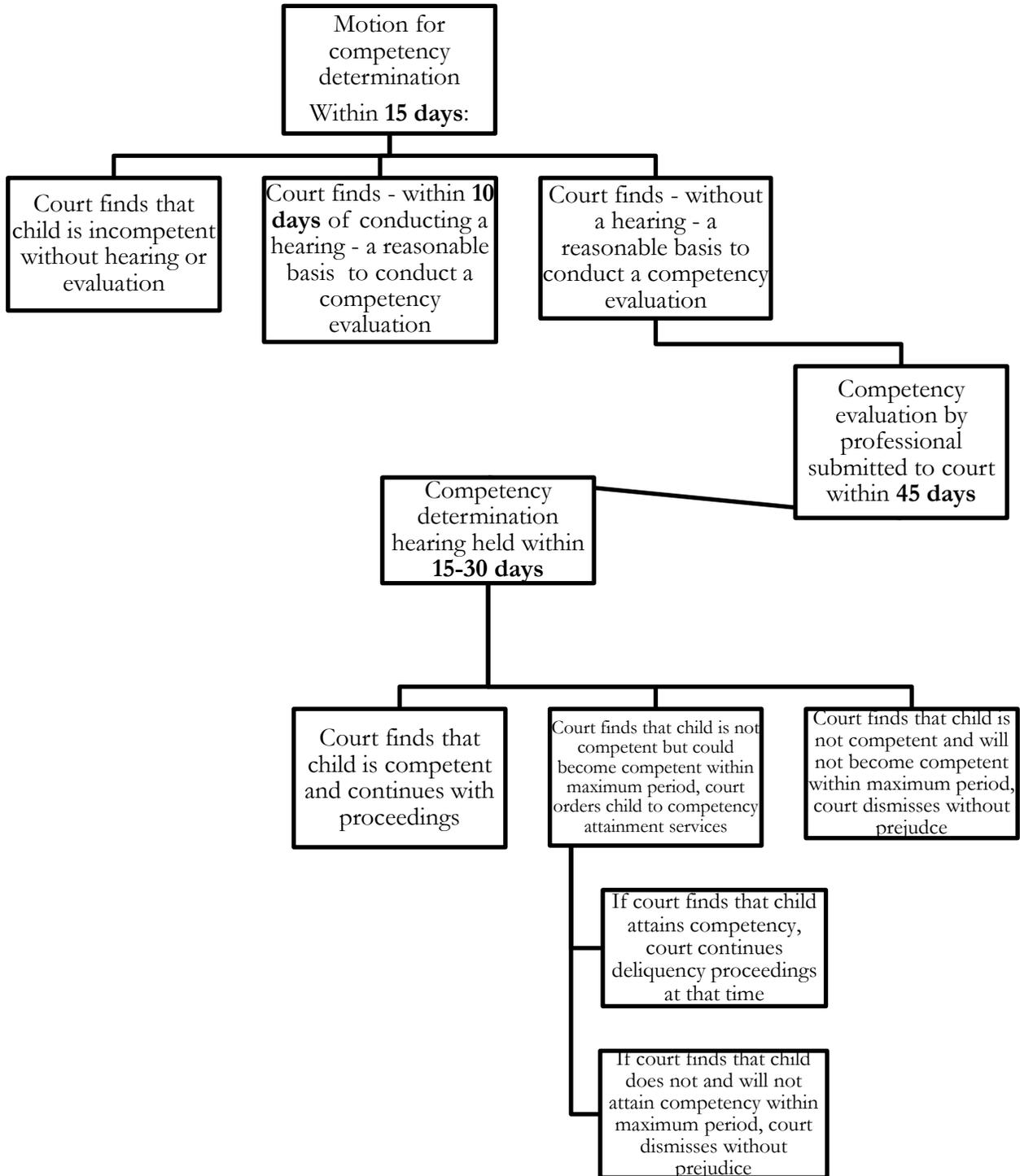


HB 86 Juvenile Provisions
Competency (O.R.C. § 2152.51 - §2152.59): Fact Sheet

Flowchart of Competency Proceedings



Motion for Competency Determination

- A. Any party or the court moves for a competency determination: 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 objectives of a proceeding against him or her or of assisting in his or her defense.

Competency applies “in any proceeding under this Chapter” other than juvenile traffic offenses.

O.R.C. § 2152.51(A)(1); O.R.C. § 2152.52(A)(1)

- B. There is a rebuttable presumption that any child who is fourteen years of age or older who is not found to be mentally ill, intellectually disabled, or developmentally disabled is competent

O.R.C. § 2152.52(A)(2)

Reasonable Basis to Conduct Competency Determination

Within 15 business days after a motion is made, the court must:

- A. Find child incompetent without ordering an evaluation or hearing if either:
1. The prosecuting attorney, the child’s attorney, and at least one of the child’s parents, guardians, or custodians agree to the determination (See, O.R.C. 2152.52(B)(1); OR
 2. A previous court determined that the child was incompetent and could not attain competency through competency attainment services (See, O.R.C. 2152.52(B)(2)

O.R.C. § 2152.53(A)(1)

- B. Determine whether there is a reasonable basis to conduct a competency evaluation either:
1. Without a hearing (O.R.C. § 2152.53(A)(2)) OR
 2. By holding a hearing and making its determination within ten business days after the conclusion of the hearing O.R.C. § 2152.53(A)(3); 2152.53(B)

Competency Evaluation - Evaluator

If the court determines that there is reasonable basis for a competency evaluation, or if both the prosecuting attorney and the child’s attorney agree to an evaluation, the court must order an evaluation and appoint an evaluator. O.R.C. 2152.53(B). The type of evaluator appointed depends on whether the child appears to the court to be at least moderately intellectually disabled.

- A. If the child does NOT appear to the court to be at least moderately intellectually disabled, the evaluation will be made by either:
1. A professional who is:
 - a. Employed by a psychiatric facility or any other center certified by the department of mental health to provide forensic services; AND

b. Is appointed by the director of the facility or center to conduct the evaluation;

OR

2. A psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents. (See criteria in O.R.C. 5122.01(I)(1))

O.R.C. § 2152.54(A)

If the initial evaluator for a child who does NOT appear to the court to be at least moderately intellectually disabled concludes that the child IS at least moderately intellectually disabled, the court must order a new evaluation by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents WHO HAVE INTELLECTUAL DISABILITIES. O.R.C. § 2152.54(C)

B. If the child DOES appear to the court to be at least moderately intellectually disabled, the evaluation will be made by a psychiatrist or licensed clinical psychologist who has specialized education, training, or experience in forensic evaluations of children or adolescents WHO HAVE INTELLECTUAL DISABILITIES. (See criteria in O.R.C. 5122.01(I)(1))

O.R.C. § 2152.54(B)

Competency Evaluation - Requirements of Evaluation

A. The evaluation must be performed in the least restrictive setting available that will both facilitate an evaluation and maintain the safety of the community and the child and the child's parents, guardians, or custodians shall be available at the times and places established by the evaluator.

O.R.C. § 2152.55(A)

B. The evaluator shall have access to all relevant private and public records. Within 10 business days, the prosecuting attorney and the defense attorney shall deliver copies of relevant police reports and other background information that pertain to the child and in in their possession, unless the release would interfere with the prosecution of any person, create a substantial risk of harm to any person, or is protected by attorney-client privilege.

O.R.C. § 2152.52(B),(C),(D)

Competency Evaluation – Evaluator’s Report

A. The report must include the evaluators 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 him or her or of assisting in his or her defense.

O.R.C. § 2152.56(A)

- B. The report must 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.

O.R.C. § 2152.56(A)

- C. The report must address the child's capacity to:
 1. Comprehend and appreciate the charges or allegations against him or her
 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 his or her defense and communicate with counsel
 4. Comprehend and appreciate the consequences that may be imposed or result from the proceedings

O.R.C. § 2152.56(B)

Competency Evaluation – Conclusion and Submission of Report

- A. If the evaluator concludes that the child's competency is impaired but that the child may be able to understand the nature and objectives of the proceeding against him or her and to assist in his or her defense with REASONABLE ACCOMODATIONS, the report must include recommendations for those accommodations

O.R.C. § 2152.56(C)

- B. If the evaluator concludes that the child is not competent, the report must include an opinion as to the likelihood that the child could attain competency within the applicable time period. If the child could likely attain competency within the maximum period of participation, the report shall include:
 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 providers of child competency attainment services known to the evaluator that are located most closely to the child's current residence

O.R.C. § 2152.56(C), (D)

- C. The evaluator shall submit the competency report to the court no more than 45 days after the appointment is issued, although the court may grant one extension. A competency report obtained independently by a child may only be admitted if it is submitted to the court within the time allowed for the court-appointed evaluator.

The court shall provide a copy of each report to the prosecutor, child's attorney, and the child's parent, guardian, or custodian. Expenses may not be recovered from the child or the child's parents/guardians. Any party may object and request an additional evaluation. If the child is indigent, the county shall pay the costs for the additional evaluation, however, the county is not required to pay more than it would normally pay for an evaluation.

O.R.C. § 2152.57(A)-(E)

Competency Hearing Based on Competency Evaluation

The court must hold a hearing to determine the child's competency between 15-30 business days after receiving the evaluation, and make a written determination as to the child's competency or incompetency, based on a preponderance of the evidence, within 15 business days after the completion of the hearing.

O.R.C. § 2152.58(A); O.R.C. § 2152.58(D)(1)

- A. The court must consider the competency reports, and may consider additional evidence, including the court's own observations of the child's conduct and demeanor in the court room, to determine competency

O.R.C. § 2152.58(C)

- B. The court's determination that a child is incompetent cannot be based solely on any of the following reasons:
1. The child is receiving or has received treatment as a voluntary or involuntary mentally ill patient
 2. The child is or has been institutionalized under Chapter 5123
 3. The child is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication

O.R.C. § 2152.58(D)(2)

- C. If the court determines that the child is competent, the court shall proceed with the delinquent child's proceeding as provided by the law. No statement that a child makes during a competency evaluation or hearing shall be used against the child on the issue of responsibility or guilt in any child or adult proceeding.

O.R.C. § 2152.59(A)

D. If the court determines that the child is not competent and cannot attain competency within the maximum period of participation, the court must dismiss the charges without prejudice. The court may delay dismissal for up to 90 days to either:

1. Refer the matter to a public children services agency and request that agency determine when to file an action alleging that the child is a dependent, neglected, or abused child; OR
2. Assign court staff to refer the child or the child's family to:
 - a. The local family and children first council;
 - b. An agency funded by the department of mental health;
 - c. An agency funded by the department of developmental disabilities; OR
 - d. Otherwise secure services.

O.R.C. § 2152.59(B)

E. If the court determines that the child is not competent but could likely attain competency within the maximum period of participation by participating in services specifically designed to help the child develop competency, the court may order the child to participate at county expense. The court shall name the provider.

O.R.C. § 2152.59(C)

Competency Attainment - Parameters and Service Provider Reports

A. Competency attainment services shall be provided in the least restrictive setting and the child shall only be required to participate for as long as is required for the child to attain competency. Services are subject to the following time periods:

	Non-residential setting	Residential setting operated for sole purpose of competency attainment	Residential, detention, or other secure setting for purposes other than competency attainment	Partial residential setting/Partial non-residential setting*
Misdemeanors	3 months	45 days	3 months	45 days
F3, F4, F5	6 months	3 months	6 months	3 months
F1, F2	1 year	6 months	1 year	6 months
Murder, Attempted Murder, Aggravated Murder, Attempted Aggravated Murder	1 year	1 year	1 year	1 year

*For purposes of calculating time under this section, 2 days in a non-residential setting = 1 day in a residential setting.

The court shall deliver a copy of each competency report to the competency attainment provider within 10 business days. The provider shall submit to the court a plan for the child to attain competency within 30 days. Copies of the plan to the prosecutor, child's attorney, GAL, and parent/guardian/custodian.

O.R.C. § 2152.59(D), (E)

- B. The provider of the child's competency attainment services shall submit reports to the court:
1. Every 30 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
 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
 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 him or her and assist in his or her defense
 5. If the provider determines that the child will not achieve the goals of the plan within the maximum period of participation

O.R.C. § 2152.59(F)

Within 15 business days of receiving one of these reports, the court may hold a hearing to determine if a new order is necessary. If the court determines that the child:

- A. Is not making progress towards competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services
- B. Has not or will not attain competency within the maximum period of participation, the court must dismiss the charges without prejudice. The court may delay dismissal for up to 90 days to either:
 1. Refer the matter to a public children services agency and request that agency determine when to file an action alleging that the child is a dependent, neglected, or abused child;
OR
 2. Assign court staff to refer the child or the child's family to:
 - a. The local family and children first council;
 - b. An agency funded by the department of mental health;
 - c. An agency funded by the department of developmental disabilities; OR
 - d. Otherwise secure services.
- C. Has attained competency, the court shall proceed with the delinquent child's proceeding

O.R.C. § 2152.59(H)