

By Senator Lawson

6-00363-09

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1                   A bill to be entitled  
2           An act relating to competency in juvenile proceedings;  
3           amending s. 985.19, F.S.; requiring an evaluation of  
4           mental competency to proceed for every child 10 years  
5           of age or younger who is the subject of a court  
6           hearing; providing an effective date.

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8   Be It Enacted by the Legislature of the State of Florida:

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10           Section 1. Subsection (1) of section 985.19, Florida  
11           Statutes, is amended to read:

12           985.19 Incompetency in juvenile delinquency cases.—

13           (1) If, at any time prior to or during a delinquency case,  
14           the court has reason to believe that the child named in the  
15           petition may be incompetent to proceed with the hearing, the  
16           court on its own motion may, or on the motion of the child's  
17           attorney or state attorney must, stay all proceedings and order  
18           an evaluation of the child's mental condition. An evaluation  
19           shall be ordered for a child 10 years of age or younger.

20           (a) A ~~Any~~ motion questioning the child's competency to  
21           proceed and any subsequent motions, notice of hearing, order, or  
22           other legal proceedings relating to the motion must be served  
23           upon the child's attorney, the state attorney, the attorneys  
24           representing the department ~~of Juvenile Justice~~, and the  
25           attorneys representing the Department of Children and Family  
26           Services. Thereafter, any motion, notice of hearing, order, or  
27           other legal pleading relating to the child's competency to  
28           proceed with the hearing must be served upon the child's  
29           attorney, the state attorney, the attorneys representing the

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30 department ~~of Juvenile Justice~~, and the attorneys representing  
31 the Department of Children and Family Services.

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

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

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

54 (e) For incompetency evaluations related to mental  
55 retardation or autism, the court shall order the Agency for  
56 Persons with Disabilities to examine the child to determine if  
57 the child meets the definition of "retardation" or "autism" as  
58 defined in s. 393.063 and, if so, whether the child is competent

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59 to proceed with delinquency proceedings.

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

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

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

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

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88 attorneys representing the department ~~of Juvenile Justice~~.

89 Section 2. This act shall take effect July 1, 2009.