

XXVII. MENTAL COMPETENCY PROCEEDINGS

A. Code Section: O.C.G.A. §15-11-150 - 15-11-155

B. Procedure:

1. After the filing of a petition alleging delinquency or unruliness

- a. If there is reason to believe the child may not be mentally competent:
 - 1) A motion may be made by the court on its own motion or by the attorney representing the child, the guardian ad litem, or the attorney for the state, for a mental competency evaluation.
 - 2) An order issues for an evaluation of the child's mental condition.
 - 3) Time limits are tolled for adjudication and disposition pending the evaluation and adjudication and disposition of the issue of mental competency.

2. An examination of the child shall be made by a qualified examiner, a licensed psychologist or psychiatrist with expertise in child development and trained in forensic evaluation procedures.

- a) The court provides the examiner with information necessary to understand the petition, including law enforcement records and court records. The child's attorney provides any other records deemed necessary.
- b) The examiner submits a report to the court within 30 days of the examiner's receipt of the court order. The court may grant an extension of time.
- c) The examiner's report is to contain:
 - 1) The reason for the evaluation;
 - 2) Evaluation procedures used, including psychometric instruments, records reviewed, identity of persons interviewed;
 - 3) Results of the mental exam, including the diagnosis; a description of psychiatric symptoms; a description of cognitive deficits in the child's ability to:
 - a) understand and appreciate the nature and object of the proceedings;
 - b) comprehend the child's situation in relationship to the proceedings;
 - c) render assistance to the defense attorney.
 - 4) Examiner's opinion regarding the potential significance of the child's mental competency, strengths, and deficits;
 - 5) Examiner's opinion whether the child should be considered mentally competent or incompetent;
 - 6) If the child is considered to be incompetent, the report is to contain the examiner's:
 - a) diagnosis of probability child will attain competency;
 - b) recommendations for general level and type of remediation necessary;

- c) recommendations for modification of court procedure to compensate for the child's mental competency weakness.

3. Prehearing procedures after the examination

- a) Examiner's report is received by the court, the attorney representing the child, the guardian ad litem, District Attorney or staff member, and the state's attorney no later than 5 working days after the court receives the report.
- b) Motions for additional examinations by other qualified examiners may be made by the court or by any party.
 - 1) Only one examination by an employee of the Department of Human Resources.
 - 2) No statement made by the child in the course of evaluation, hearing, or other proceedings in the competency proceeding shall be admitted against the child in any future proceeding in the state's case-in-chief.

4. Hearing of Mental Incompetency is to be held within 60 days after the initial court order for evaluation. The hearing may be continued for good cause shown.

- a) Notice to parties shall be given at least 10 days prior to the hearing.
- b) Defense and State's attorneys have the right to present evidence, call and examine witnesses, cross-examine witnesses, and present arguments.
- c) Qualified examiner is the Court's witness and subject to cross-examination by the State and by the defense.
- d) Burden of proof that the child is not mentally competent rests with the defense.
- e) Standard of proof is Preponderance of the Evidence.

5. Order is to give a finding of fact based on the evaluations by qualified examiners appointed by the court or hired by the parties.

- a) Order to be transmitted to the parties within 10 days following the issuance of findings.
- b) If the child is **found mentally competent**, the suspended proceedings resume with time limits running from the date of the order.
- c) If the child is **found not mentally competent**, the child may be adjudicated dependent and an alleged misdemeanor or unruly charge shall be dismissed without prejudice.
 - 1) As long as incompetency exists, the child is not subject to a discretionary transfer to superior court; not subject to adjudication, disposition, or modification of disposition.
 - 2) The court shall appoint a guardian ad litem, if one has not previously been appointed.
 - 3) The court shall appoint a Plan Manager.

6. Case may be transferred to the county of child's residence after adjudication of dependency, unless the alleged act would be a felony.

- a) Sending court sends certified copies of all legal, social history, health or mental

records on file with the clerk of the court.

- b) Jurisdiction of the sending court is terminated but may be restored to sending court if child's mental competence is restored.

7. **Plan Manager** can be the child's guardian ad litem or any other person under the supervision of the court.

- a) Plan Manager shall present a mental competency plan to the court within 30 days of adjudication. The court may grant an extension of time.

1) Plan Manager shall:

- a) collect all previous histories of the child, including previous evaluations, assessments and school records;
- b) convene a meeting to develop a mental competency plan for disposition;
- c) convene all parties involved in developing the plan in order to identify persons needed to testify at each 6 month review hearing;
- d) upon child reaching age 18, make referrals to appropriate adult services.

2) The Plan shall include:

- a) the specific defects the plan is attempting to address: supervision, mental competency, mental competency restoration;
- b) an outline of specific provisions for supervision of the child and for protection of the community;
- c) an outline of plan achievable within limits of resources for treatment, habilitation, support and supervision services;
- d) identification of persons responsible for each element of the plan.

- b) Development of the Mental Competency Plan is made at meeting(s) of all relevant parties, such as the parent, guardian, or legal custodian of the child; attorney representing child; attorney representing the State; guardian al litem; mental health or mental retardation representative; probation officer or caseworker for child; school representative; representative of division of public health; child protective services worker; representatives of public and private resources to be utilized in the plan; family members showing interest and involvement in the child's well-being.

8. **Dispositional Hearing** shall be within 30 days after the mental competency plan has been submitted to the court. The purpose of the hearing is to approve the mental competency plan.

- a) At least 10 days notice shall be given to all persons required to be notified.
- b) Witnesses are to be heard and the victim given the opportunity to be heard and make a victim impact statement.

- c) Judge may sequester witnesses to protect privilege and confidentiality of the child.
- d) The order shall incorporate the mental competency plan.
 - 1) Time limits for felony allegations up to two years from the date of adjudication; order may be extended for additional two year periods.
 - 2) Time limits for misdemeanor or unruly allegations up to 120 days following the disposition order incorporating the mental competency plan; order may *not* be extended.
 - 3) Upon child reaching age 18, the plan manager shall make a referral to the appropriate adult services.

9. Review Hearings

- a) Each 6 months
- b) At any time upon a change of circumstances alleged in motion of the child's attorney, the guardian ad litem, the attorney for the State, the plan manager, or the court's own motion.
- c) Purpose: to review the mental competency plan and consider proposed amendments to the plan
- d) At least 10 days prior notice to persons required to be notified and to witnesses to be heard.
- e) Judge may sequester witnesses
- f) Judge to consider whether the petition alleging delinquency or deprivation should be withdrawn, maintained, dismissed on grounds other than child's competency. If withdrawn, State may refile felony petition if child is later determined to be mentally competent.
- g) Order: enter findings of fact as to child's competency; amend the competency plan; if found child may be competent, the process begins again with another evaluation. The court may commit the child to the appropriate agency or agencies for services under Title 37.
- h) District Attorney may seek civil commitment if, in disposition or reviews, the court determines the child meets the criteria for commitment and services available under Title 37.

10. Rehearing on issue of child's mental incompetency may be granted at any time upon a motion of any party showing there are reasonable grounds to believe the child is now mentally competent. Grant of a rehearing starts the process anew with an evaluation by a qualified examiner.