

Juvenile Competency Reference Guide

What Is Competency to Stand Trial?

A juvenile is incompetent if, due to mental illness, due to developmental disability, or otherwise due to a lack of mental capacity, the juvenile is presently incapable of understanding the nature and objective of proceedings against the juvenile or of assisting in the juvenile's defense. [R.C. 2152.51(A)(1)]

- A juvenile who is found incompetent may not be adjudicated delinquent, tried, or convicted unless and until the juvenile attains competency.
- A juvenile must be competent to make the decision to waive the right to counsel and/or to enter a guilty plea.
- The issue of a juvenile's competency is not applicable to proceedings involving allegations that a juvenile is unruly or a juvenile traffic offender. [R.C. 2152.52(A)(1)]

Competency Determination – Hearing Not Required [R.C. 2152.52(B)]:

A juvenile court may find a juvenile incompetent to participate in the proceedings without a hearing if either:

- The prosecutor, the juvenile's attorney, and at least one of the juvenile's parents, guardians, or custodians agree to the determination. [R.C. 2152.52(B)(1)] or;
- The court relies on a previous determination that the juvenile was not competent and competency is not attainable. [R.C. 2152.52(B)(2)]

Competency Determination – Hearing Required

Except as provided in R.C. 2152.52(B), once the issue of competency has been raised the court must hold a hearing on the issue, at which the accused juvenile must be represented by counsel. [R.C. 2152.51(C)]

Raising the Issue of Competency

Juveniles aged 14 and older who are not otherwise found to have a mental illness or developmental disability are presumed to be competent. [R.C. 2152.52(A)(2)]

- This is a rebuttable presumption, and the court is the final arbiter as to the juvenile's competency.

Note: There is not presumption for or against competency for juveniles under the age of 14. Thus, courts should still only address competency if the issue is raised.

Who Can Raise Competency?
[R.C. 2152.52(A)(1)]

Any party to a juvenile proceeding can raise the issue.

When can competency be raised?
[R.C. 2152.52(A)(1)]

The issue of competency can be raised at any time.



Timing of hearing:

Under R.C. 2152.35(A), within 15 business days of the motion the court must:

- Make a determination of incompetency under R.C. 2152.52(B) (by the agreement of the prosecutor, the juvenile’s attorney, and at least one of the juvenile’s parents, guardians, or custodians agree to the determination, or based on a prior determination), or;
- Determine, without a hearing, if there is a reasonable basis to order a competency evaluation, or;
- Hold a hearing to determine whether there is a reasonable basis to order such an evaluation.
 - Courts have 10 business days to make this determination after the conclusion of the hearing. [R.C. 2152.53(B)]

If the court determines that there is a reasonable basis to order a competency evaluation, or if the prosecuting attorney and the child’s attorney agree to an evaluation, the court shall order an evaluation and appoint an evaluator. [R.C. 2152.53(B)]

- The evaluation is required to be submitted to the court as soon as possible, but no more than 45 calendar days from issuance of the order. The court may grant one extension for a reasonable length of time. [R.C. 2152.57(A)]

Once a court receives the evaluation, the court must hold a hearing to determine whether the juvenile is competent. The hearing must be not less than 15 nor more than 30 business days after the date the court received the evaluation. [R.C. 2152.58(A)]

Always check local rules for specific guidance on timing and notice under R.C. 2152.51(B).

How is competency determined?

Courts have authority to order competency evaluations under R.C. 2152.53(B) (see below), and the prosecution or defense may submit relevant evidence at the hearing.

The court cannot, under R.C. 2152.58(D) (2), find incompetency solely based on the juvenile’s:

- Current or previous treatment for mental illness under R.C. 5122, or;
- Institutionalization or treatment for intellectual disability under R.C. 5123, or;
- Because the juvenile is receiving medication, even if incompetence may occur without the medication.

If the court does not make a finding under R.C. 2152.52(B), it must consider all competency evaluations in evidence and may consider additional evidence in determining whether the juvenile, due to mental illness, developmental disability, or a lack of mental capacity, is presently incapable of understanding the nature and objective of the proceedings or is incapable of assisting in the juvenile’s own defense. [R.C. 2152.58(C)]

The hearing/evidentiary procedure is outlined in R.C. 2152.58 (B) & (C). *Note: The additional evidence the court may consider includes, but is not limited to, the juvenile’s conduct and demeanor in the courtroom.*



Court-Ordered Competency Evaluations

Courts may order one or more professional evaluations of a juvenile’s competency for the court’s consideration in making a competency determination.

Who conducts the evaluation? [R.C. 2152.54]

The revised code dictates that juveniles who have a moderate level of intellectual disability¹ be evaluated by a psychiatrist or clinical psychologist [see R.C. 5122.01 (I)] with specialized education, training, or experience with forensic evaluations of juveniles with intellectual disabilities.

Evaluations for juveniles who do not appear to have a moderate or greater level of intellectual disability may be conducted by professionals employed at psychiatric facilities or centers certified by OMHAS to provide forensic services, or by licensed clinical psychologists with specialized education, training, or experience with forensic evaluations of juveniles or adolescents. [R.C. 2152.54]

Is a participation with court-ordered competency evaluation mandatory? [R.C. 2152.55(A)]

Yes. If a court orders an examination, the juvenile must submit to the evaluation.

Juvenile evaluations must take place in the least restrictive setting available that will facilitate the evaluation and maintain the safety of the juvenile and community, and the juvenile, along with the juvenile’s parents, guardians, or custodians must appear at the evaluator’s request. [R.C. 2152.55(A)]

What must be included in the evaluation report? [R.C. 2152.56(B)]

The report must detail the evaluator’s findings as to the juvenile’s competency, including whether such finding is attributable to mental illness, developmental disability, or other lack of mental capacity. The report must address the juvenile’s capacity to:

- Comprehend and appreciate the charges against them;
- Understand the adversarial nature of the proceedings and the roles of the parties to the case;
- Assist in the juvenile’s own defense and communicate with the juvenile’s attorney;
- Comprehend and appreciate the potential consequences of the proceedings.

¹ “Moderate level of intellectual disability” is defined by R.C. 5123.01 (P) as “the condition in which a person, following a comprehensive evaluation, is found to have at least moderate deficits in overall intellectual functioning, as indicated by a full-scale intelligence quotient test score of fifty-five or below, and at least moderate deficits in adaptive behavior, as determined in accordance with the criteria established in the fifth edition of the diagnostic and statistical manual of mental disorders published by the American psychiatric association.”

What is the time frame for an evaluation? [R.C. 2152.57(A)]

Evaluations are required to be submitted to the court as soon as possible, but no more than 45 calendar days from issuance of the order. The court may grant one extension for a reasonable length of time.



The report must also include the evaluator’s opinion as to whether an impaired juvenile might be “enabled to understand” the nature and objective of the proceedings or assist in the juvenile’s defense, with recommendations for reasonable accommodations the court could make.

If the evaluator finds that reasonable accommodations would not suffice, the report must include an opinion on whether competency could be attained within the R.C. 2152.59(D)(2) statutory timeframes, and, if applicable [R.C. 2152.56(D)]:

- A recommendation as to the least restrictive setting for competency attainment services
- A list of such providers located most closely to the juvenile’s residence.

Can statements made to examiners during competency evaluations or hearings be used against the defendant? [R.C. 2152.59(A)]

No. Statements made by the juvenile during evaluations or hearings cannot be used to determine the issue of responsibility or guilt.

Who pays the costs of the evaluation? [R.C. 2152.57(D)]

Costs of juvenile evaluations are borne by the court, but cost of missed evaluation appointments may be assessed to the juvenile, or the juvenile’s parents/guardians.

What about a second opinion? [R.C. 2152.57(E)]

Any party to a juvenile case may object to the contents of a competency assessment and, by motion, request an additional evaluation. The court may, in its discretion, order an additional competency evaluation if appropriate, at the cost of the moving party except in the case of indigent juveniles.

Competency Determinations

Once a hearing on competency has been conducted, and any and all evaluations are in evidence, the court then makes the final determination as to competency. Juvenile courts have 15 business days to make a determination following the competency hearing, subject to one additional 15-day extension. The burden of proof at a competency hearing is proof by a preponderance of the evidence. [R.C. 2152.58(D)(1)]

What are the types of competency determinations?

1. **Competent:**

After consideration of all evidence and/or testimony, the court determines that the juvenile is competent to proceed with the alleged delinquent child’s proceedings as provided by law. [R.C. 2152.59(A)]

Result: Juvenile is competent. Case proceeds as normal.



2. Not competent, but likely to attain competency within the statutory timeframe:

The court finds that the juvenile is currently not competent but the juvenile could likely attain competency if the juvenile participates in a competency attainment plan subject to time limitations below. [R.C. 2152.59(C) and (D)]

Result: Juvenile is found not competent and may be ordered to participate in the competency attainment plan.

3. Not competent, the juvenile cannot attain competency within the statutory timeframe:

The court finds that the juvenile does not understand the nature and objective of the proceedings against them or cannot assist in the juvenile’s own defense and cannot attain competency within the R.C. 2152.59(D)(2) timeframe. [R.C. 2152.59(B)]

Result: The Court must dismiss the charges without prejudice but may delay the proceedings for up to ninety days to either:

- *Refer the case to children services for a determination as to the appropriateness of an abuse, neglect, or dependency proceeding, or;*
- *Make a referral for the juvenile or the juvenile’s family to an appropriate agency or secure services that would reduce the potential for additional delinquency proceedings or criminal charges against the juvenile.*

Does a juvenile receive credit for confinement time while under evaluation, treatment, or commitment for competency?

If an accused juvenile is sent to competency attainment services in a residential setting operated solely or partly for providing such services, the juvenile is entitled to credit for that time under detention. [R.C. 2152.59(D)(3)]

What effect does a dismissal for incompetency have on future prosecution for the offense(s)?

A dismissal due to incompetency under does not bar further prosecution for those offenses. Prosecutor may pursue the same charges if the juvenile attains competency within the statute of limitations. [R.C. 2152.59(B)]

Maximum Length of Competency Attainment Services

When an accused juvenile is found not competent to participate in the proceedings, the evaluator and the court must determine whether there is a substantial probability that the juvenile may attain competency within the statutory timeframe based on the nature of the offenses involved.

The “substantial probability” language used with adults does NOT appear to apply to juvenile proceedings –the determination is whether a juvenile is likely or not likely to attain competency within the statutory timeframes provided under R.C. 2152.59(D)(2).



For Juvenile Cases

The revised code restricts the maximum amount of time allowed for competency attainment services by offense level and by the type of treatment being ordered.² [R.C. 2152.59(D) and (E)]

² Note the provisions of R.C. 2152.59(D) (2) (d). A child that is required to attend competency attainment for which some, but not all, of the program is residential is subject to the time frames laid out in (D) (2) (b), with every two days of non-residential treatment counted as 1 day of residential treatment.

Time Clock for Competency-Restoration Treatment

The time periods for restoration are measured from the date the court approves the competency attainment plan. [R.C. 2152.59(D)]

Decompensation and Restoration Timelines

What happens when a juvenile is restored to competency within the statutory timeframe, but then the juvenile’s circumstances change, and the juvenile is found no longer competent to participate in the proceedings?

The above question has seemingly not been addressed in any appellate decisions related to juvenile proceedings. However, in the adult system the question has been addressed as follows:

- [*State v. Hudkins, 2022-Ohio-249 \(12th Dist.\)*](#) held the time period for restorative treatment does not begin anew or “restart” when there is a period of competency in between incompetency findings.
- [*State v. Henderson, 2014-Ohio-2991 \(5th Dist.\)*](#) held that an entirely new restoration period commenced and the deadline for continuing jurisdiction was extended.

(*Hudkins* distinguished *Henderson* by finding that *Henderson* was a unique and unusual fact pattern.)

Offense	Maximum time in competency attainment outside of residential setting R.C. 2152.59(D)(2)(a)	Residential setting operated for sole purpose of competency attainment R.C. 2152.59(D)(2)(b)	Residential, detention, or other secured setting for purposes other than competency attainment R.C. 2152.59(D)(2)(c)
Aggravated Murder, Murder, or an attempt to commit such offenses	1 year	1 year	1 year
F1 and F2 offenses	1 year	6 months	1 year
F3, F4, and F5 offenses	6 months	3 months	6 months
Misdemeanors	3 months	45 days	3 months



Competency Attainment Review Hearings

When an accused juvenile is found not competent to participate in the proceedings but has been found to be able to attain competency and is participating in competency attainment services, the revised code dictates timeframes for required written reporting by treatment providers and deadlines for hearings after those reports are received.

When must treatment providers report to the court?

The provider must first provide a competency attainment plan for the juvenile. [R.C. 2152.59(E)]

Treatment providers must report to the court: [R.C. 2152.59(F)]

- If the provider believes the juvenile is capable of understanding the nature and objective of the proceedings against them and of assisting in the juvenile's defense;
- Every 30 calendar days while the juvenile is engaged in competency attainment services;
- Upon termination of services;
- Within 3 days of a determination that the juvenile is not adequately cooperating with treatment;
- Within 3 days of a determination that the current setting is no longer the least restrictive setting necessary, and;
- Within 3 days of a determination the juvenile will not attain competency within the statutory timeframe.

When are additional competency hearings conducted? [R.C. 2152.59(H)(1)]

The court may hold an additional hearing within 15 business days of receiving an R.C. 2152.59(F) report to determine if a new order is necessary.

What determinations can be made at an additional competency hearing?

1. The juvenile has attained competency.
2. The juvenile remains incompetent but may still attain competency within the statutory timeframe with continued compliance with the competency attainment services.
3. The juvenile is not competent and, while it was determined that the juvenile was likely to attain competency, the statutory timeframe has expired. The court then has the same options as with a not competent, not able to attain competency juvenile above. [R.C. 2152.59(B)]
4. The juvenile is not making progress toward competency or is so uncooperative that attainment services cannot be effective. The court may then order a change in setting or services that would help the juvenile attain competency within the statutory timeframe.



Relevant Cases

- [*In re C.B., 2019-Ohio-2890*](#) (1st Dist.). Although Ohio law provides specific timelines for competency restoration, R.C. 2152.59(D)(2) does not preclude the parties from agreeing to extend the competency restoration deadline.
- [*In re A.H., 2018-Ohio-364*](#) (12th Dist.). After the issue of competency has been raised, an evaluation is completed, and a hearing is held, a juvenile court errs where it accepts an admission without first filing a written ruling on the issue of competency to stand trial. A juvenile court also errs when it fails to comply with Rule 29 by not informing the juvenile of the nature of the allegations, the consequences of admission, or the waiver of rights.
- [*In re K.A., 2017-Ohio-6979*](#) (8th Dist.). Where a juvenile court orders a competency evaluation but then fails to address the evaluation report, it is error to accept a plea from the juvenile or proceed to trial.
- [*In re J.F., 2017-Ohio-7675*](#) (1st Dist.). Time for competency attainment is not tolled by a juvenile's failure to participate in services. Rather than tolling the time allowed for competency attainment due to a juvenile's lack of participation R.C. 2152.59 provides, in clear and unambiguous language, that the remedy for such behavior is to place the juvenile in a more appropriate or restrictive setting to receive services.
- [*In re Andrew W., 2014-Ohio-1576*](#) (5th Dist.). The failure to hold a hearing and make a competency determination following a competency evaluation is grounds for reversal as the juvenile competency statute mandates those hearings and written determinations.
- [*In re R.H., 2013-Ohio-1030*](#) (8th Dist.). Because R.C. 2151.56(B) requires that a competency evaluation determine whether the juvenile is competent to understand the facts specific to a charge, the trial court should not have used a prior competency determination from a different charge to determine that a juvenile was competent to stand trial for a subsequent charge. However, that was not plain error and it was not ineffective assistance for the juvenile's attorney to stipulate to the prior report. Prior to the enactment of HB68 - 129th GA - the issue of juvenile competency was governed by R.C. 2945.37, which governed competency for adults. The effective date of the juvenile competency statute was Sept. 30, 2011.



Cases Prior to Juvenile Statute

- [*In re B.W.*, 2010-Ohio-2092](#). The issue of whether a juvenile was sane at the time of commission of an offense (able to understand the wrongfulness of actions) is not a factor to be considered in determining whether the juvenile was competent. (*The court did not separately consider whether the juvenile has a right to a separate determination as to N.G.R.I., but only that it was not part of the competency evaluation.*)
- [*In re B.M.S.*, 165 Ohio App.3d 609, 2006-Ohio-981](#). A juvenile court must hold a competency hearing after the issue of competency has been raised. The completion of an evaluation is not sufficient- the court must conduct a hearing on the issue of competency.
- [*In re B.H.*, 169 Ohio App.3d 331, 2006-Ohio-5534](#). Where sufficient information is before the court to call into question the juvenile's ability to understand the proceedings (such as information from an attorney, Guardian ad Litem and relative that the juvenile has a learning disability and is not able to assist in her defense), it is an abuse of discretion for the court to deny a request for a competency evaluation.
- [*In re Kristopher F.*, 2007-Ohio-3259](#). In determining whether a juvenile is competent to stand trial, the court should apply the adult standard in view of juvenile norms. The mere presence of some educational or verbal inadequacies does not render the juvenile incompetent to stand trial.
- [*In re Braden*, 176 Ohio App.3d 616, 2008-Ohio-2981](#). The right not to be tried while incompetent is as basic and fundamental in juvenile delinquency proceedings as it is in adult criminal proceedings, despite the lack of a formal statute for juvenile offenders.



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