



COMMONWEALTH of VIRGINIA

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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DARYL WASHINGTON, LCSW
COMMISSIONER

JUVENILE COMPETENCY TO STAND TRIAL PROCEDURES

§§ 16.1-356 - 16.1-361 of the *Code of Virginia*

§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

- Issue of juvenile's competency to stand trial is raised by the Commonwealth's Attorney, the defense attorney or the court, sua sponte, when a juvenile charged with a delinquency offense is before a juvenile and domestic relations district court. (§ 16.1-356A)
- Court may order initial evaluation of competency to stand trial. (§ 16.1-356 A) (Virginia Supreme Court model order form DC-522: Order for Evaluation to Determine Competency to Stand Trial - Juvenile)
- Within 96 hours, attorneys provide required information to evaluator. (§ 16.1-356 C)
 - Copy of warrant or petitions;
 - Names and addresses of the attorney for the Commonwealth, the defense attorney for the juvenile, and the judge ordering the evaluation;
 - Information about the alleged offense;
 - Psychiatric records and other relevant information; and
 - Summary of the reasons for the evaluation request.
- Outpatient evaluation performed by court appointed evaluator. (§ 16.1-356 B)
- Evaluation report filed with court within 14 days of receipt of all information by court appointed evaluator. (§ 16.1-356 D and E)
- Hearing on competency if requested by attorney or required under § 16.1-357 B. (§ 16.1-356 F)

§ 16.1-357. Disposition when juvenile found incompetent.

- Upon finding that the juvenile is incompetent, court shall order services to restore competency for up to three (3) months. (§ 16.1-357 A and B)
- A copy of the order shall be forwarded to the Commissioner of the Department of Behavioral Health and Developmental Services (DBHDS), who shall arrange for the provision of restoration services. (§ 16.1-357 A). Please mail, fax or email copies of the needed information
 - **Court order for restoration to competency** (Virginia Supreme Court model order form DC-523: Order for Provision of Restoration Services to Incompetent Juvenile);
 - **Initial court ordered evaluation of competency** (§ 16.1-357 A);
 - **All information provided to the initial evaluator under § 16.1-356 C;**
 - **Petitions or warrants;**
 - **Names and addresses of the attorney for the Commonwealth, the defense attorney for the juvenile, the guardian ad litem for the juvenile (if one has been appointed), and the judge ordering restoration services;**
 - **If the court has appointed a guardian ad litem for the juvenile, a copy of that court order (DC-514);**
 - **Location of juvenile; and**
 - **Name and contact information for parent or guardian of juvenile.**

to:

Benjamin Skowysz, LCSW, CSOTP
DBHDS Juvenile Justice Supervisor
Virginia Department of Behavioral Health and Developmental Services
P.O. Box 1797
Richmond, Virginia 23218-1797
Ben.skowysz@dbhds.virginia.gov

- **To expedite the initiation of the provision of competency restoration services to a juvenile, the information may also be faxed to Mr. Skowysz at facsimile (804) 786-0197. Mr. Skowysz may be reached at telephone (804) 786-9087 or (804) 840-0280.**
- Schedule next hearing on issue of competency in 80 to 85 days during restoration phase because the language of § 16.1-357 B limits the duration of restoration services to 3 months. **If continued restoration services are needed, the court could provide a new court order to DBHDS in order to guarantee the uninterrupted provision of restoration services.**

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- Upon receipt of valid court order and accompanying information listed above, DBHDS authorizes a qualified Restoration Counselor to provide juvenile competency restoration services.
- Restoration Counselor has a face-to-face intake meeting with juvenile's parent or legal guardian to explain the program and procedures, and to obtain the requisite consents.
- Restoration Supervisor conducts admission competency evaluation and with the Restoration Counselor, develops the competency restoration services plan within 14 calendar days of receipt of the authorization for services.
- Upon completion of the competency restoration services plan, restoration services will typically be provided to the juvenile up to 2 to 3 times weekly, in the least restrictive environment permitted by the court.
- After providing restoration services to a juvenile, if the Restoration Counselor believes the juvenile's competency is restored, the Counselor will arrange for an evaluator to conduct an evaluation of the juvenile's competency to stand trial. Upon receipt of the evaluation report, with the approval of the DBHDS Director of Juvenile Competency Services, the Restoration Supervisor will forward the evaluation report as prescribed in § 16.1-356 E to the court and attorneys, and request that a hearing be scheduled on the issue of competency. (§ 16.1-357C)
- After providing restoration services to a juvenile, if the Restoration Counselor believes the juvenile continues to be incompetent but can be restored, the Counselor will arrange for an evaluator to conduct an evaluation of competency to stand trial. Upon receipt of the evaluation report, with the approval of the DBHDS Director of Juvenile Competency Services, the Restoration Supervisor will forward this evaluation to the court and the attorneys prior to the expiration of the court order for restoration services, and prior to the court hearing required pursuant to § 16.1-357 B. (§ 16.1- 357 B)
- After providing restoration services to a juvenile, if the Restoration Counselor and Supervisor believe the juvenile is likely to remain incompetent for the foreseeable future, the provider will arrange for an evaluator to conduct an evaluation of competency to stand trial. Upon receipt of the evaluation report, with the approval of the DBHDS Director of Juvenile Competency Services, the Restoration Supervisor will forward the evaluation report as prescribed in § 16.1-356 E and § 16.1-358 to the court and attorneys, and request that a hearing be scheduled on the issue of competency. (§ 16.1-358)

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- At the end of three (3) months from the date restoration is ordered under § 16.1-357 A, the court shall hold a hearing on the issue of competency (§ 16.1-357B).
- The Court's options are
 - Find the juvenile competent; or
 - If the court finds the juvenile incompetent but restorable to competency, it may order continued restoration services for up to three (3) months; or
 - Find the juvenile is incompetent and is likely to remain so for the foreseeable future.

§ 16.1-358. Disposition of the unrestorably incompetent juvenile.

- If the court finds that the juvenile is incompetent and is likely to remain so for the foreseeable future, it shall order that the juvenile
 - Be committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2;
 - Be certified pursuant to § 37.2-806;
 - Have a child in need of services petition filed on his behalf pursuant to § 16.1-260 D; or
 - Be released. (§ 16.1-358)
- If not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed
 - One (1) year from the date of arrest for a misdemeanor, or
 - Three (3) years from the date of arrest for a felony. (§ 16.1-358)

§ 16.1-360. Disclosure by juvenile during evaluation or restoration; use at guilt phase of trial adjudication or disposition hearing.

- No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation or during competency restoration services may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence. (§ 16.1-360)

For additional information, please contact

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