

2026 Annual VBBA-VBJDR Conference

10.1.2026

8:15 a.m. - 9:00 a.m. **Check-in and Breakfast**

9:00 a.m. - 10:00 a.m. **Mental Health Panel: Competency Issues for Adult and Juvenile Cases** Presenters:
Dr. Elizabeth Wheeler, Ben Skowysz, Hannah Hopkins, Judge Bennett and Judge Eveleigh

10:00 a.m.-11:00 a.m. **Psychological Evaluations: Evaluations in Civil and DHS Cases;** Presenter: **Dr. Mazzio**

11:00 a.m. -11:15 a.m. **Break**

11:15 a.m. – 12:15 p.m. **Being a Restorative Lawyer ;** Presenters: **Judge Shupert and Brenda Waugh**

12:30 p.m. – 1:00 p.m. **Lunch Provided/Lunch Session – Clerks VBJDR processes/procedures/Q&A**
Presenters: **Judge Hollowell, Amy Burnham, and Sara Quiroga**

1:00 p.m.- 2:00 p.m. **Human Trafficking and Juvenile Law Update;** Presenters: **Judge Quick, Judge Normile, Megan Lang and Nickie Herron**

2:00 p.m.- 3:00 p.m. **DHS Legislative & Policy Update;** Presenter: **Christianna Cunningham**

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 4:45 p.m. **Ethics;** Presenter: **Tammy McClenney**

**Advanced Technology Theater at TCC-VB Campus
1700 College Crescent, Virginia Beach, VA 23453
MCLE/IDC/GAL Credits Pending**

VBBA~VBJDR Annual Conference Speakers

2026

The Hon. Adrienne Bennett

The Hon. Cheshire I'Anson Eveleigh

The Hon. Phillip C. Hollowell

The Hon. James P. Normile

The Hon. Timothy J. Quick

The Hon. Regis N. Rice

The Hon Jennifer S. Shupert

Amy Burnham, Clerk of Court

Mitch Broudy, Esq, Assistant Attorney General

Christianna Dougherty-Cunningham, Esq. Associate City Attorney

Elizabeth Foster, Esq. Assistant Public Defender

Hannah Hopkins, Esq. Assistant Public Defender

Nickie Herron, Esq., Assistant Commonwealth Attorney

Megan Lang, Esq., Assistant Commonwealth Attorney

Dr. Lisa Mazzio, Watermark Psychological Services

Tammy McClenney, Esq,

Sarah Quiroga, Deputy Clerk of Court

Ben Skowysz, DBHDS, Program Supervisor-Juvenile Justice

Brenda Waugh, Esq., Waugh Law & Mediation

Dr. Elizabeth Wheeler, Bay Forensic Psychology



Virginia Department of
Behavioral Health &
Developmental Services

Virginia DBHDS Community-based Juvenile Competency Restoration and Evaluation

Benjamin Skowysz, LCSW, CSOTP

DBHDS Juvenile Justice Supervisor

ben.skowysz@dbhds.virginia.gov

804-840-0280

Agenda

- Brief overview of Juvenile Competency Process
- Juvenile Competency Timeline
- Juvenile Competency Tools
- VJCP Statistics
- Questions and Answers

Virginia's Juvenile Competency Statutes

- Sections 16.1-356 - 16.1-361 of the *Code of Virginia* were effective on July 1, 1999.
- This provided statutory authority for evaluating and restoring juveniles' adjudicative competence.

...If the juvenile is otherwise able to understand the charges against him and assist in his defense, a finding of incompetency shall not be made based solely on the following: (i) juvenile's age or developmental factors, (ii) the juvenile's claim to be able to remember the time period surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

§ 16.1-356 F

DC-522

- Initial Order of Evaluation of competency to stand trial for a juvenile.
- It will include your name on the Court Order.
- Evaluator reimbursement is through the Virginia Supreme Court not DBHDS.

Statutory Requirements for the Commissioner of Virginia DBHDS

- Approve the training and qualifications for evaluators
- Approve the training and qualifications for individuals authorized to provide juvenile restoration services
- Upon receipt of a court order (DC-523), arrange for the provision of restoration services in a manner consistent with the order

ORDER FOR PROVISION OF RESTORATION SERVICES TO INCOMPETENT JUVENILE

Case No.:

Commonwealth of Virginia VA. CODE §§ 16.1-357; 16.1-358

..... Juvenile and Domestic Relations District Court

.....
COURT ADDRESS
.....

In re:

The Court having found, pursuant to § 16.1-356(F) of the Code of Virginia, that the juvenile is incompetent to stand trial, and having found further, based on the attached report or other evidence, that the juvenile can be provided services to restore his or her competency in

☐ a non-secure community setting

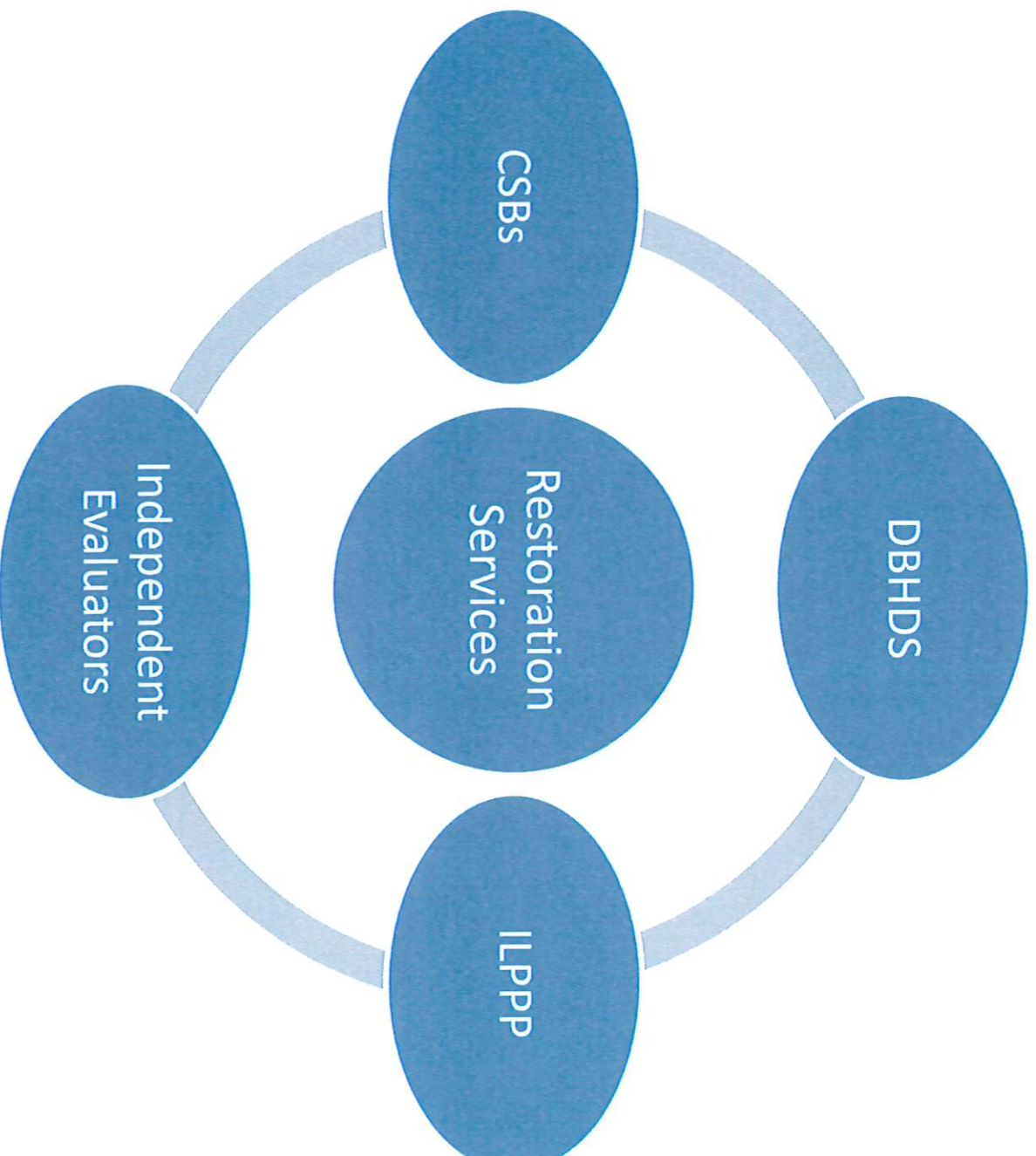
☐ a secure facility as defined in Virginia Code § 16.1-228

the Court therefore ORDERS that the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services or his or her designee shall arrange for the provision of restoration services to the juvenile in an effort to restore him or her to competency.

16.1-228 : Important Legal Definitions

- "Secure facility" or "detention home" means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.
- Commonwealth Center for Children and Adolescents (CCCA) is NOT a "Secure facility."
- CCCA is a Mental Health Treatment Facility.

Juvenile Competency Structural Components



DBHDS Juvenile Competency Team

- Training
- Coaching
- Consultation
- Quality Assurance
- Quality Improvement
- Supervision
- Restoration Services
- Evaluations of Adjudicative Competence

Community Services Boards

(20 ACTIVE CONTRACTS)

- Juvenile Competency Restoration Services
- Supervision of Juvenile Competency Restoration Services
- Evaluations of Competency to Stand Trial

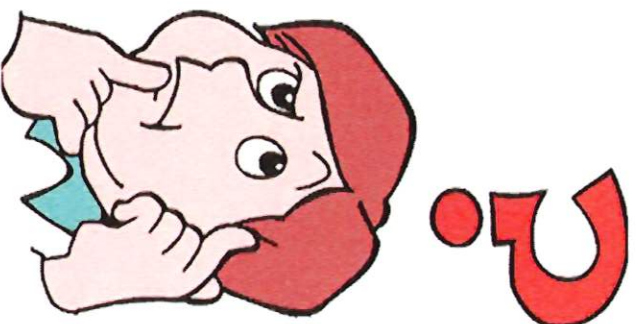
Virginia's Community Services Boards



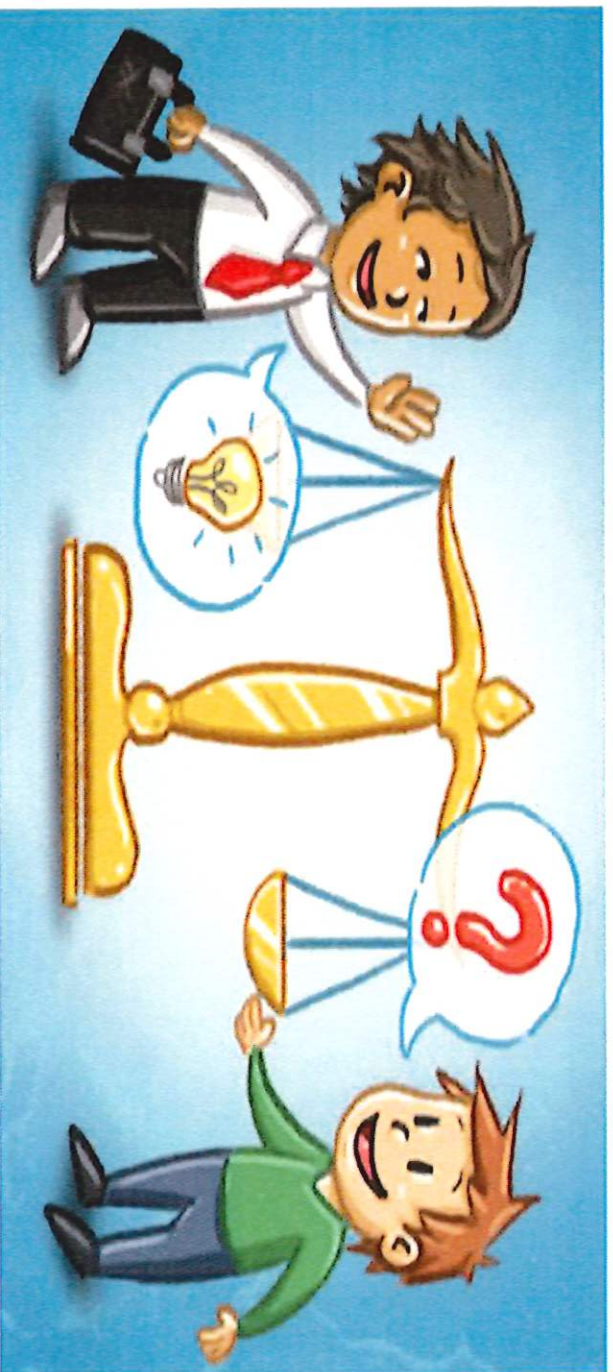
Dusky v United States

362 U.S. 402 (1960)

“It is not enough for the District Judge to find that ‘the defendant [is] oriented to time and place and [has] some recollection of events’,...



...but that the “test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.”



Juvenile Competency Restoration Services in Virginia

- Educational and training services, and
- Restoration case management services



How we do it

- Competency Restoration Service Plans-CRSPs
- IEPs
- Evaluations
- Self Report
- Experiential, Tactile, Auditory, Visual tools

Education and training

- Legal Constructs
- Educational tools that are multi-sensory (Visual, Auditory, Tactile, and Experiential)
- “Jamal in a Jam” an interactive CD ROM focused on the novice defendant, with accompanying workbook, flashcards, and board game with color form characters.
- “DJ and Alicia” an interactive CD ROM focused on a novice to intermediate defendant, (including issues of transfer to Circuit Court and its nuances), with accompanying flashcards.
- “Going to Court” Video, live action drama.
- Role playing, visits to the court room, and learning tools designed specifically to teach and reinforce the required legal constructs.

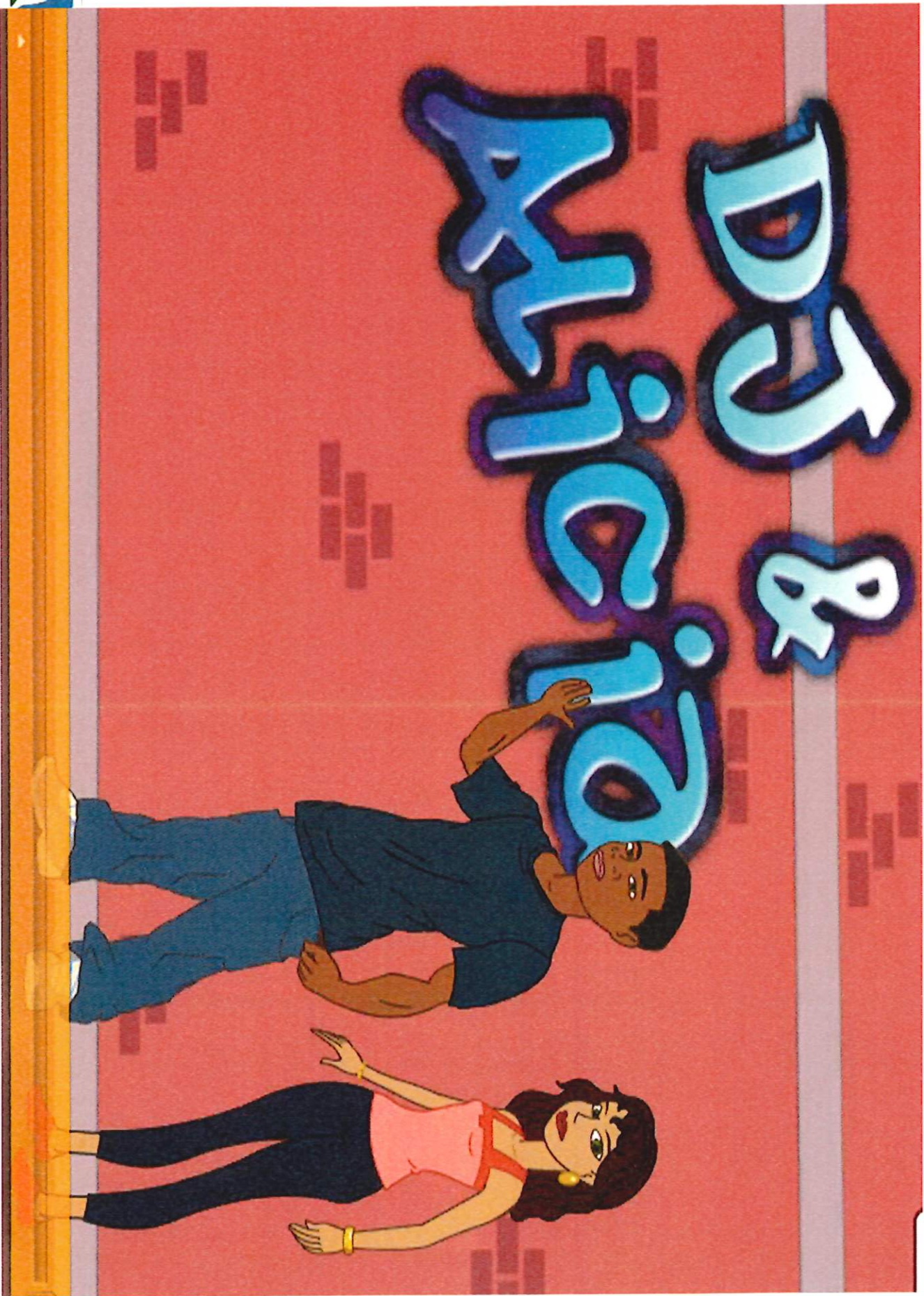
Tools

- Georgia Court Room Diagram
- Jamal in a Jam
- Flash Cards
- Court Room Simulation Video
- Jamal in a Jam Workbook
- Jamal in a Jam Color forms
- DJ and Alicia
- Visiting a Court Room
- Teaching Activities
- Original Restoration Ideas

Jamal in a Jam



DJ and Alicia



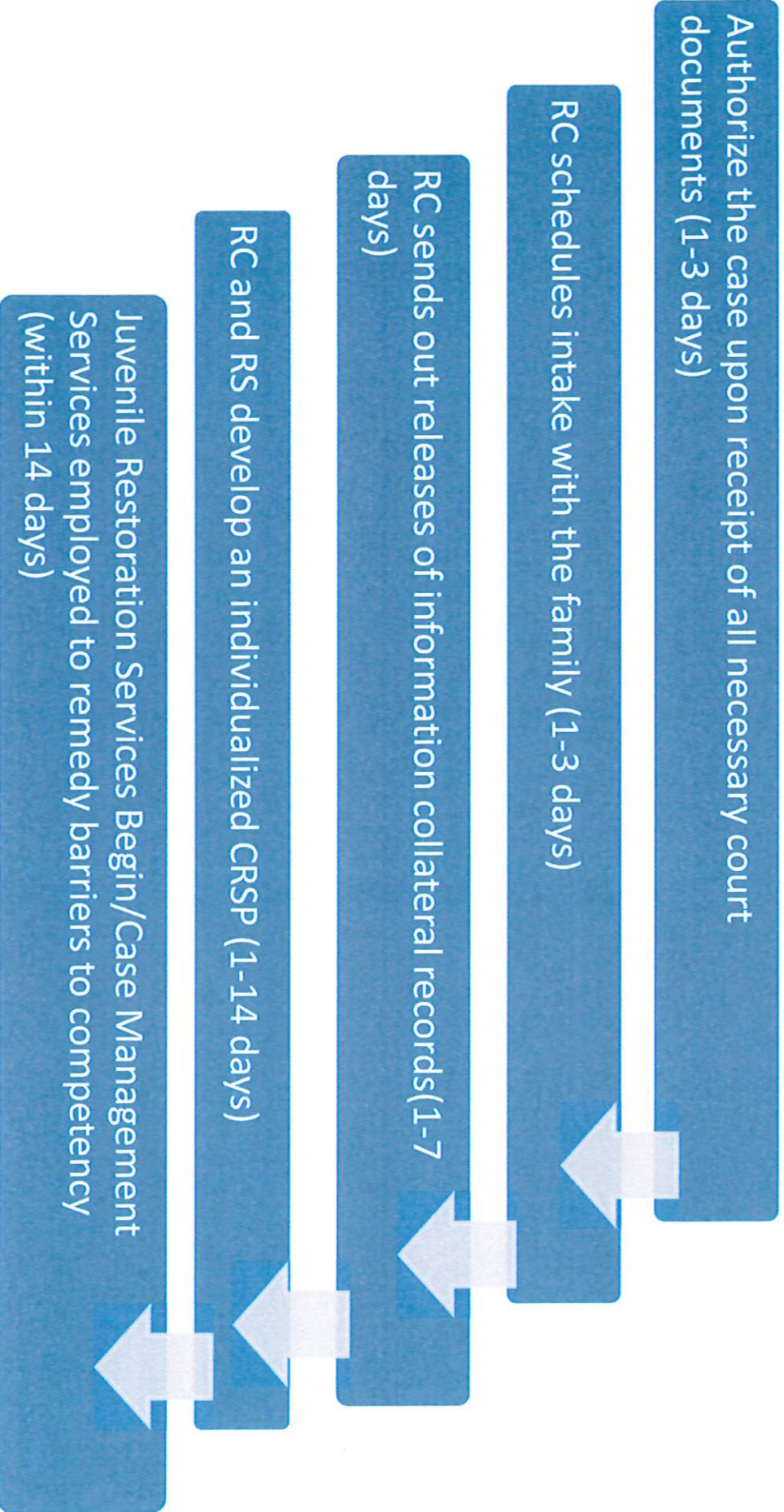
Restoration Case Management Services

- Identifying the obstacles or barriers to a juvenile's adjudicative competence;
- Linking the juvenile to appropriate service providers in the community to address the barriers to the juvenile's adjudicative competence; and
- Coordinating the care provided to the juvenile by service providers, when necessary.

Information needed to begin services

- Petitions
- Order for restoration (DC-523)
- Initial competency evaluation
- Information sheet
- GAL appointment letter (if ordered)
- Case authorization sheet from DBHDS

Timeline



Timeline Cont.

Restoration Services 2-3 times per week (Ongoing)

Restoration Supervision (1x per month)

Schedule evaluation of competency to stand trial with independent evaluator prior to the next court hearing (first 30 days)

Upon receipt of independent evaluation, DBHDS/CSB writes letter to the Court regarding the opinion of the evaluator. (Done every 90 days)

RC attends the Court hearing on the matter of Competency to Stand Trial.



Independent Juvenile Forensic Evaluators

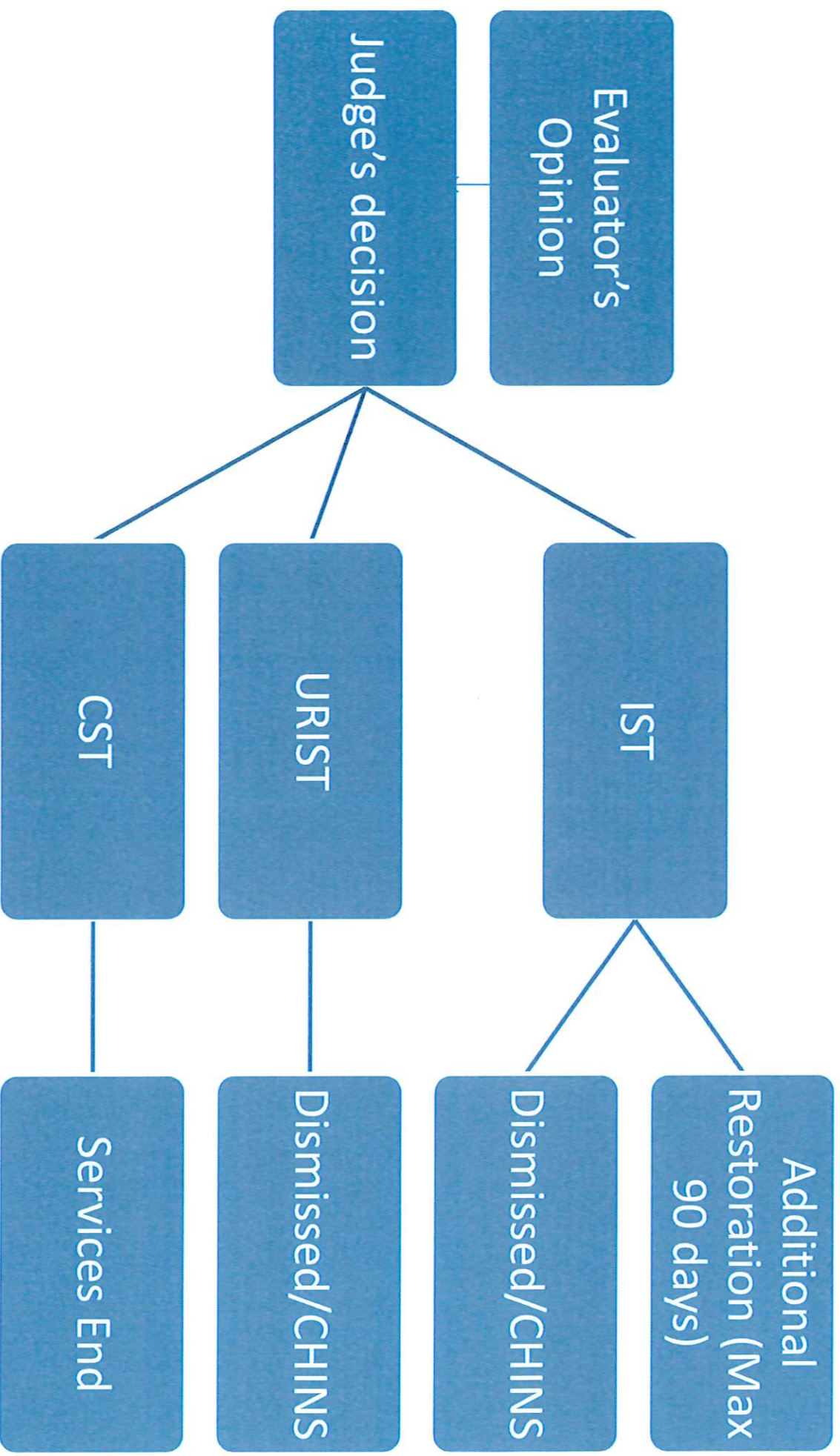
- Conduct post-restoration evaluations of adjudicative competence
- Lend a heightened sense of integrity and credibility to juvenile competency restoration services



Independent juvenile forensic evaluators in the Virginia DBHDS Juvenile Competency Program

- The current reimbursement rate is \$400.00 per evaluation. Restoration Counselors (RC) obtain the collateral information and provide it to the evaluator. RC's facilitate the communication between the family and evaluator in an attempt to assure appointments are kept.
- These evaluations can be conducted in office, or in the community (Unless ordered to a secure detention facility)

The Court's Decision



URIST Opinion

Section 16.1-358 of the *Code of Virginia* provides that

If the court finds the juvenile incompetent and likely to remain so for the foreseeable future, it shall order that the juvenile

1. Be committed pursuant to Article 16 (Section 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,
2. ~~Be certified pursuant to Section 37.2-806,~~
3. Have a child in need of services petition filed on his behalf pursuant to Section 16.1-260D, or
4. Be released.

URIST Information

- Juveniles can be in remediation services as long as the Court wants to pursue the charges, until...
- An evaluator opines that a juvenile is URIST...
- Then, up to 1 year for Misdemeanors, 3 yrs for Felonies from the date of offense.
- CHINS referrals are sent to the local FAPT Team, and they are treated as a mandated referral.

Things not to recommend

- Expensive testing prior to restoration services beginning.
- Asserting that Juvenile Restoration Services can and will pay for testing, treatment, and services. (Ex. cognitive, occupational, physical therapy, etc...)
- Hospitalization for the sole purpose of restoration services.

Virginia Juvenile Competency Data

Total Youth Served

2022 Total 167

2023 Total 237

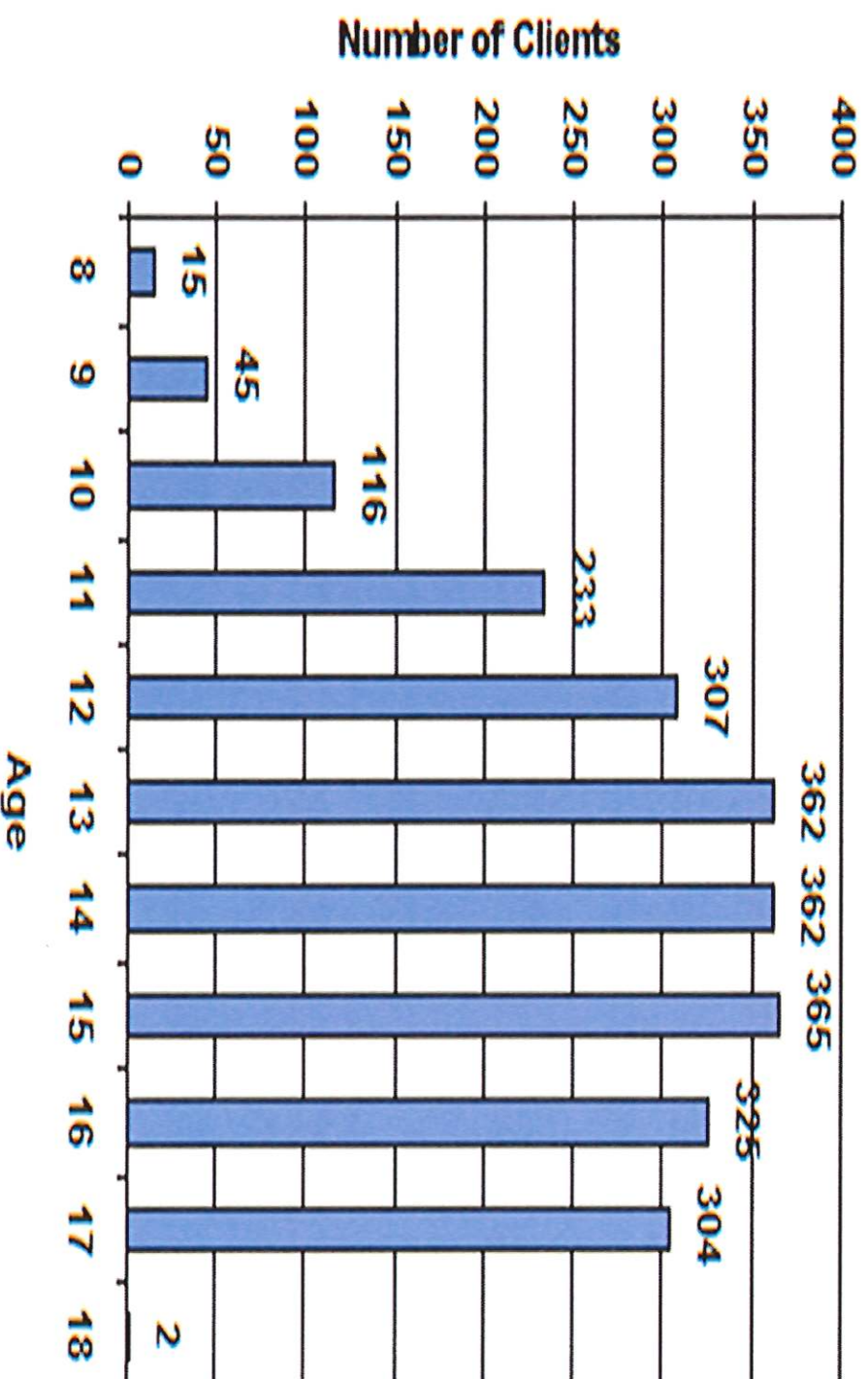
2024 Total 290

2025 Total 213

2026 Total 200

Who is being served

Age at Offense

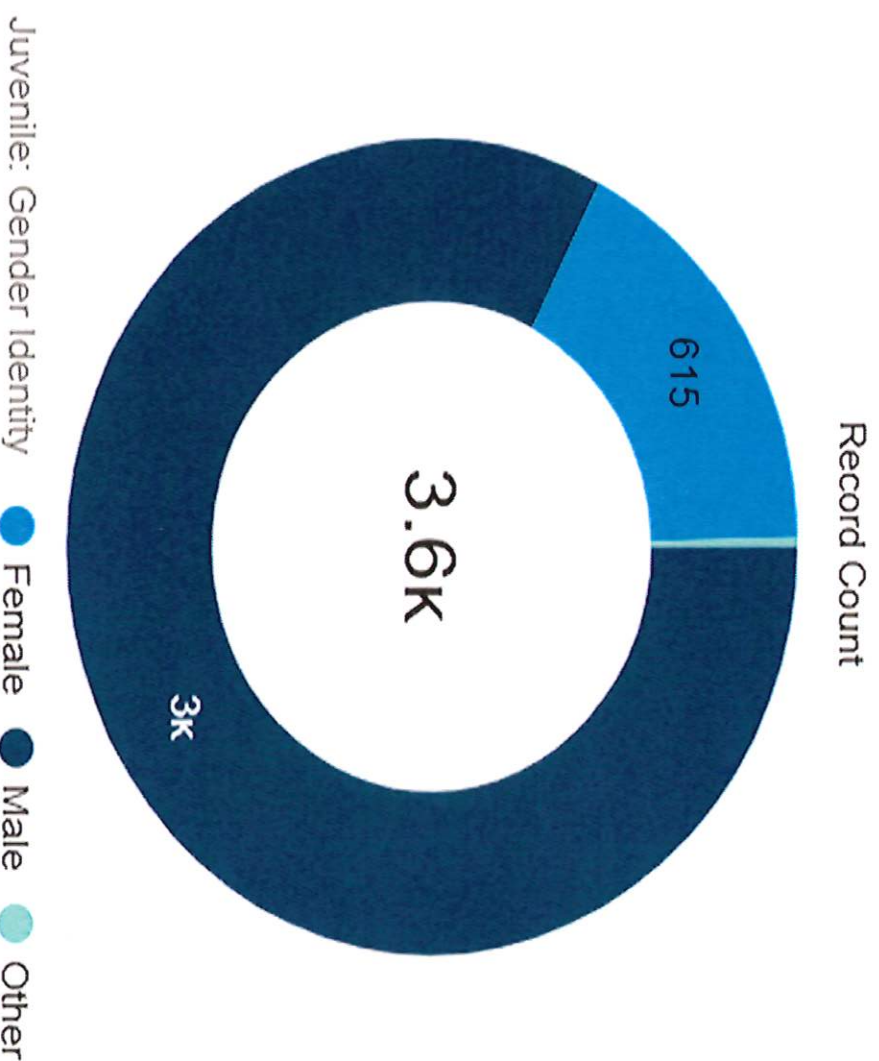


Age at time of the offense

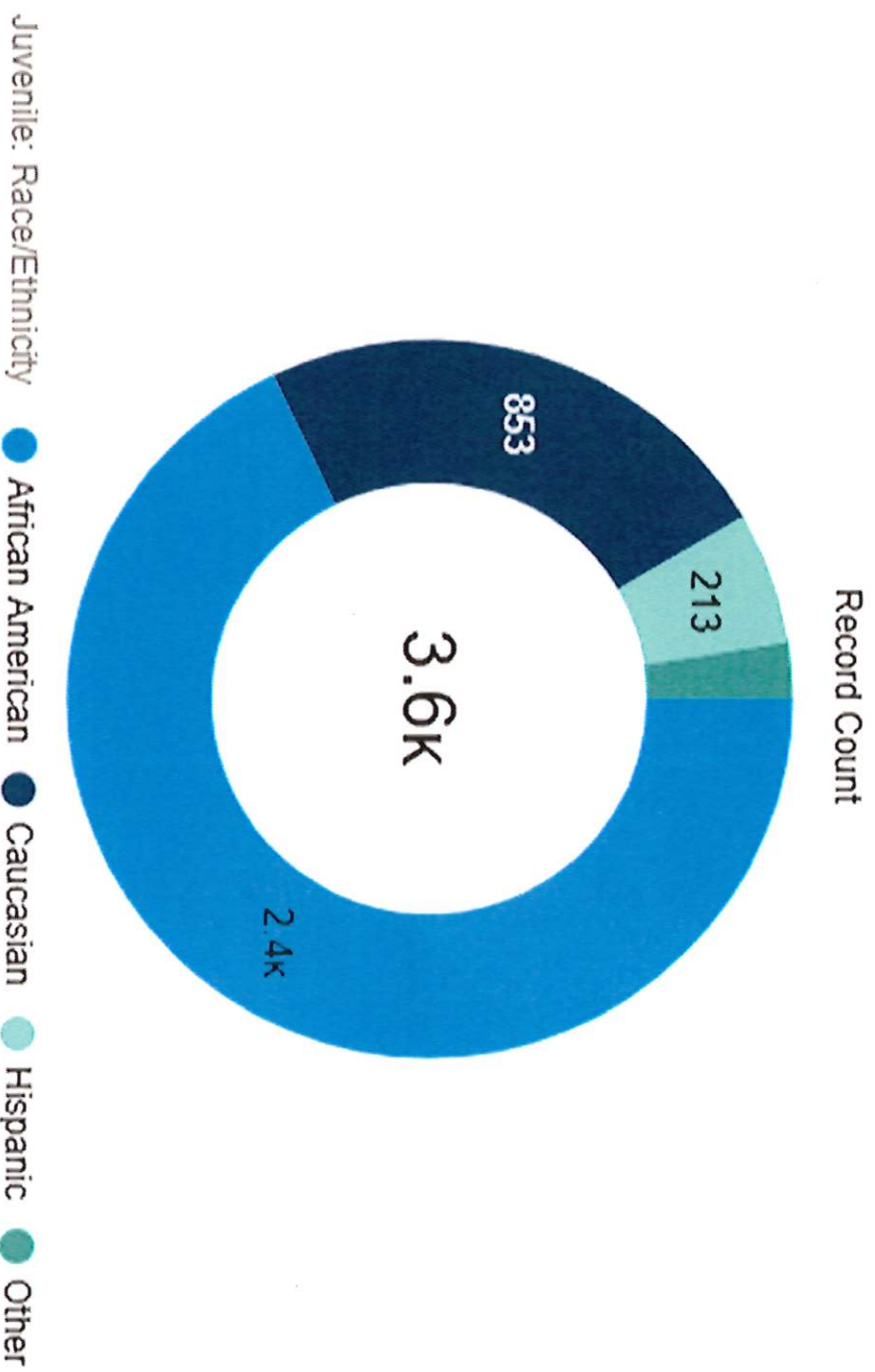
Age at Time of Offense	% Who Committed Offense at This Age
8	0.6%
9	1.8%
10	4.8%
11	9.6%
12	12.6%
13	14.9%
14	14.9%
15	15.0%
16	13.3%
17	12.5%
18	0.1%

44.3% are age 13 or younger

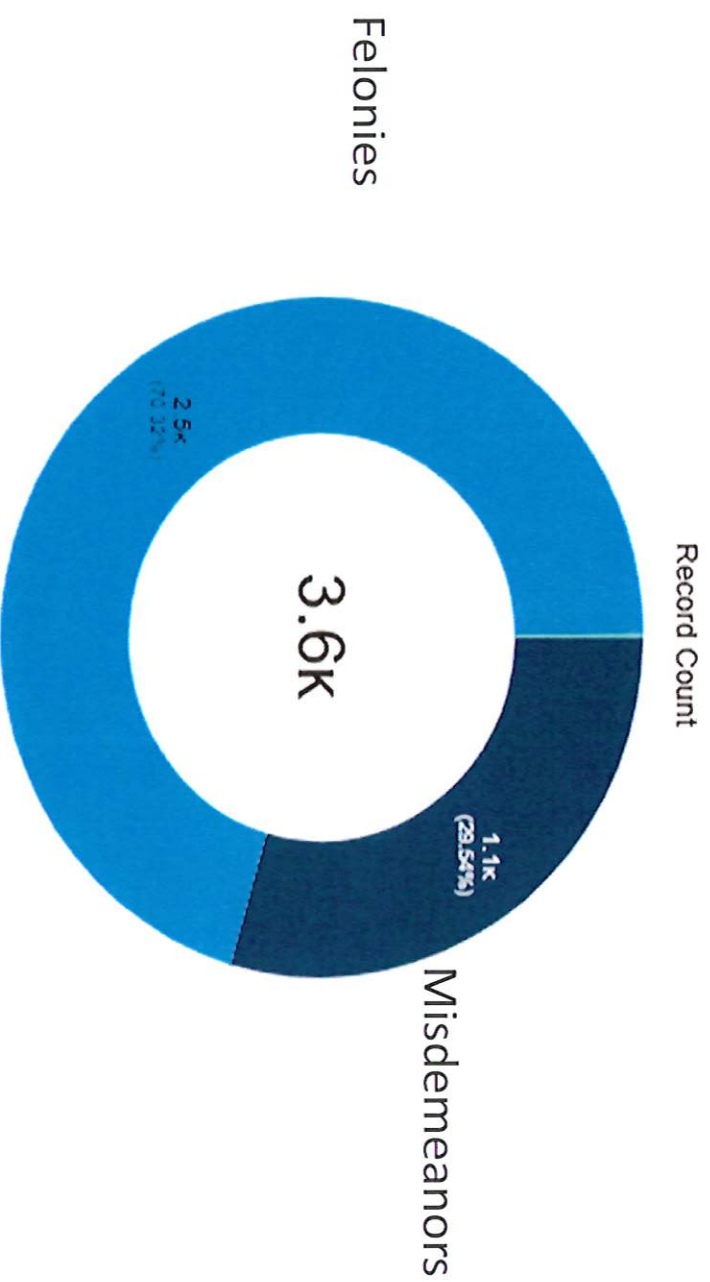
Offense by Gender



Race



Alleged Offenses



Slide 35

BS1

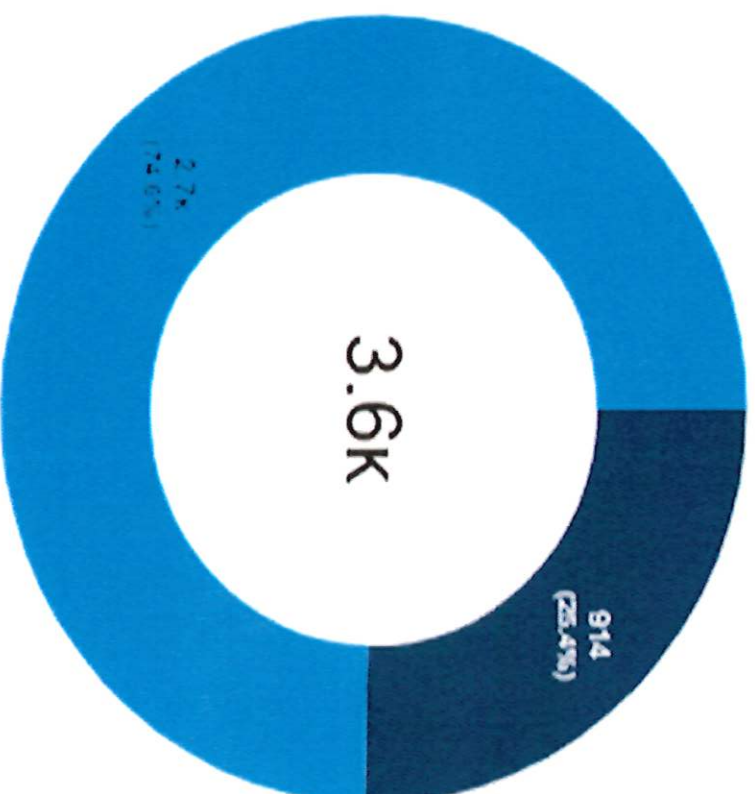
Misdemeanor

Skowysz, Ben (DBHDS), 2025-03-13T14:54:47.796

Secure vs. Non-secure Placements

Secure vs. Non-secure Facility

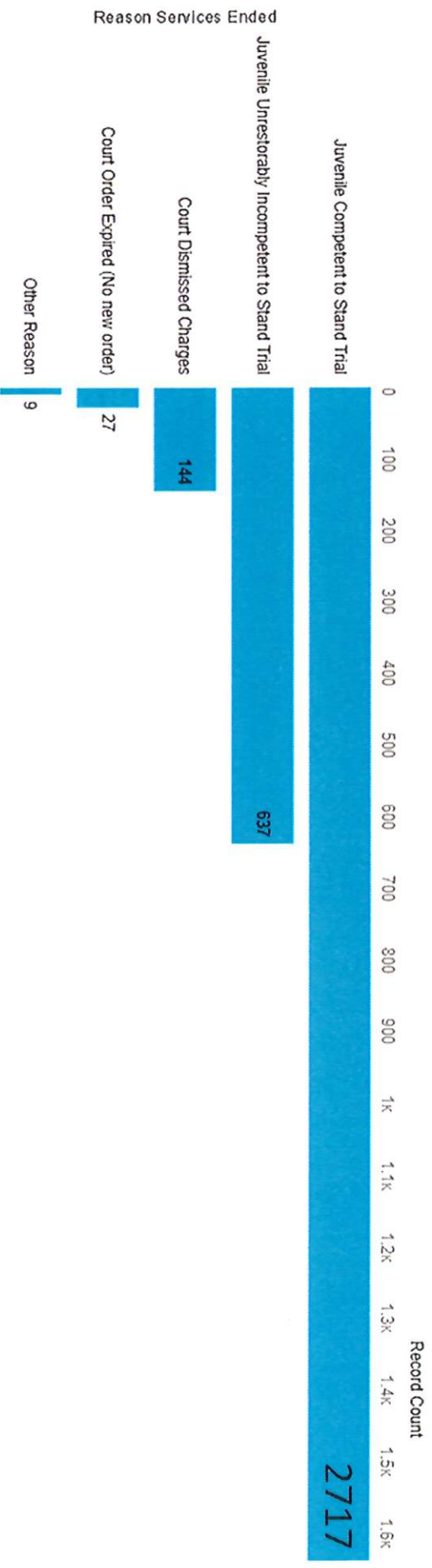
Record Count



Secure Facility No Yes

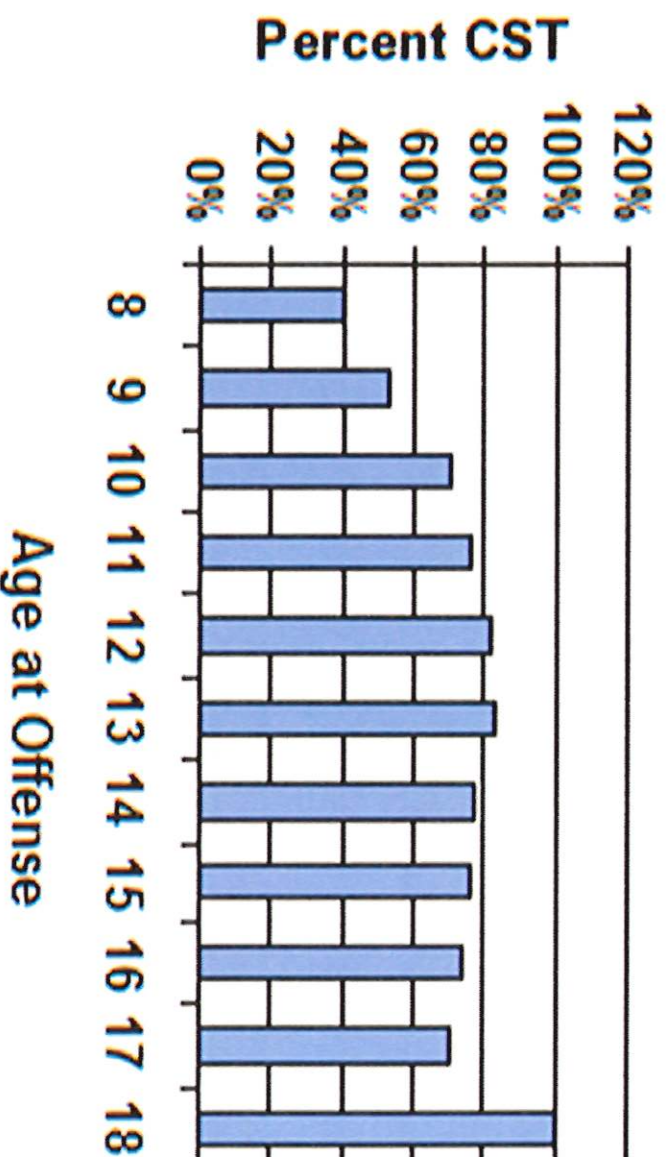


Competency Outcomes



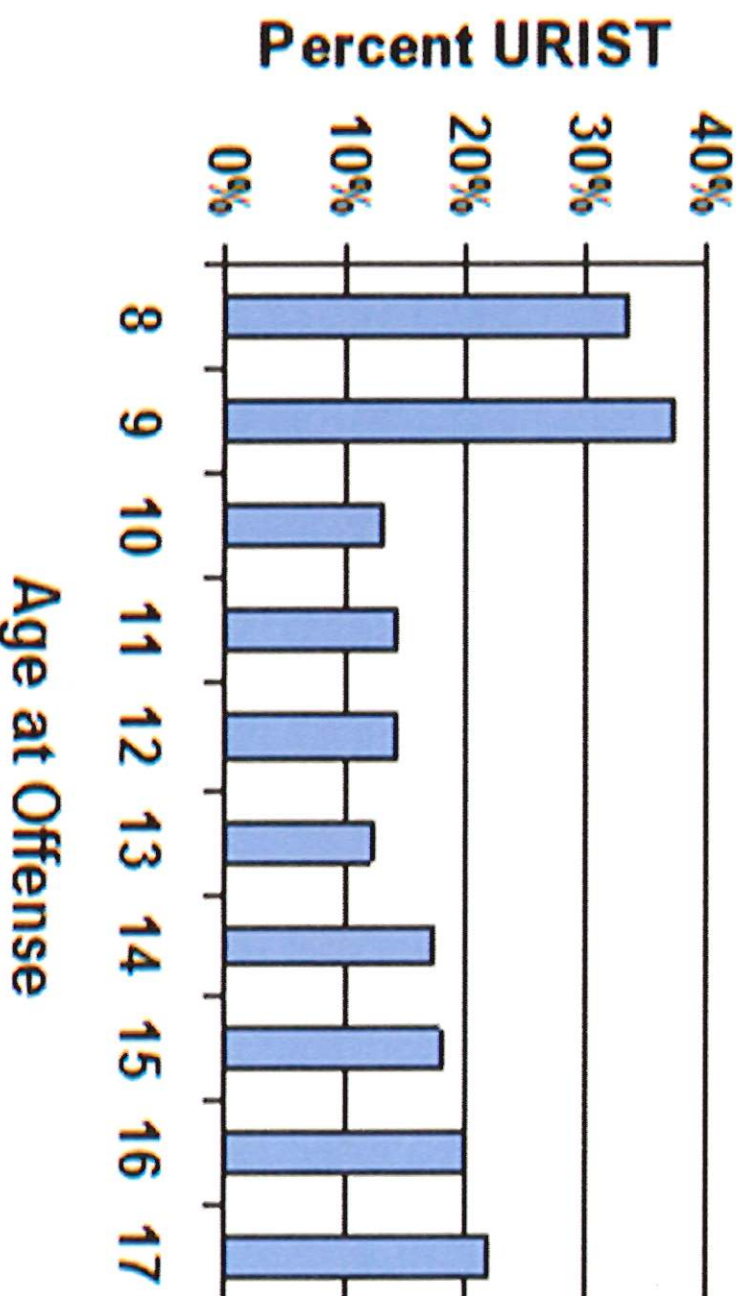
CST Outcomes

Age at Offense - CST



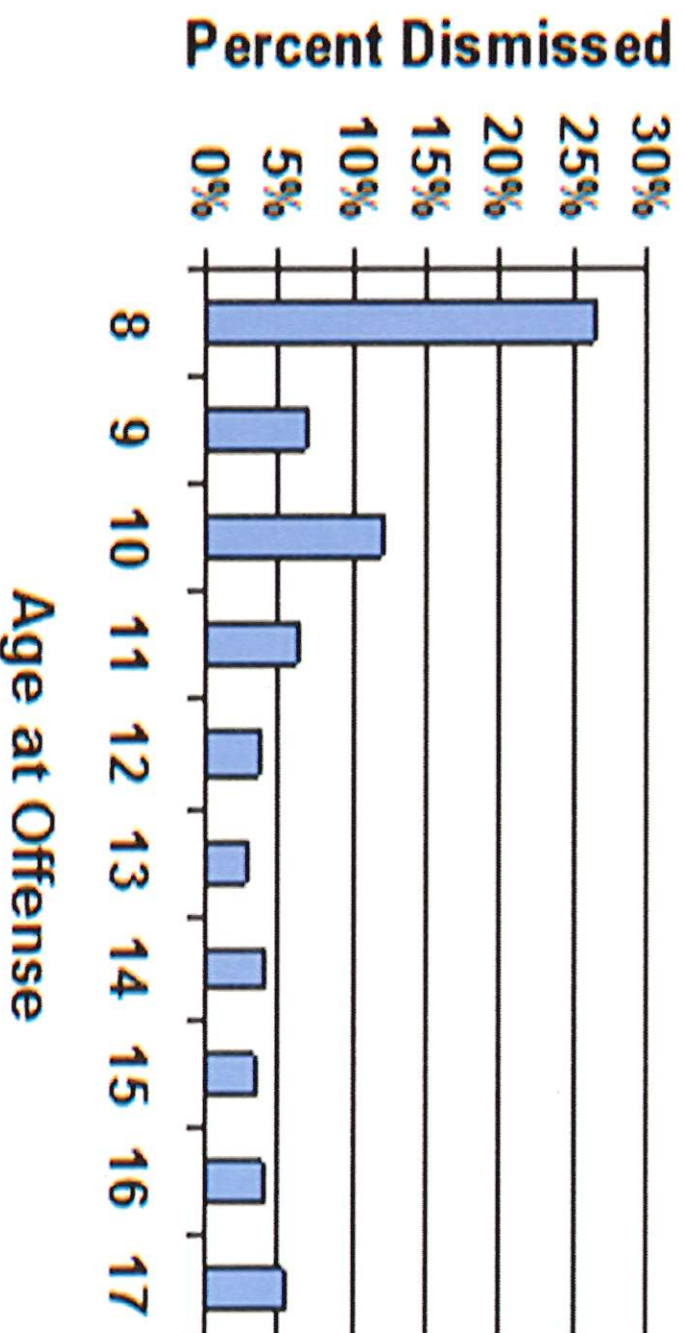
URIST Outcomes

Age at Offense - URIST



Dismissed Outcomes

Age at Offense - DISMISSED



Incidence of MH Dx. and Intellectual Disability

- Of the 3,598 court orders for juvenile restoration services since July 1, 1999...
- 877 juveniles or 24% had no MH Dx. or intellectual disability
- 162 juveniles or 5% had only intellectual disability
- 1622 juveniles or 45% had only mental health diagnosis
- 600 juveniles or 17% had both MH Dx. and ID
- 54 juveniles or 2% had only borderline intellectual disability
- 274 juveniles or 8% had both MH Dx. and BIF

Juvenile Competency Restoration Services

- When ordered by the juvenile court/mandatory participation
- Educational and training services/not clinical interventions
- Restoration case management that focuses on barriers to competency only/not wrap around services for all therapeutic and rehabilitation needs of youth
- Provided in the context of the adversarial court system/importance of protecting the rights of the youth
- Neutral and not advocacy/ no bias to the side of the prosecution or the defense
- Offered in the least restrictive setting allowed by the court

Catch All Information

- Important Nuances for DC523s
- Court Prerogative
- Disengagement/Malingering
- Problematic Areas

DC-523

- DC-523s are good for 90 days, or the next hearing on the matter, whichever comes sooner.
- DBHDS needs a new order to continue with restoration services.
- Lack of an order leads to regression in restoration services pending legal disputes

Court Prerogative

- Courts Choose their initial evaluator via DC522
- Based on urgency, need, and availability

Disengagement/Malingering

- 2 missed appointments and then...
- DBHDS respectfully requests the Court's assistance in this matter.
- Wasting time and resources...
- I don't know...
- Actual reasonable functional ability...
- Education and training provided to protect rights and safeguard the validity of the adjudication.

Problematic Areas

- 18 year olds that are URIST?
- CHINS can be ordered, but no services can be funded.
- They are psychiatrically stable, and not committable.
- Certification to apply for admission to a training center.
 - Is being discouraged as more options in the community are becoming available.
- Solutions?

Problematic Areas

- URIST juveniles that move from one jurisdiction to another.
- Break down in Communication (Family, RCs, CSBs, BHAs)
- Gaps in services
- Unmet Sex Offender needs.
- Re-entry into the Juvenile Justice System?
- CHINS allow them to “qualify” as a “mandated” referral.
- Recognition of other Court jurisdictions in their locality?

Virginia DBHDS Community-based Juvenile Competency Restoration and Evaluation

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Identifying and Addressing Competency Concerns in Juvenile and Adult Defendants

Hannah Hopkins, Assistant Public Defender

Elizabeth Foster, Assistant Public Defender

October 01, 2026

Identifying Competency Concerns

19.2-169.1(A)

Request is based on a belief that the adult lacks ***substantial capacity to understand*** the proceedings ***or to assist*** their attorney

Standard is ***probable cause***

Identifying Competency Concerns (Generally)

Things to look out for:

- Confusion as to current place, date, time, or identity
- Inability to retain information
- Inability to stay on-topic or be redirected
- Delusions or hallucinations that present a barrier to making informed decisions pertaining to their case
- Previous mental health diagnosis
- Prior findings of incompetency

Identifying Competency Concerns (Generally)

Practice Tips to Remember:

- History of MH diagnosis alone is generally not a basis for request CST eval
- Hallucinations and/or delusions do not always interfere with CST
- Attorney/Client privilege still exists when the attorney has competency concerns and must still be protected

Identifying Competency Concerns (Juveniles)

Things to look out for:

- Age
- Does client have prior interactions with the court?
- Does client have an IEP?
- Emotional Maturity

*One of these factors alone is generally not sufficient to request a competency evaluation

Practice Tips for Competency in Juvenile Cases

Expect kids will know very little about court. Can they retain information after you explain it?

School records are often very helpful.

Juveniles may be less likely to say they don't know something.

Ask for examples, not just definitions.

Procedure for Requesting Eval

Motion can be made ***any time*** after attorney is appointed/retain to before the end of trial

Can be made day of hearing but should be avoided if possible

Agreed to Prior to Trial:

- 1) File a motion with the court requesting evaluation *
- 2) Indicate the agreement of counsel
- 3) Provide available dates 25-40 days out for review hearing
- 4) Include *FORM DC-342* *

Objected to Prior to Trial:

- 1) File a motion requesting a competency evaluation *
- 2) Note opposing parties objection
- 3) Provide available dates for hearing request or note the hearing will be addressed on the next scheduled date

**Sample included with written materials*

Procedure for Requesting Eval

Provide materials to the evaluator:

§ 19.2-169.1(C) - Within 96 Hours (4 days)

Provide all documentation in non-CW cases (warrant, criminal complaint, etc.)

Not required (but helpful) - letter explaining specific concerns, helpful information or family contacts, and basis for the eval request

COURT NAME AND ADDRESS

Commonwealth of Virginia v. _____

TYPE OF EVALUATION AND REPORT

- ☐ COMPETENCY EVALUATION: If appearing to the Court on motion of ☐ the Court ☐ the Commonwealth's Attorney ☐ the defendant's attorney, the Court shall appoint a qualified evaluator to conduct an evaluation to assist the Court in determining whether the defendant is competent to stand trial. The evaluator shall submit a report to the Court, on or before the date shown below, in this Court, the Commonwealth's Attorney, and the defendant's attorney, concerning: (1) the defendant's capacity to understand the proceedings against him; (2) the defendant's ability to assist his attorney; (3) the defendant's need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future; and (4) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 3 of Title 18.2, or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128, whether the defendant should be evaluated to determine whether he meets criteria for temporary detention pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable future. If a need for restoration treatment is identified in the event he is found incompetent but restorable, or incompetent for the foreseeable future, the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unreasonably incompetent in the past two years, the report may recommend that the court find the defendant unreasonably incompetent to stand trial. No statement of the defendant relating to the time period of the alleged offense shall be included in the report.

- ☐ SANITY AT THE TIME OF THE OFFENSE: If appearing to the Court, upon hearing evidence or representation of counsel for the defendant, that there is a probable cause to believe that the defendant's sanity may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. They shall prepare and submit a full report, on or before the date shown below, solely to the defendant's attorney, concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. If further evaluation on this issue is necessary, the evaluator(s) shall so state.

- ☐ The motion for the evaluation having been made by the Commonwealth after receiving notice pursuant to Virginia Code § 19.2-168, the Court also orders the defendant to submit to an evaluator and has advised the defendant that a refusal to cooperate with the Commonwealth's evaluator(s) could result in the exclusion of defendant's expert evidence. The Court further orders the evaluator(s) to submit to the attorneys for the Commonwealth and defendant copies of the report and the records obtained during the evaluation.

DESIGNATION OF EVALUATOR(S)

The Court finds and concludes that:

- ☐ the evaluation shall be performed on an outpatient basis at a mental health facility or in jail.
The Court therefore appoints the following evaluator(s) to conduct the evaluation:

EVALUATOR(S) NAME(S) AND TITLE(S) OR NAME OF FACILITY

- ☐ the evaluation shall be conducted on an inpatient basis by qualified staff at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:

- ☐ an outpatient evaluation (copy attached) has been conducted and the outpatient evaluator opined that a hospital-based evaluation is needed to reliably reach an opinion.
☐ the defendant is currently in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to Virginia Code §§ 19.2-169.2, 19.2-169.6, 19.2-169.6, 19.2-182.1, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 3 (§ 37.2-814 et seq.) of Chapter 3 of Title 37.2.

DUE DATE AND TIME

The Court further orders that the Commonwealth's Attorney and the defendant's attorney forward appropriate background information to the evaluator(s) as required by law. TO EVALUATORS AND ATTORNEYS: See reverse for additional instructions.

DATE

JUDGE

Competency Review, Δ is Competent

If evaluator opines client is competent to stand trial:

- If all parties agree → new hearing date is set and case proceeds as usual.
 - Counsel may re-raise competency concern later in the process if concerns arise again
- If you still have concerns about client's CST → contested hearing
 - Party alleging incompetency has the burden to prove by ***preponderance of the evidence***

Competency Review, Δ is Not Competent

Evaluator opines client is not competent to stand trial

Not Competent But Restorable:

- If all parties agree → restoration services ordered and review hearing set.
 - Inpatient vs. Outpatient
- If a party objects → contested hearing
 - Burden is always on the party alleging that the Defendant is not competent

Not Competent and Not Restorable:

- Criminal Charge Nolle Prosequi
 - PD/CAC involvement ends at the NP
- May be a civil commitment hearing subsequently
- Finding of unrestorable can be challenged

Quick Note on Inpatient

Restoration

Most defendants are housed at Eastern State Hospital

ESH sends an Attorney Questionnaire after client has been admitted

Clients & Providers often ask for attorney conference calls

Both can help speed up process, but remember **Attorney /Client Privilege**

- Calls from client are not confidential and are from a phone in communal area
- Remind client that conversation may not be confidential and avoid discussing specifics about offense

Tips for Contested CST Hearings

Subpoena Witnesses:

- Original Evaluator
- Restoration Clinician
- Case Managers (CSB or CYS)
- Client's doctors or psychologists
- Teachers (juvenile defendants)

Collect supporting medical records:

- Psychological Evals
- Previous CST Evals
- School Records/IEPs

Tips for Contested CST Hearings

Areas of focus:

- Length of time spent with Δ
- Format of meeting(s)
- Frequency and Duration
- Information relied on (records vs. self-reporting)
- Δ level of participation/engagement
- What (if any) improvements was Δ able to achieve
- Have witnesses articulate *WHY* they made their conclusion
 - i.e. Δ 's developmental delays prevent them from retaining new info

Thank you

Questions?

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Elizabeth Foster, Assistant Public Defender

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JDR Competency and Restoration Samples & Resources

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Elizabeth Foster

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EFoster@vadefenders.org

10/01/26

ORDER FOR PSYCHOLOGICAL EVALUATION

Case No.

Commonwealth of Virginia Va. Code §§ 19.2-168, 19.2-168.1, 19.2-169.1, 19.2-169.5

COURT NAME AND ADDRESS

Commonwealth of Virginia v.

TYPE OF EVALUATION AND REPORT

- ☐ **COMPETENCY EVALUATION:** It appearing to the Court, on motion of
☐ Commonwealth's Attorney ☐ defendant's attorney ☐ the Court
and upon hearing evidence or representations of counsel, that there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist in his own defense, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant and to submit a report, on or before the date shown below, to this Court, the Commonwealth's Attorney and the defendant's attorney, concerning: (1) the defendant's capacity to understand the proceedings against him; (2) the defendant's ability to assist his attorney; (3) the defendant's need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future and (4) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128, whether the defendant should be evaluated to determine whether he meets criteria for temporary detention pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable future. If a need for restoration treatment is identified in the event he is found incompetent but restorable, or incompetent for the foreseeable future, the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial. No statements of the defendant relating to the time period of the alleged offense shall be included in the report.
- ☐ **SANITY AT THE TIME OF THE OFFENSE:** It appearing to the Court, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. They shall prepare and submit a full report, on or before the date shown below, solely to the defendant's attorney, concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. If further evaluation on this issue is necessary, the evaluator(s) shall so state.
- ☐ The motion for the evaluation having been made by the Commonwealth after receiving notice pursuant to Virginia Code § 19.2-168, the Court also orders the defendant to submit to an evaluation and has advised the defendant that a refusal to cooperate with the Commonwealth's evaluator(s) could result in the exclusion of defendant's expert evidence. The Court further orders the evaluator(s) to submit to the attorneys for the Commonwealth and defendant copies of the report and the records obtained during the evaluation.

DESIGNATION OF EVALUATOR(S)

The Court finds and concludes that:

- ☐ the evaluation shall be performed on an outpatient basis at a mental health facility or in jail.

The Court therefore appoints the following evaluator(s) to conduct the evaluation:

EVALUATOR(S): NAME(S) AND TITLE(S) OR NAME OF FACILITY

- ☐ the evaluation shall be conducted on an inpatient basis by qualified staff at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:
- ☐ an outpatient evaluation (copy attached) has been conducted and the outpatient evaluator opined that a hospital-based evaluation is needed to reliably reach an opinion.
 - ☐ the defendant is currently in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to Virginia Code §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

DUE DATE AND TIME:

The Court further orders that the Commonwealth's Attorney and the defendant's attorney forward appropriate background information to the evaluator(s) as required by law. TO EVALUATORS AND ATTORNEYS: See reverse for additional instructions.

DATE

JUDGE

ADDITIONAL INSTRUCTIONS TO EVALUATOR(S) AND ATTORNEYS

Providing Background Information

1. Competency Evaluation: Prior to an evaluation of competency pursuant to Va. Code § 19.2-169.1, the Commonwealth's Attorney must forward to the evaluator(s) within 96 hours of the issuance of this order:
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime; and
 - d. a summary of the reasons for the evaluation request.

The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C).

2. Sanity at the Time of the Offense: Prior to an evaluation of sanity at the time of the offense, the party making the motion for the evaluation must forward to the evaluator(s):
 - a. a copy of the warrant;
 - b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;
 - c. information about the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any;
 - d. a summary of the reasons for the evaluation request;
 - e. any available psychiatric, psychological, medical or social records that are deemed relevant; and
 - f. a copy of defendant's criminal record, to the extent reasonably available.

Va. Code § 19.2-169.5(C).

Use of Information Obtained During Evaluation

No statement of disclosure by the defendant concerning the alleged offense made during the evaluation may be used against the defendant at the trial as evidence, or as a basis for such evidence, except on the issue of his/her mental condition at the time of the offense after the defendant raises the issue pursuant to § 19.2-168 of the Code of Virginia. Va. Code § 19.2-169.7.

**ORDER FOR TREATMENT OF
INCOMPETENT DEFENDANT**

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No.

.....
COURT NAME AND ADDRESS

Commonwealth of Virginia v.

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the defendant is incompetent to stand trial, and based on the attached report or other evidence, that the defendant can be treated to restore his or her competency, the Court therefore ORDERS that the defendant be treated in an effort to restore the defendant to competency

☐ on an outpatient basis in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority

☐ specifically,
NAME OF OUTPATIENT THERAPIST OR FACILITY

☐ on an inpatient basis in a hospital, by qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee. Pursuant to Virginia Code § 19.2-169.2, the defendant shall be transferred to and accepted by the hospital designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of this Order.

Any psychiatric records and other information that have been deemed relevant and were submitted by the defendant's attorney to the evaluator pursuant to Virginia Code § 19.2-169.1(C) and any reports submitted pursuant to § 19.2-169.1(D) shall be made available to the director of the community services board or behavioral health authority or his designee, or to the director of the treating inpatient facility or his designee, within 96 hours of the issuance of this order.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, or if the initial evaluator has found that the defendant has an ongoing and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to the court so stating and indicating whether, in the opinion of the director of the board, authority, or inpatient facility or his designee or the evaluator, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

☐ *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or § 37.2-817.01 or certified pursuant to § 37.2-806.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

☐ A review hearing will be held on at m.
DATE TIME

.....
DATE

.....
JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

SAMPLE CST EVAL MOTION WHEN CWA IN AGREEMENT FOR EVALUATION - NO HEARING NEEDED

VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA,
Plaintiff,

V. DOCKET NO.: JA -----

{DEFENDANT},
Defendant.

NOTICE AND MOTION

TAKE NOTICE that the Defendant is charged with {ENTER CHARGES AND COUNTS} that is currently set for trial on {DATE} at {TIME} in JDR Courtroom X; and

IT APPEARING that defense counsel believes there is probable cause that the Defendant is not competent to stand trial; and the Defendant is currently being held in custody at the Virginia Beach Correctional Center {IF APPLICABLE}; and

IT FURTHER APPEARING that the Commonwealth Attorney has no objection to defense counsel's request for an evaluation;

THEREFORE, Defense respectfully requests that this Court enters the attached order for a competency to stand trial evaluation, removes the previously scheduled trial date from the docket, and set a mental health review date on {DATE AGREED UPON BY DEFENSE, CWA, AND CLERK'S OFFICE}. **ATTACH A COMPLETED DC-342**

Respectfully submitted,
{DEFENDANT}

By: _____
{COUNSEL}

Seen and Agreed:

{Commonwealth Attorney}

CERTIFICATE

I hereby certify that I have on this ____ day of {DATE}, 2026, sent via electronic mail a true copy of the foregoing motion to oca@vbgov.com, Office of the Commonwealth's

Attorney, Judicial Center, Virginia Beach, Virginia, 23456.

{COUNSEL}

**SAMPLE CST EVAL MOTION WHEN CWA NOT IN AGREEMENT FOR EVALUATION
- HEARING NEEDED**

***VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
OF THE CITY OF VIRGINIA BEACH***

COMMONWEALTH OF VIRGINIA,
Plaintiff,

V. DOCKET NO.: JA-----

{DEFENDANT},
Defendant.

NOTICE AND MOTION

TAKE NOTICE that the Defendant is charged with {ENTER CHARGES AND COUNTS} that is currently set for trial on {DATE} at {TIME} in JDR Courtroom X; and

IT APPEARING that defense counsel believes there is probable cause that the Defendant is not competent to stand trial; and the Defendant is currently being held in custody at the Virginia Beach Correctional Center {IF APPLICABLE}; and

IT FURTHER APPEARING that defense counsel has confirmed the availability of the Commonwealth Attorney to docket this matter on the below requested date;

THEREFORE, Defense respectfully requests that this matter be placed on the Court's docket on {DATE}, at 9:00am or 10:30am, whichever docket the Court is available.

Respectfully submitted,
{DEFENDANT}

By: _____
{COUNSEL}

CERTIFICATE

I hereby certify that I have on this ____ day of {DATE}, 2026, sent via electronic mail a true copy of the foregoing motion to oca@vbgov.com, Office of the Commonwealth's Attorney, Judicial Center, Virginia Beach, Virginia, 23456.

{COUNSEL}



DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Robert D. Williams
CEO

Eastern State Hospital

4601 IRONBOUND ROAD
WILLIAMSBURG, VA 23188-2652
Telephone: (757) 253-5161
Fax: (757) 253-5065
V/TDD: (757) 253-4638
<https://dbhds.virginia.gov/facilities/esh/>

**Defense Attorney
Competency to Stand Trial Questionnaire**

Date:

TO:

Fax /email#:

FROM: Andrew Osborn, Ph.D.
Pretrial Forensic Services
Eastern State Hospital
4601 Ironbound Road
Williamsburg, VA 23188
Office: (757) 208-7601
Fax: (757) 253-4703
lawrence.osborn@dbhds.virginia.gov

Your client, _____ – **Case Number/s** _____, has been referred to Eastern State Hospital for evaluation/treatment for competency to stand trial. I would greatly appreciate your completion of the following form, which will provide valuable assistance in conducting this evaluation, and/or provide individualized treatment for his/her legal unique situation. Please also provide any available psychiatric, psychosocial, medical, or other records that are deemed relevant, per VA statute 19.2-169.1. Please do not hesitate to phone me if you have any questions.

It helps us to know more about the initial competency referral. Who brought your client's competency to the attention of the court?

Myself Prosecuting Attorney Court's own motion Probation officer

Detention Staff Arresting officers Client's family Other: _____

What factors, if any, contributed to the perceived need for a competency evaluation?
(Please check all that apply, and describe all factors checked)

Concerns about/History of major mental illness or mental health treatment

Concerns about/History of a personality disorder or behavioral disorder

Concerns about/History of intellectual disability, developmental disability, or learning disorder

Concerns about dementia/neurocognitive impairment

Concerns about/History of a substance use disorder

Other

One aspect of competency is the defendant's ability to assist counsel and to manage the attorney-client relationship in a way that does not detract from the opportunity to develop the defense.

What challenges you have faced when interacting with the defendant?
(Please check all that apply, and describe all factors checked)

They appeared confused

They appeared immature or childlike

They appeared detached or indifferent

They appeared inattentive or distracted

They appeared depressed or hopeless, or I had concerns about suicide

They appeared hostile, defiant, or aggressive

They appeared to have memory problems

They appeared to be seeing or hearing things that were not really there (possible hallucinations)

They made peculiar/odd statements or relayed unusual beliefs (possible delusions)

I had trouble understanding what they were trying to tell me (expressive communication)

They had trouble understanding what I was trying to tell them (receptive communication)

Their behaviors were bizarre or unusual

Other: _____

Competency is assessed in the context of the status of a defendant's legal case, and relates to the defendant's ability to meet the demands of their case in the foreseeable future.

What is the current status of your client's case (at what phase of proceedings will the case return to, when the issue of competency is resolved)?

Please check if your client should expect to do (may have to do) the following moving forward:
(Please check all that apply)

Arraignment/Enter a plea

Mental health/Competency hearing

MSO/NGRI evaluation interview

Bond hearing

Decide about a plea bargain/plea agreement

Trial/Appeal processes

Testify as a witness (i.e., direct- and cross-examination)

Other: _____

Please indicate your expectations for your client's case:

- | | | | | | |
|---|----|----------|------------|--------|------------|
| 1. Evidence against the client is limited | No | Unlikely | Don't know | Likely | Definitely |
| 2. Evidence against the defendant is confusing/complicated | No | Unlikely | Don't know | Likely | Definitely |
| 3. The case will involve many adverse witnesses | No | Unlikely | Don't know | Likely | Definitely |
| 4. The pre-adjudication process will be lengthy | No | Unlikely | Don't know | Likely | Definitely |
| 5. The adjudication hearing will be lengthy | No | Unlikely | Don't know | Likely | Definitely |
| 6. The adjudication hearing will be complex (i.e., difficult to follow) | No | Unlikely | Don't know | Likely | Definitely |
| 7. The case is expected to be highly contentious (i.e., adversarial) | No | Unlikely | Don't know | Likely | Definitely |
| 8. The case is expected to be a high publicity case | No | Unlikely | Don't know | Likely | Definitely |

How serious do you believe your client's legal situation is?

Please describe the nature of the dispositions that your client might face, given these charges and your client's past record:

Please describe any collateral consequences or added stressors in the client's life that I should consider when interacting with this client:

Please fax completed form to (757) 253-4703, or mail to Forensics, Bldg. 2, Eastern State Hospital, Ironbound Rd., Williamsburg, VA 23188, and do not hesitate to contact me if you have any questions. Thank you.

ADULT COMPETENCY

➤ IDENTIFYING AND ADDRESSING COMPETENCY CONCERNS

- *Relevant code: § 19.2-169.1(A)*
- **STANDARD:** A belief that the adult lacks substantial capacity to understand the proceedings or to assist their attorney. *Look out for:*
 - Confusion as to current place, date, time, or identity
 - ♦ Note that inability to recall OR having been under the influence during the time period of the alleged offense (or a combination of both) without other factors in play does not justify a competency concern.
 - Inability to retain new information, even if simplified and repeated
 - ♦ Critically: trial rights, attorney/client relationship and associated privilege; potential case outcomes; roles of courtroom players; appellate rights; plea options; plea agreements; etc.
 - Delusions or hallucinations that present a barrier to effective communication
 - Known diagnoses and delays
 - Prior findings of incompetency/prior psych hospitalization
- **PROCEDURE** pursuant to § 19.2-169.1(A)
 - Court or counsel may request a competency evaluation via written motion or orally in court AT ANY TIME before the end of trial.
 - ♦ If addressed prior to court and all counsel agrees to evaluation, counsel must file a motion or letter to the Court (1) requesting a competency

evaluation (2) indicating the agreement of counsel (3) providing available dates 25-40 days out for competency review.

- ◆ If addressed prior to court and counsel is NOT in agreement to evaluation, the requesting party must send a motion or letter to Court (1) requesting a competency evaluation (2) providing available dates for hearing for request for evaluation OR noting that the request will be addressed on the next scheduled hearing date.

➤ **COMPETENCY EVALUATION**

- *Relevant code: § 19.2-169.1*
- **STANDARD:** Probable cause to believe that the Defendant lacks the substantial capacity to understand the proceedings or to assist their attorney in their defense. Most often, this determination is made based on the observations of the Court or Commonwealth, or the proffer of defense counsel.
- **PROCEDURE** pursuant to § 19.2-169.1
 - (1) Court enters Order for Psychological Evaluation
 - ◆ Outpatient (Defendant on bail or in custody) – usually handled by Bay Forensics, Tricoastal Psychological Services, or Tidewater Forensic Assessments
 - ◆ Inpatient (only if recommended by an outpatient evaluation or if the Defendant is already in the custody of Behavioral Health) – handled by DHS/ACS
 - (2) Court enters DC-570 noting that a DC-342 was entered and sets review date 25-30 days out

- ◆ DC-342 should indicate that the report is to be submitted 5 days before the review date.
- (3) Pursuant to § 19.2-169.1(C), certain materials must be provided to the evaluator within 96 hours (4 days):
 - ◆ Commonwealth to provide “any information relevant” to include:
 - Warrants/indictments; contact information for the attorneys and judge involved; information about the offense; a summary of reasons for the evaluation request.
 - ◆ Defense to provide “any available psychiatric records and other information deemed relevant”
 - May include: Psychological evaluations, school records, contact information for helpful family members, letter detailing Counsel’s specific concerns and reason for the evaluation request.
 - ◆ In non-Commonwealth cases, Defense counsel should provide everything.

➤ **COMPETENCY REVIEW, NEXT STEPS**

- *Relevant code: § 19.2-169.2; 169.1(E); 169.2(A)*
- **STANDARD:** Party alleging incompetency has the burden of proving incompetency by a preponderance of evidence.
 - Typically, an evaluator’s report indicating a finding of incompetency or competency will be enough for the Court to make the same finding.
- **PROCEDURE:** based on what the evaluator finds *unless challenged*:
 - If competent → Set for trial

- If incompetent, but restorable → (hearing is not required unless requested by a party or hospitalization is anticipated)
 - ◆ Court enters Order for Treatment of Incompetent Defendant (Restoration)
 - Outpatient restoration is ordered when Defendant is in the community or in jail.
 - Note: an evaluator may recommend inpatient treatment even when the Defendant is in the community or in the jail.
 - Inpatient is ordered when an adult is already in the custody of Behavioral health.
 - ◆ Restoration Review date is to be set 60 days out – ensure Defendant's contact information is in the order.

➤ **RESTORATION REVIEW, NEXT STEPS**

- *Relevant code: § 19.2-169.2(B); 19.2-169.3(A); 19.2-169.3(B); 19.2-169.3(B)*
- **PROCEDURE:** After restoration services are completed, the Court must rule on Defendant's competency pursuant to § 19.2-169.1(E). A post restoration competency evaluation must be conducted if the restoration service providers indicate that they have exhausted restoration services.
 - Court finds Defendant competent → set for trial
 - Court finds Defendant incompetent, but restorable in the foreseeable future → set for review no later than 6 months after restoration began, with a review hearing to be held every 6 months afterwards
 - ◆ Note: the report will indicate whether the Defendant would likely benefit from continued restoration services.

- Court finds Defendant unrestorable → proceed to next steps

➤ **UNRESTORABILITY (URIST)**

- *Relevant code: § 19.2-169.2; 19.2-169.1(E); 19.2-169.3*

- **PROCEDURE:**

- Note that a hearing is not required unless (1) requested by either party (2) hospitalization is anticipated.

- If report indicates URIST, the Court has the following options:

- ♦ Release

- Note that it is at this stage that the Commonwealth will *Nolle Prosequi* criminal charges.

- If not, all charges (except aggravated murder) shall be dismissed on the date upon which the sentence would have expired if convicted and received maximum sentence OR 5 years from the date of arrest, whichever is sooner.

- ♦ Review for Commitment pursuant to § 37.2-8144 et seq.

- ♦ Commit pursuant to § 37.2-900 et seq. (but first screened per 903 and 904)

- ♦ Certify pursuant to § 37.2-806 (admission to training center – V.B. does not currently have this option)

JUVENILE COMPETENCY

➤ IDENTIFYING AND ADDRESSING COMPETENCY CONCERNS

- *Relevant code: § 16.1-356*
- **STANDARD:** (Same as Adult standard) - A belief that the juvenile lacks substantial capacity to understand the proceedings or to assist their attorney.
 - Absent serious mental health or physical health concerns, juvenile competency concerns usually stem from difficulty grasping and/or retaining court concepts as they are complicated, foreign, and abstract to most children.
 - Ask the juvenile about medical diagnoses; mental health diagnoses; IEPs; prior evaluations; medications; psych providers, etc.
 - ◆ With client consent, it is often more fruitful to speak with the juvenile's parent or guardian about this information depending on the age of the juvenile. They tend to be better historians and sometimes have documentation.
 - Almost every juvenile requires a brief education on the criminal justice system.

Critical points to hit:

- ◆ Your role as counsel; roles of other courtroom players; what allegation/charge brings them to court; potential case outcomes; attorney-client privilege; plea options; trial rights; plea agreements; appellate rights.
- ◆ Do your best to simplify these concepts without diluting or undermining the gravity of the situation.

- After providing a brief and slowly placed education, first ask if the juvenile has any questions or if anything needs to be repeated. (They will almost always say no...)
- ♦ Conduct a “quiz” with discrete and narrow questions to see what was retained. Examples:
 - “If you plead ‘not guilty,’ does that mean you have a trial, or don’t have a trial?”
 - “If you plead ‘guilty,’ do you have to speak in court, even if you don’t want to?”
 - “Do I work for you, against you, or am I in the middle?”
- Try and see if you can get juvenile to the point where they can answer these types of questions.
- ♦ Then, it’s a good idea to ask more open-ended questions to get a better sense of their grasp of concepts. Examples:
 - “What does it mean if you plead not guilty/guilty?”
 - “What does it mean if you appeal your case?”
 - “Can you explain what a plea agreement is?”
 - “What do you think my job is? The prosecutor’s? The judge’s?”
- ♦ If the juvenile continues to struggle at this stage even with correction, breaks, and re-questioning, then you should ask for a competency evaluation.
- ♦ Sometimes a juvenile is able to learn the concepts, but is struggles to apply them to their case. Pay attention to the juvenile’s questions, assertions, and

decision-making rationales while you discuss their case – be on the lookout for indicators that they don't actually understand what is happening.

- If there are continued concerns about the juvenile struggling to apply concepts to their case and it interferes with their ability to effectively assist you in their own defense, you should probably ask for a competency evaluation.

➤ **COMPETENCY EVALUATION**

- **PROCEDURE** pursuant to § 16.1-356:
 - Upon a finding of probable cause, Court to order a competency evaluation. It is to be conducted on an outpatient basis at a community services board or behavioral health authority, juvenile detention home, or juvenile justice facility UNLESS the Court specifically finds that:
 - ♦ (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary OR
 - ♦ (ii) the juvenile is currently hospitalized in a psychiatric hospital
- Pursuant to § 16.1-356(C), certain materials must be provided to the evaluator within 96 hours (4 days):
 - ♦ Commonwealth to provide “any information relevant” to include:
 - Warrants/petitions; contact information for the attorneys and judge involved; information about the offense; a summary of reasons for the evaluation request

- ◆ Defense to provide “only the psychiatric records and other information that is deemed relevant to the evaluation of competency” as well as a summary of the reasons for the request.
 - May include: Psychological evaluations, school records, contact information for helpful family members, letter detailing counsel’s specific concerns and reason for the evaluation request.
- ◆ In non-Commonwealth cases, Defense counsel should provide everything.

➤ **COMPETENCY REVIEW, NEXT STEPS**

- **PROCEDURE** pursuant to §16.1-356(E)
 - Competency Evaluator as 14 days from completion of their evaluation to submit a written report concerning (i) the juvenile’s capacity to understand the proceedings against them (ii) their ability to assist their attorney and (iii) their need for services in the event they are found incompetent.
 - ◆ No statements of the juvenile relating to the alleged offense shall be included in the report.
 - ◆ Note: after ordering a competency evaluation, the Court will typically set a competency review date at least 30 days out.
 - Court to determine competency based on the report
 - ◆ A hearing is not required unless one is requested by the Commonwealth or the Defense where a party is challenging the findings of the report.
 - If a hearing is held, the party alleging incompetency has the burden of proving incompetence by a preponderance of evidence.
 - ◆ If competent → set for trial

- ♦ If incompetent → proceed with restoration services

➤ **RESTORATION REVIEW, NEXT STEPS**

- **PROCEDURE** pursuant to § 16.1-357
 - Upon a finding of incompetence, Court to order restoration services.
 - ♦ Note: restoration services are to be ordered for up to 3 months. If the juvenile is not restored in 3 months from the date of the restoration order, the agent providing restoration must notify the Court and make recommendations concerning disposition of the juvenile.
 - Then, the Court must conduct a competency hearing according to § 16.1-356(F)
 - If the Court finds the juvenile unrestorable → Court to order one of the dispositions found in § 16.1-358.
 - If the Court finds the juvenile incompetent, but restorable → Court may order continued restoration services for 3-month periods, with a § 16.1-356(F) hearing held after each period.
 - ♦ If at any point during this process the agent providing restoration believes the juvenile's competency is restored, the agent shall immediately so notify the Court and the Court shall make a ruling on competency at a § 16.1-356(F) hearing.

➤ **UNRESTORABLE (URIST)**

- **PROCEDURE** pursuant to § 16.1-358

- If at any point the agent providing restoration services concludes that the juvenile is likely to remain incompetent for the foreseeable future, he must send a report to the Court so stating.
 - ◆ The agent shall also indicate whether, in the agent's opinion, the juvenile should be:
 - (i) committed pursuant to Article 16 (§ 16.1-335 et seq.) or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2
 - (ii) certified pursuant to § 37.2-806
 - (iii) provided other services by the Court, or
 - (iv) released
- Upon receipt of the agent's report, the Court shall hold a § 16.1-356(F) hearing.
 - ◆ Incompetent, likely to remain so for the foreseeable future → Court shall order one of the conditions (i)-(iv) listed above
 - ◆ Incompetent, but restorable to competency in the foreseeable future → Court may order restoration services continued until 3 months have elapsed from the date of entry of the original restoration order.
- Charges against an unrestorable incompetent juvenile shall be dismissed within:
 - ◆ 1 year from the date of the arrest for a misdemeanor
 - ◆ 3 years from the date of arrest for a felony

CHALLENGING AN EVALUATION

➤ WHAT IF YOU DISAGREE WITH AN EVALUATION?

- The Commonwealth could disagree with a finding of incompetence, Defense could disagree with a finding of competence.
- PROCEDURE: the aggrieved party must request a competency hearing, and the party arguing for incompetence must prove incompetence by a preponderance of the evidence.
 - The evaluator may be subpoenaed for questioning at the hearing.
Questions to ask:
 - ◆ How long were meetings with the Defendant? How frequent? How many total?
 - ◆ Format of the meeting – in-person? Zoom? Telephone?
 - ◆ Were medical or psychological records reviewed?
 - ◆ How much reliance was there on patient self-reporting, and was there any follow-up?
 - ◆ Is it outside the realm of possibility that this Defendant could have decompensated over time?
 - ◆ Etc.
 - Other professionals more closely tied to the Defendant may testify – their own doctors, psychologists, etc.
 - Not advisable, but the Defendant *may* testify as well.

- ◆ Counsel could demonstrate to the Court and the Commonwealth through questioning of their client how the client responds to basic education and questions about court proceedings and rights (be careful to avoid facts of the case – this might be very difficult depending on the client, so this is a risky option and generally not advisable.)