

**§3318-B. Disposition of a juvenile found incompetent to proceed**

**1. Substantial probability that juvenile will be competent in the foreseeable future.** If, following the competency determination hearing pursuant to section 3318-A, subsection 7, the Juvenile Court finds that the juvenile is not competent to proceed but additionally finds that there exists a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall continue the suspension of the proceedings and refer the juvenile to the Commissioner of Health and Human Services for evaluation and treatment of the mental health and behavioral needs identified in the report of the State Forensic Service examiner under section 3318-A.

A. At the end of 60 days or sooner, at the end of 180 days and at the end of one year following referral, the State Forensic Service shall examine the juvenile and forward a report of the examination to the Juvenile Court relating to the juvenile's competency to proceed and its reasons. Upon receipt of the report the Juvenile Court shall forward the report to the parties and without delay set a date for a conference of counsel or, upon a motion of any party, set a hearing on the question of the juvenile's competency to proceed. If the Juvenile Court finds that the juvenile is not yet competent to proceed, but there exists a substantial probability that the juvenile will be competent to proceed in the foreseeable future, the proceedings must remain suspended pending further review or hearing. [PL 2011, c. 282, §5 (NEW).]

B. If more than one year has elapsed since the suspension of the proceedings, the Juvenile Court shall promptly hold a hearing to determine whether based on clear and convincing evidence there exists a substantial probability that the juvenile will be competent in the foreseeable future. Notwithstanding section 3318-A, subsection 8, the burden of proof is on the State in any hearing under this paragraph. If the Juvenile Court finds that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall further determine whether or not the court should:

- (1) Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or
- (2) Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment.

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition. [PL 2011, c. 282, §5 (NEW).]

C. If during the suspension of the proceedings the juvenile reaches 18 years of age, the Juvenile Court may evaluate the appropriateness of placing the juvenile in an appropriate institution for the care and treatment of adults with mental illness or mental retardation for observation, care and treatment. [PL 2011, c. 282, §5 (NEW).]

D. The Juvenile Court shall set a time for resumption of the proceedings if at any point it finds, based upon the burden and standard of proof pursuant to section 3318-A, subsection 8, that the juvenile is now competent to proceed. [PL 2011, c. 282, §5 (NEW).]

[PL 2011, c. 282, §5 (NEW).]

**2. No substantial probability that juvenile will be competent in the foreseeable future.** If, following the competency determination hearing provided in section 3318-A, subsection 7, the Juvenile Court finds that the juvenile is incompetent to proceed and that there does not exist a substantial probability that the juvenile will be competent in the foreseeable future, the Juvenile Court shall promptly hold a hearing to determine whether or not the Juvenile Court should:

A. Order the Commissioner of Health and Human Services to evaluate the appropriateness of providing mental health and behavioral support services to the juvenile; or [PL 2011, c. 282, §5 (NEW).]

B. Order the juvenile into the custody of the Commissioner of Health and Human Services utilizing the procedures set forth in section 3314, subsection 1, paragraph C-1 for purposes of placement and treatment. [PL 2011, c. 282, §5 (NEW).]

At the conclusion of the hearing the Juvenile Court shall dismiss the petition or, if post-adjudication, vacate the adjudication order and dismiss the petition.

[PL 2013, c. 519, §4 (AMD).]

#### SECTION HISTORY

PL 2011, c. 282, §5 (NEW). PL 2013, c. 519, §4 (AMD).

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