

# JUVENILE COMPETENCY

## FAQs



W. Va. Code for Juvenile Competency  
Evaluations and Attainment Services  
<https://code.wvlegislature.gov/49-4-712/>

### What is competency?

Competency is a term specific to the court process. It refers to an individual's ability to understand and appreciate the legal proceedings against them, such as a trial or hearing, and reasonably assist in their own defense by understanding their available options.

### Who may be considered incompetent?

If a youth commits an act which would be a crime if committed by an adult (a delinquency action), AND who has an:

- Intellectual disability;
- Developmental disability; or,
- Mental health condition; and

Due to their condition is presently unable to reasonably consult with their attorney and have a rational and factual understanding of the proceedings against them. For youth under the age of 13, they are initially deemed incompetent, requiring a motion to evaluate the youth to prove competence.

### Can youth still be placed in a Bureau for Juvenile Services (BJS) facility?

Yes. In certain limited circumstances a youth may be placed in a BJS facility. Youth aged 13 and older may be placed in a BJS facility while the competency evaluation is completed. Youth under the age of 13 may not be placed in a BJS facility unless the court determines it is necessary due to situations outlined in W. Va. Code §49-4-705 or §49-4-706. A youth found to be incompetent but likely to attain competency may not be placed in a BJS facility to receive competency attainment services.

### What is the evaluation and attainment process?

When a youth is ordered to have a competency evaluation:

- Within 5 judicial days, the prosecuting attorney and youth's attorney must provide a qualified

forensic evaluator with all relevant records including police reports and relevant background information such as educational, medical, psychological, and neurological records.

- Within 30 days of entry of the order requiring a competency evaluation, the evaluator must deliver the evaluation. This can be extended an additional 30 days for good cause shown.
- Within 15 days of receiving the report, the court must schedule a hearing to determine competency. The hearing may be scheduled the same day the report is due to be delivered.
- All Court Orders related to juvenile competency, along with the Competency Evaluation(s) shall be forwarded to [juvenilecompetency@wv.gov](mailto:juvenilecompetency@wv.gov).



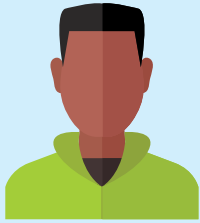
### Who may be considered a Qualified Forensic Evaluator?

Qualified forensic evaluators are licensed psychologists and psychiatrists authorized to practice in the state of West Virginia. In order to conduct juvenile competency evaluations, a qualified forensic evaluator must also have specialized training, knowledge, and experience in the following areas:

- Forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency;

## Length of Participation in Attainment Services When a Youth Is Found Incompetent but Likely to Attain Competency

### Non-Violent or Misdemeanor Offense



No longer than  
**90 days**  
or beyond their  
**19th birthday**

### Felony Crime of Violence



No longer than  
**180 days**  
or beyond their  
**21st birthday**

- Evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness;
- Clinical understanding of child and adolescent development; and
- Familiarity with competency standards in this state.

### What do attainment services entail?

Attainment services, also known as restoration or remediation services are services designed to teach the youth about the court process. West Virginia's model for competency attainment provides one-on-one, tailored instruction to the youth intended to address their underlying conditions contributing to their incompetence.

### Are youth required to be in placement to receive competency attainment services?

No. The statute emphasizes youth receiving evaluation and services in the least restrictive environment possible, preferably the youth's community whenever



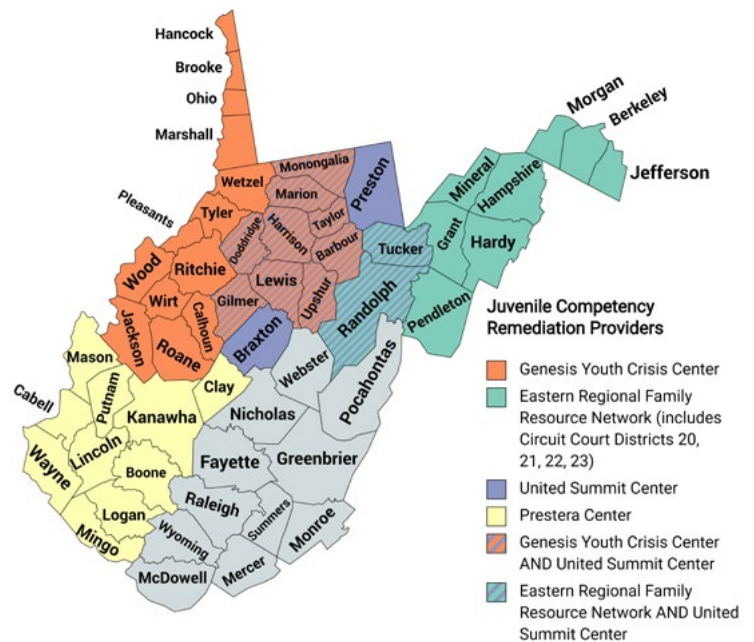
Qualified Forensic Evaluators

<https://dhhr.wv.gov/officeofhealthfacilities/Pages/Statewide-Forensic-Services.aspx>

possible. A youth may be ordered to receive the evaluation and competency attainment services in the community; ordered into a placement to receive an evaluation and then released to their home to receive competency attainment services; or, ordered to receive the evaluation in the community and ordered to placement for competency attainment services.

### What happens after a youth receives competency attainment services?

The youth will receive another juvenile competency evaluation (by a qualified forensic evaluator) within 90 days of beginning competency attainment services.



For questions/concerns, contact:  
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