaluation. The evaluation shall be performed in the least restrictive setting available that will both facilitate an evaluation and maintain the safety of the child and community. If the child has been released on temporary or interim orders and refuses or fails to submit to the evaluation, the court may amend the conditions of the orders in whatever manner necessary to facilitate an evaluation.

(B) The court shall provide in its evaluation order that the evaluator shall have access to all relevant private and public records related to the child, including competency evaluations and reports conducted in prior delinquent child proceedings. The court may include an order for all relevant private and public records related to the child in the journal entry ordering the evaluation.

(C) Within ten business days after the court appoints an evaluator, the prosecuting attorney shall deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and that are in the prosecuting attorney's possession, except for any information that the prosecuting attorney determines would, if released, interfere with the effective prosecution of any person or create a substantial risk of harm to any person.

(D) Within ten business days after the court appoints an evaluator, the child's attorney shall deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and that are in the attorney's possession and that is not protected by attorney-client privilege.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.56 Competency assessment report.

(A) Upon completing an evaluation ordered pursuant to section 2152.53 of the Revised Code, an evaluator shall submit to the court a written competency assessment report. The report shall include the evaluator's opinion as to whether the child, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, is presently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report shall not include any opinion as to the child's sanity at the time of the alleged offense, details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could have been culpable for committing the offense.

(B) A competency assessment report shall address the child's capacity to do all of the following:

(1) Comprehend and appreciate the charges or allegations against the child;

(2) Understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian ad litem or court-appointed special assistant, and witnesses;

(3) Assist in the child's defense and communicate with counsel;

(4) Comprehend and appreciate the consequences that may be imposed or result from the proceedings.

(C) A competency assessment report shall include the evaluator's opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in division (B) of this section. If the evaluator concludes that the child's competency is impaired but that the child may be enabled to understand the nature and objectives of the proceeding against the child and to assist in the child's defense with reasonable accommodations, the report shall include recommendations for those reasonable accommodations that the court might make. If the evaluator concludes that the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, the report shall include an opinion as to the likelihood that the child could attain competency within the periods set forth in division (D)(2) of section 2152.59 of the Revised Code.

(D) If the evaluator concludes that the child could likely attain competency within the periods set forth in division (D)(2) of section 2152.59 of the Revised Code, the competency assessment report shall include both of the following:

(1) A recommendation as to the least restrictive setting for child competency attainment services that is consistent with the child's ability to attain competency and the safety of both the child and the community;

(2) A list of the providers of child competency attainment services known to the evaluator that are located most closely to the child's current residence.

(E) If the evaluator is unable, within the maximum allowable time for submission of a competency assessment report under division (A) of section 2152.57 of the Revised Code, to form an opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in division (B) of this section, the evaluator shall so state in the report. The evaluator shall also include recommendations for services to support the safety of the child or the community.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.57 Extension for filing report; admission into evidence; expenses; objections.

(A) An evaluator appointed by the court under section 2152.53 of the Revised Code shall submit a competency assessment report to the court as soon as possible but not more than forty-five calendar days after the order appointing the evaluator is issued. The court may grant one extension for a reasonable length of time if doing so would aid the evaluator in completing the evaluation.

(B) No competency assessment report obtained independently by the child may be admitted into evidence unless it is submitted to the court within the time allowed for submission of a report by

a court-appointed evaluator under division (A) of this section and meets all the criteria that apply to a court-ordered report.

(C) The court shall provide a copy of each competency assessment report it receives to the prosecuting attorney, the child's attorney, and the child's parents, guardian, or custodian. Counsel shall not disseminate the report except as necessary to receive clarification of the contents of the report.

(D) The expenses of obtaining an evaluation ordered by the court may not be recovered from the child or the child's parents or guardians. However, expenses associated with missed appointments may be assessed to the child's parents or guardians.

(E)(1) Before a hearing is held under section 2152.58 of the Revised Code, any party may object to the contents of a competency assessment report and by motion request an additional evaluation. If the court determines that an additional evaluation is appropriate and grants the motion, the evaluator shall complete an additional evaluation as soon as possible but not more than forty-five calendar days after the order allowing the additional evaluation is issued. An additional evaluation shall meet all the criteria that apply to a court-ordered evaluation.

(2) An additional evaluation allowed under division (E)(1) of this section shall be made at the moving party's expense unless the child is indigent. If the child is indigent, the county shall pay the costs of the additional evaluation. However, the county shall not be required to pay costs exceeding that which the county would normally pay for a competency evaluation conducted by a provider with which the court or county has contracted to conduct competency evaluations.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.58 Hearing to determine competency.

(A) Not less than fifteen nor more than thirty business days after receiving an evaluation under division (A) of section 2152.57 of the Revised Code or not less than fifteen nor more than thirty business days after receiving an additional evaluation under division (E) of that section, the court shall hold a hearing to determine the child's competency to participate in the proceeding.

(B) At a hearing held under this section, a competency assessment report may be admitted into evidence by stipulation. If the court contacts the evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

(C) In determining the competency of the child to participate in the proceeding, the court shall consider the content of all competency assessment reports admitted as evidence. The court may consider additional evidence, including the court's own observations of the child's conduct and demeanor in the courtroom.

(D)(1) Except as otherwise provided in this division, the court shall make a written determination as to the child's competency or incompetency based on a preponderance of the evidence within fifteen business days after completion of the hearing. The court, by journal entry, may extend the period for making the determination for not more than fifteen additional days. If the court extends the period for making the determination, it shall make the written determination within the period as extended.

(2) The court shall not find a child incompetent to proceed solely because the child is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. of

the Revised Code, is or has been institutionalized under Chapter 5123. of the Revised Code, or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.

2152.59 Procedure upon determination of competency or lack of competency.

(A) If after a hearing held pursuant to section 2152.58 of the Revised Code the court determines that a child is competent, the court shall proceed with the delinquent child's proceeding as provided by law. No statement that a child makes during an evaluation or hearing conducted under sections 2152.51 through 2152.59 of the Revised Code shall be used against the child on the issue of responsibility or guilt in any child or adult proceeding.

(B) If after a hearing held pursuant to section 2152.58 of the Revised Code the court determines that the child is not competent and cannot attain competency within the period of time applicable under division (D)(2) of this section, the court shall dismiss the charges without prejudice, except that the court may delay dismissal for up to ninety calendar days and do either of the following:

(1) Refer the matter to a public children services agency and request that agency determine whether to file an action in accordance with section 2151.27 of the Revised Code alleging that the child is a dependent, neglected, or abused child;

(2) Assign court staff to refer the child or the child's family to the local family and children first council or an agency funded by the department of mental health or department of developmental disabilities or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquent child or other criminal charges.

(C) If after a hearing held pursuant to section 2152.58 of the Revised Code the court determines that a child is not competent but could likely attain competency by participating in services specifically designed to help the child develop competency, the court may order the child to participate in services specifically designed to help the child develop competency at county expense. The court shall name a reliable provider to deliver the competency attainment services and shall order the child's parent, guardian, or custodian to contact that provider by a specified date to arrange for services.

(D) The competency attainment services provided to a child shall be based on a competency attainment plan described in division (E)(2) of this section and approved by the court. Services are subject to the following conditions and time periods measured from the date the court approves the plan:

(1) Services shall be provided in the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community. If the child has been released on temporary or interim orders and refuses or fails to cooperate with the service provider, the court may reassess the orders and amend them to require a more appropriate setting.

(2) No child shall be required to participate in competency attainment services for longer than is required for the child to attain competency. The following maximum periods of participation apply:

(a) If a child is ordered to participate in competency attainment services that are provided outside of a residential setting, the child shall not participate in those services for a period exceeding three months if the child is charged with an act that would be a misdemeanor if committed by an adult, six months if the child is charged with an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, or one year if the child is charged with an act that would be a felony of the first or second degree, aggravated murder or murder if committed by an adult.

(b) If a child is ordered to receive competency attainment services that are provided in a residential setting that is operated solely or in part for the purpose of providing competency attainment services, the child shall not participate in those services for a period exceeding forty-five calendar days if the child is charged with an act that would be a misdemeanor if committed by an adult, three months if the child is charged with an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, six months if the child is charged with an act that would be a felony of the first or second degree if committed by an adult, or one year if the child is charged with an act that would be aggravated murder or murder if committed by an adult.

(c) If a child is ordered into a residential, detention, or other secured setting for reasons other than to participate in competency attainment services and is also ordered to participate in competency attainment services concurrently, the child shall participate in the competency attainment services for not longer than the relevant period set forth in division (D)(2)(a) of this section.

(d) If a child is ordered to participate in competency attainment services that require the child to live for some but not all of the duration of the services in a residential setting that is operated solely or in part for the purpose of providing competency attainment services, the child shall participate in the competency attainment services for not longer than the relevant period set forth in division (D)(2)(b) of this section. For the purpose of calculating a time period under division (D)(2)(d) of this section, two days of participation in a nonresidential setting shall equal one day of participation in a residential setting.

(3) A child who receives competency attainment services in a residential setting that is operated solely or partly for the purpose of providing competency attainment services is in detention for purposes of section 2921.34 and division (B) of section 2152.18 of the Revised Code during the time that the child resides in the residential setting.

(E)(1) Within ten business days after the court names the provider responsible for the child's competency attainment services under division (D) of this section, the court shall deliver to that provider a copy of each competency assessment report it has received for review. The provider shall return the copies of the reports to the court upon the termination of the services.

(2) Not later than thirty calendar days after the child contacts the competency attainment services provider under division (C) of this section, the provider shall submit to the court a plan for the child to attain competency. The court shall provide copies of the plan to the prosecuting attorney, the child's attorney, the child's guardian ad litem, if any, and the child's parents, guardian, or custodian.

(F) The provider that provides the child's competency attainment services pursuant to the competency attainment plan shall submit reports to the court on the following schedule:

(1) A report on the child's progress every thirty calendar days and on the termination of services;

(2) If the provider determines that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency, a report informing the court of the determination within three business days after making the determination;

(3) If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community, a report informing the court of the determination within three business days after making the determination;

(4) If the provider determines that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, with or without reasonable accommodations to meet the criteria set forth in division (B) of section 2152.56 of the Revised Code, a report informing the court of that determination within three business days after making the determination. If the provider believes that accommodations would be necessary or desirable, the report shall include recommendations for accommodations.

(5) If the provider determines that the child will not achieve the goals of the plan within the applicable period of time under division (D)(2) of this section, a report informing the court of the determination within three business days after making the determination. The report shall include recommendations for services for the child that would support the safety of the child or the community.

(G) The court shall provide copies of any report made under division (F) of this section to the prosecuting attorney, the child's attorney, and the child's guardian ad litem, if any. The court shall provide copies of any report made under division (F) of this section to the child's parents, guardian, or custodian unless the court finds that doing so is not in the best interest of the child.

(H)(1) Within fifteen business days after receiving a report under division (F) of this section, the court may hold a hearing to determine if a new order is necessary. To assist in making a determination under division (H) of this section, the court may order a new competency evaluation in accordance with section 2152.53 of the Revised Code. Until a new order is issued or the required period of participation expires, the child shall continue to participate in competency attainment services.

(2) If after a hearing held under division (H)(1) of this section the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the child attain competency within the relevant period of time under division (D)(2) of this section.

(3) If after a hearing held under division (H)(1) of this section the court determines that the child has not or will not attain competency within the relevant period of time under division (D)(2) of this section, the court shall dismiss the delinquency complaint without prejudice, except that the court may delay dismissal for up to ninety calendar days and do either of the following:

(a) Refer the matter to a public children services agency and request that agency determine whether to file an action in accordance with section 2151.27 of the Revised Code alleging that the child is a dependent, neglected, or abused child;

(b) Assign court staff to refer the child or the child's family to the local family and children first council or an agency funded by the department of mental health or department of developmental disabilities or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquency or other criminal charges.

(4) A dismissal under division (H)(3) of this section does not preclude a future delinquent child proceeding or criminal prosecution as provided under section 2151.23 of the Revised Code if the child eventually attains competency.

(5) If after a hearing held under division (H)(1) of this section the court determines that the child has attained competency, the court shall proceed with the delinquent child's proceeding in accordance with division (A) of this section.

(6) A dismissal under this section does not bar a civil action based on the acts or omissions that formed the basis of the complaint.

Added by 129th General Assembly File No. 29, HB 86, § 1, eff. 9/30/2011.