

oppaga Justification Review



December 2000

Report No. 00-27

72% of Youths Restored to Competency, Able to Move to Delinquency Proceedings

at a glance

- The Juveniles Incompetent to Proceed Program restores the adjudicative competency of 72% of the mentally ill and mentally retarded children court-ordered to participate in competency restoration training. Training is most effective for mentally ill children. The \$4.2 million program served 266 children in Fiscal Year 1999-2000.
- More than half of children complete training within six months; 90% complete training within a year. After training, children are returned to the juvenile justice system to continue with delinquency proceedings.
- The program is an improvement over the way juvenile competency was handled before Florida's juvenile competency statute was passed in 1996. However, community partners raise concerns about methods used to assess juvenile competency; delays securing services and placements for children; and delays discharging children from the program. Some of these issues are outside the department's influence.

Purpose

This report presents the results of OPPAGA's Program Evaluation and Justification Review of the Department of Children and Families' Juveniles Incompetent to Proceed Program. State law directs the Office of Program Policy Analysis and Government Accountability to conduct justification reviews of each program during its second year of operating under a performance-based program budget.¹ This report evaluates program performance and discusses how the program interacts with the judicial branch of government. Appendix A is a summary of our conclusions regarding the nine issue areas the law requires OPPAGA to consider in a program evaluation and justification review.

Program Background

Purpose

The Juveniles Incompetent to Proceed Program serves mentally ill and mentally retarded children who have been charged with felonies, but do not have the ability to participate in legal proceedings.²

¹ Chapter 94-249, *Laws of Florida*.

² Incompetence is not synonymous with mental disorder; not all individuals with mental disorders experience symptoms that interfere with their court participation.

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These juveniles are deemed unable to participate in their defense because they cannot consult with counsel with a reasonable degree of rational understanding and do not have a rational and factual understanding of the proceedings. Participation in this program is court-ordered. The goal of the program is to restore adjudicative competence, so that children can be returned to the juvenile justice system and proceed with delinquency proceedings.

Florida's juvenile competence law (s. 985.223, *Florida Statutes*) establishes a process and criteria for determining adjudicative competence. It specifies the categories of children eligible to receive competency restoration services and procedures to follow when the child completes training (see Appendix B). The general process is described below.

- If mental incompetence is suspected, court proceedings are suspended, and judges order an evaluation of the child's ability to participate in a fair trial.
- When warranted, a court order establishes the child's adjudicative incompetence and refers the child to the Department of Children and Families for competency restoration training.
- Upon the completion of training, children who have been restored to competency continue with delinquency proceedings; judges dismiss the charges of children who are not restorable.

The courts may retain jurisdiction over children in the program for a period of up to two years.

Organization

The Department of Children and Families (DCF) administers the Juveniles Incompetent to Proceed Program through a central program office in Tallahassee, its 15 district offices, and a private service provider.

- DCF's central office oversees the program. A statewide program coordinator and a halftime clinical coordinator housed within

the forensic unit of the Mental Health Program office handle administrative and policy development functions including planning, budgeting, quality assurance, data collection and reporting, and contract management. The coordinator also provides consultation on juvenile forensic mental health and mental retardation issues to DCF district offices and approves all referrals for program services.

- Program liaisons, who are appointed by district administrators, operate in each district office.³ The liaisons help coordinate the department's efforts on behalf of incompetent juveniles by monitoring court cases and forwarding client information to the statewide program coordinator. They also educate court personnel about the program and oversee discharge planning by arranging for needed services. In all districts, the designated liaisons work with the program on a part-time basis and have other duties.
- The department uses a private service provider to deliver services. For the last two years, a private provider, the Brown Schools of Gainesville, Florida, has been awarded the contract through a competitive process. The contractor employs program managers and case managers and subcontracts with providers across the state for competency restoration, psychological assessment, and residential services.

Services

After being court-ordered into the Juveniles Incompetent to Proceed Program, children receive a variety of services. All children committed receive case management services and competency restoration training.

- Case management services include identifying the children's needs; coordinating services; monitoring service

³ Districts vary in their approaches to the liaison position. Some district administrators designate separate liaisons from the Children's Mental Health and Developmental Services program offices. Others assign liaison responsibilities to only one program office, or to the district legal counsel.

delivery; monitoring court activity related to their cases; and evaluating the effectiveness of competency restoration training.

- Competency restoration training assists children with participating in their own defense (see Appendix C). Methods may include education, role-playing, watching videos, and game-playing. This training is designed to help the children appreciate the charges against them and the corresponding range and nature of possible penalties that may be imposed. The training also addresses the importance of disclosing pertinent facts to their attorneys, understanding the adversarial nature of the legal process, and displaying appropriate courtroom behavior.

Additional services provided depend on whether the child is served in the community or a secure residential facility. The courts may order children to receive competency restoration training services in a secure residential environment if they are considered potentially dangerous to themselves or others; have no responsible family or friends to care for them; or have no less restrictive housing alternatives. In addition to competency restoration services, these children receive a full array of residential and treatment services such as housing, schooling, assessment, counseling, therapy, social skills training, and psychotropic medication. Competency restoration training is generally provided in a group setting.

Children who do not meet residential commitment criteria are provided competency training and case management in the community. The training is generally provided on a one-on-one basis in their homes. If the home environment is too disruptive, training may be provided at school, or in a public place, such as a library.

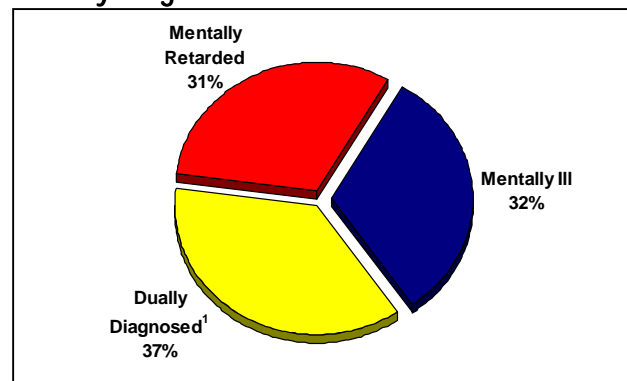
Given their mental illnesses and/or developmental disabilities, some children need treatment and support services to enable them to participate in competency restoration training. For example, a mentally ill child may

need to be stabilized through the use of psychotropic medication before he or she is able to respond to competency restoration training. When a need for additional treatment or support services is indicated, the program may provide the service directly, or link the child to treatment resources available through the department's children's mental health and developmental services programs. The program covers the cost of treatment and support services for children committed to competency restoration training in residential settings. For children committed to competency training in the community, other DCF programs fund the additional needed services.

Clients

From the time the program began providing services in 1997 through September 2000, it has served 476 children. According to judges, staff from the Department of Children and Families and the Department of Juvenile Justice, service providers, and other stakeholders, these children are high-need, difficult-to-serve youth; many have had substantial prior involvement in Florida's social services and juvenile justice systems. Most (68%) have a primary diagnosis of mental retardation. Exhibit 1 shows the diagnoses for children served.

Exhibit 1
Most Children Served by the Program Have a Primary Diagnosis of Mental Retardation



¹ Dually diagnosed children are both mentally ill and mentally retarded. When this occurs, mental retardation is the primary diagnosis.

Source: OPPAGA analysis of program data from May 1997 through September 2000.

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Exhibit 2 illustrates the demographic characteristics of children committed to the program. Most are black (62%), males (87%), between 13 and 16 years in age (56%).

Exhibit 2

Most Clients Are Black Males Between 13 and 16 Years in Age

Demographic Profile of Program Clients					
Age		Sex		Race	
12 or less	28%	Male	87%	Black	62%
13—16	56%	Female	13%	White	31%
17—19	16%			Other	7%

Source: OPPAGA analysis of program data.

The majority were charged with violent crimes against persons, such as assault or battery on a school official or resisting arrest (see Exhibit 3).⁴ The types of crimes committed by mentally ill and mentally retarded children were similar.

Resources

The Juveniles Incompetent to Proceed Program was instituted with a 1997 transfer of \$2.8 million from the Department of Juvenile Justice (DJJ) to the Department of Children and Families.⁵ Since that time, the program's annual budget has almost doubled, enabling it to serve an increasing number of children (see

⁴ Chapter 985, *F.S.*, contains mechanisms for handling some juvenile cases in adult court, depending on the seriousness of the charges and the child's age and criminal history. If a prosecutor proceeds directly to adult court with a child's case, the issue of adjudicative competency is handled within the adult system.

⁵ Through an inter-agency agreement, DJJ has transferred \$2.8 million annually to DCF to support the program.

Exhibit 4

The Program's Budget Has Nearly Doubled in the Four Years Since It Was Established

Funding Source	Fiscal Year			
	1997-98	1998-99	1999-2000	2000-01
General Revenue transferred from DJJ to DCF	\$2,800,000	\$2,800,000	\$2,800,000	\$2,800,000
General Revenue from DCF		650,000	650,000	2,650,000
Trust Funds			750,000	
Total Budget	\$2,800,000	\$3,450,000	\$4,200,000	\$5,450,000
Children Served¹	160	210	266	266 (estimated)

¹ Some children are served in more than one fiscal year.

Source: OPPAGA analysis of program budget information and department Long-Range Program Plan (2000).

Exhibit 3

Most Primary Offenses Were Categorized as Violent Personal Offenses

Category of Crime	Number ¹	Percent
Violent personal offenses	214	52%
Burglary	75	18%
Sexual offenses	65	16%
Theft, forgery, fraud	19	5%
Robbery	18	4%
Other (weapons, drugs, etc.)	22	5%

¹ The program database is missing offense information for 63 children.

Source: OPPAGA analysis of program data from May 1997 through September 2000.

Exhibit 4). During Fiscal Year 2000-01, it anticipates serving 266 children with a budget of \$5.45 million. The department has allocated 1.5 full-time equivalent positions to the program in the central office. Costs associated with district liaison positions are not charged to the program and are funded through district budgets.⁶

Most program funds in Fiscal Year 1999-2000 (\$4,034,200) were allocated for contracted services, and the balance (\$165,800) covered central office administrative costs. The department's contract with the Brown Schools establishes a daily rate of \$225 for residential services, and hourly rates of \$47.50 and \$40, respectively, for case management and competency restoration training.

⁶ The staff in the department's 15 service districts who serve as program liaisons have other primary responsibilities and devote only a portion of their time to the Juveniles Incompetent to Proceed Program. One district contracts with a local service provider to perform the liaison function.

Findings

Need

Program services are needed to ensure due process rights. Court decisions have established that states must provide due process rights to children in delinquency proceedings. The U.S. Supreme Court has ruled that, for those juvenile proceedings that have the potential consequence of incarceration, children are entitled to the same due process protections as adults. These protections include the right to receive notification of the charges against them, to be represented by counsel, to remain silent, the right to confront their accusers, and to cross-examine witnesses testifying against them.⁷

However, these protections have little meaning for individuals who due to mental illness or retardation are incapable of understanding court proceedings or assisting in their own defense. Although the U. S. Supreme Court case did not specifically address the issue of competency in juvenile proceedings, other cases have required that adults must be competent to stand trial. Florida's juvenile competence legislation was passed after several appellate courts held that Ch. 916, *Florida Statutes*, applied only to adult incompetence and did not apply to juveniles. The Legislature in 1996 subsequently amended Florida juvenile justice statutes (Ch. 39, *Florida Statutes*) to establish due process protections for children. The protections are similar to those provided to adults when the offenses committed are likely to result in incarceration.⁸ Thus, program services are needed to meet statutory and constitutional requirements.

In addition, the program ensures that children with mental illnesses or retardation receive the services they need to lessen the impact of their disabilities and allow them to face the consequences of their actions. According to stakeholders we interviewed, many children who were incompetent to proceed did not receive mental health or developmental

services prior to their commitment to the program. In addition, prior to the program, many incompetent children who committed serious offenses never went to trial. By restoring them to competency, this program now ensures that they can go to trial and face the consequences of their crimes. Accordingly, we concluded that the program provides beneficial services and should be continued.

Program Placement

The program is appropriately placed within the Department of Children and Families. The department's Mental Health Program administers a similar program for adults who are incompetent to proceed as well as a mental health program for children. In addition, the department's Developmental Services Program provides services for children who are mentally retarded. Thus, the department handles all rehabilitative programs for children who are mentally ill or retarded, including those who are incompetent to participate in judicial proceedings. An alternative placement for the program, the Department of Juvenile Justice, lacks this expertise. Accordingly, we concluded that the program's current organizational placement is appropriate.

Privatization

The program is already highly privatized. A private provider, the Brown Schools of Gainesville, Florida, carries out or sub-contracts for all direct program services. The department's involvement is limited to state-level planning, contract administration, and district-level monitoring of court activities. These activities are needed to ensure that program funds are properly used and that services are effective.

Performance

The Juveniles Incompetent to Proceed Program uses three primary performance measures. These measures assess the effectiveness of the program's competency restoration training; how long it takes to complete the training; and community partners' satisfaction with the program. Appendix D shows the program's performance on these measures for the last three years.

⁷ U.S. Supreme Court, *In Re Gault*, 387 U.S. 1 (1967).

⁸ The 1997 Juvenile Justice Reform Act created Ch. 985, *F.S.*, and transferred the provisions of Ch. 39 to the new section.

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For our analysis of program performance, we also used the program's recently completed database, which tracks the dates and major events of each child's case. Using this information, we were able to track outcomes for children who remained in the program for more than one year. We were also able to assess the overall effectiveness of Florida's juvenile competency process by examining factors outside of the program's direct sphere of influence, such as the timeliness of court processes related to juvenile competency cases.

Competency restoration training is reasonably effective. Overall, 72% of the children who complete training are sent back to the courts with their adjudicative competency restored. Program data indicate that 91% of mentally ill children who complete training attain competency, and 63% of mentally retarded children experience success with the training (see Exhibit 5.). The program makes a recommendation to the courts as to whether competency has been restored at the conclusion of the training. The courts mostly concur with the program's recommendations, accepting 98% of the recommendations over the three-year period the program has been in existence.⁹

Exhibit 5

Competency Restoration Training Is Most Effective for Mentally Ill Children

Outcome of Training	Primary Diagnosis	
	Mental Illness	Mental Retardation
Adjudicative competency restored	91%	63%
Child found non-restorable	9%	37%
Total children completing training ¹	115	252

¹ Sixteen children did not complete training due to relocating, running away, or a lack of family cooperation with the program.

Source: OPPAGA analysis of program data from May 1997 through September 2000.

Because the success rate for restoring competency for mentally retarded children (63%) is much lower than for mentally ill children (91%), we analyzed program data to identify factors that may contribute to these

outcome differences. Our review of the data indicates that there is a relationship between Intelligence Quotient (IQ) and restorability; those mentally retarded children with higher IQs were restored at a higher rate than those with lower IQs.¹⁰ (See Exhibit 6.)

Exhibit 6

Competency Restoration Training Is More Effective for Mentally Retarded Children Who Have Higher IQs

Outcome of Training	Intelligence Quotient		
	Under 50	50 to 59	60 and above
Adjudicative competency restored	35%	59%	77%
Child found non-restorable	65%	41%	23%
Total number of mentally retarded children completing training	n=48	n=71	n=107

Source: OPPAGA analysis of program data from May 1997 through September 2000.

Age may be another factor that affects restorability. Older children appear to be more difficult to restore to competency than younger children. However, due to the low number of children served and the apparent effects of IQ, more information is needed to validate a relationship between age and restorability.

Slightly more than half of the children complete competency restoration training within six months, and over 90% complete training within a year. The program's second primary performance measure is the length of time needed for children to complete competency restoration training. More than half (56%) of children who complete the program do so within six months. The program's current performance measures establish separate training timeframes for mentally ill and mentally retarded children (180 days for most mentally ill and 365 days for most mentally retarded children). However, actual performance shows a similar timeframe for the two groups (see Exhibit 7). The department should therefore reassess its timeliness performance expectations for both groups and base the expectations on past performance.

⁹ The program database only contains judicial concurrence information for 75% of the children served by the program.

¹⁰ Approximately 21% of the mentally retarded children served have IQs below 50.

Exhibit 7**Most Children Can Be Trained and Returned to the Courts in Under Six Months¹**

Length of Training	Primary Diagnosis	
	Mental Illness (n=117)	Mental Retardation (n=263)
Under 3 months	16.2%	12.6%
3 to 6 months	41.9%	41.8%
6 months to one year	35.1%	37.2%
Over one year	6.8%	8.4%
Median number of days in training	162 days	173 days

¹ The time measured is from the date competency restoration training begins, until the date the program notifies the courts that a child's competency has been restored or it is unlikely competency will ever be restored.

Source: OPPAGA analysis of program data from May 1997 through September 2000.

Satisfaction with the program is mixed. The primary way the program measures satisfaction is through annual surveys of its community partners, who are circuit court judges, state attorneys, and Department of Juvenile Justice district managers. The results of these surveys raise concern because the satisfaction rates of 59% in Fiscal Year 1998-99 and 74% in Fiscal Year 1999-2000 are well below the program's performance standard of 90%. The department has not followed up to determine why some community partners are dissatisfied with the program.

Since the response rate to the program's most recent survey of community partners was relatively low (48%), and the department was unable to provide us with data on the Fiscal Year 1998-99 survey, we interviewed stakeholders to identify issues that affect satisfaction with the program.¹¹ The interviews revealed that stakeholders are generally satisfied with the competency restoration training being provided, and believe the program represents an improvement over the way Florida handled the issue of juvenile competency prior to the program's establishment in 1997. However, they identified three areas of concern.

¹¹ We conducted interviews with program staff, service providers, and court personnel.

- There is uncertainty regarding the number of evaluations needed in the initial assessment of juvenile competency and concern over the quality of some evaluations.
- There are delays in securing services and placements for some children.
- Children spend additional time in the program after their competency is restored, which increases costs and ties up placement slots.

Concerns exist about the methods used to assess children's competency to proceed with delinquency proceedings. Stakeholders expressed concern about a lack of statutory clarity about the number of required competency evaluations and the quality of these evaluations.

While determinations of juvenile competency are made at judicial hearings, Florida law requires that findings of fact be based on expert evaluation of the child's mental condition. The law requires evaluation by more than one court-appointed expert, and the department is required to provide the courts with the names of mental health professionals qualified to perform the evaluations. However, for competency evaluations related to mental retardation, the law stipulates that the Developmental Services Program of the Department of Children and Families must conduct the evaluation. Stakeholders reported confusion about these seemingly conflicting requirements and told us that the confusion can lead to delays in children receiving services, as the department believes it is statutorily required to wait for the second evaluation before it can admit a child to the program.

Some stakeholders also expressed concern about the quality of the competency evaluations. They observed that while most evaluation reports submitted to the courts are useful, the reports sometimes reflect a lack of familiarity with the juvenile competency statute and with program criteria. For example, they may not include an assessment of the child's potential for being restored to competency. Nevertheless, the evaluation reports are very influential in the court setting,

and judges told us they rely on them to make decisions about referring children to the program, as well as whether children will be placed in secure residential or less restrictive settings. Good evaluations are needed to ensure that the appropriate individuals are referred to the program and that proper decisions are made regarding the type of placement ordered.

Many children experience admission delays. Program stakeholders also expressed concerns about the timeliness of program admissions. Our analysis of program data confirmed that time lags occur.

Forty-four percent (44%) of the children referred to the program wait more than a month from the date of the court-ordered referral until the time they begin receiving services; 26% wait more than two months. Program stakeholders identified several coordination and education issues related to these delays. First, the program may not be aware of court-ordered program referrals. It is not clear if this is a result of processes within the court system or within the department. Second, there are sometimes technical errors in the court orders that refer children to the program. For example, if a court order refers the child for treatment in the adult mental health system, the program waits for a new order before admitting the child to the *juvenile* competency restoration program. Finally, delays can occur if the department has difficulty obtaining client information. Stakeholders attribute these three problems, in part, to communication issues associated with a high rate of turnover among court personnel who interface with the program.

In addition to these admission delays, 40% of the children court-ordered into a secure residential training environment waited more than two weeks for a placement and began their competency restoration training in the community or a detention center while awaiting a secure placement.¹² While the majority of children meeting commitment

criteria (69%) were eventually placed within a month, 15% of the children waited more than two months for a secure residential placement. These delays can occur because some facilities are reluctant to accept children with violent histories, while others are reluctant to serve children with very low IQs. In addition, the November 2000 closing of one of the primary facilities that served program clients may affect the future availability of placement slots for children with severe behavior problems. However, program administrators believe the increased funding granted by the Legislature for Fiscal Year 2000-01 and the Brown Schools' recent acquisition of a facility that can serve program clients will greatly reduce or alleviate these delays.

Discharge delays affect program costs. A related problem is that most children spend additional time in the program after the service provider believes they could be discharged. These delays increase program costs and tie up the limited number of slots available for secure residential placements, thus delaying admission to these facilities.

On average, children spend 58 days (approximately two months) in the program after the service provider believes that competency restoration training is complete (see Exhibit 8). While the department does not track costs associated with these discharge delays, we estimate that, for those children who spend the extra two months in the program, the program absorbs additional costs of up to \$2,000 for each child served in the community and \$13,500 for each child served in a secure residential facility.¹³

According to program stakeholders, discharge delays generally occur due to delays in obtaining a court hearing or when an adequate discharge plan is not in place. Judges can be reluctant to release a child when sufficient community supports are not available or when a child's home district cannot provide the

¹² Since the program's inception in 1997, 39% of the children served by the program have been court-ordered into a secure residential environment; 61% have been court-ordered to receive competency restoration training in less restrictive environments.

¹³ These cost estimates are based on two months of services at the program's contracted rates and expected levels of service. For children served in the community, estimates include five hours per week of competency restoration training at \$40 per hour, and one hour per month of case management at \$47.50 per hour. For children in residential settings, estimates are computed at the daily rate of \$225.

needed type of residential care. The department's district offices are responsible for planning for and providing services needed after a child is discharged from the competency restoration program.

Exhibit 8

Over Half of the Children (58%) Remain in the Program More Than a Month After Competency Restoration Training Is Completed¹

Time Until Discharge	Percentage of Children (n=296)
Within 2 weeks	23%
2 weeks to 1 month	19%
1 to 3 months	33%
3 to 6 months	19%
Over 6 months	6%
Average time until discharge = 58 days	

¹ Children who remain in the program because the courts have ordered continued maintenance training are not included in this analysis.

Source: OPPAGA analysis of program data from May 1997 through September 2000.

Identifying appropriate placements for children upon discharge can be difficult because program clients tend to have such specialized characteristics. For example, one child's caseworker reported that there is only one facility in the child's district able to accommodate him, because he is mentally retarded and a repeated arsonist. Youth who exceed the age limitations of the children's mental health system, yet have juvenile rather than adult charges, also present placement challenges.¹⁴ Discharge from the program is delayed for these types of children.

In addition to the direct cost implications of discharge delays, the delays contribute to the program's difficulties obtaining placement slots for newly admitted children and placing them at the court-ordered level of security. With limited funds and a limited number of facilities available to serve incompetent juvenile offenders, additional eligible children cannot be served until placement slots and financial resources are freed.

¹⁴ According to the department, the concern is that most children's mental health facilities are only licensed to serve youth under age 18. But youth can remain under the purview of the juvenile, not the adult criminal system, until they reach age 21.

Conclusions and Recommendations —

The Juveniles Incompetent to Proceed Program has been relatively successful in restoring children's adjudicative competency and returning them to the juvenile justice system to proceed with their delinquency proceedings. The program provides a public benefit, as it ensures due process for mentally ill and mentally retarded juvenile offenders, and ensures they are held accountable for their actions. However, there are concerns about the methods used to assess juvenile competency. In addition, insufficient coordination between the program, the court system and other Department of Children and Families programs affects the timeliness of competency restoration training and increases program costs. To address these issues, we recommend the actions described below.

- To address concerns about the methods used to assess children's competency to proceed with delinquency proceedings, we recommend that the Legislature amend Florida's juvenile competency statute to clarify that all children who are mentally retarded should receive more than one evaluation of competency.

The Legislature should also establish a process to ensure that qualified professionals evaluate children who potentially may be ordered into competency restoration training in a secure residential environment. The Legislature has recently adopted a process for selecting evaluators to conduct suitability assessments for children in the department's custody who may need residential mental health treatment.¹⁵

A similar process could be established for juvenile competency assessments.

- To increase the timeliness of admission processes, we recommend that the Department of Children and Families

¹⁵ Section 39.407, *F.S.*, requires the Agency for Health Care Administration to adopt rules for the registration and selection of qualified evaluators, who must have at least three years experience in the diagnosis and treatment of emotional disturbances in children.

(DCF) improve its coordination with the court system and the Department of Juvenile Justice. DCF should devise a mechanism to monitor juvenile cases from the time the issue of competency is raised through the issuance of a court order and admission to the program.¹⁶ With earlier involvement in cases, the department could mitigate admission delays by providing technical assistance on the program's statutory requirements and monitoring the program referral process. To improve communication about cases, the Department of Juvenile Justice should designate a program contact for each of the DCF districts.

The department should also explore new strategies for educating court system personnel about the juvenile competency process. Education strategies should focus on the statutory process for establishing competency and include information about the types of children most likely to experience success in the program, as well as anticipated timeframes for completing competency restoration training.

The education strategies need to accommodate the high turnover rates among judges, state attorneys, and public defenders. For example, while the department currently provides computer disks with model court orders, these disks may not be forwarded to new staff replacing those who leave their jobs. A program web page on the Internet could be a more effective means of ensuring ongoing access to important program information.

- To increase its ability to serve children at the court-ordered level of security, the program should monitor the length of time children wait for secure residential placements, to identify if delays persist, and if those delays are due to a lack of budget authority or a lack of placement slots.

- Finally, to ensure that program resources are being used to meet legislative intent, we recommend that the department monitor program discharge processes. The department should collect information that will enable it to pinpoint reasons for discharge delays. With this information, it could identify needed placement slots and community services for children exiting the program, and report its findings to the Legislature.

Agency Response



FLORIDA DEPARTMENT OF
**CHILDREN
& FAMILIES**

Jeb Bush
Governor

Kathleen A. Kearney
Secretary

December 20, 2000

Mr. John W. Turcotte, Director
Office of Program Policy Analysis and
Government Accountability
111 West Madison Street, Room 312
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

Thank you for your December 7 letter providing the preliminary findings and recommendations of your justification review of the "Department of Children and Families' Juveniles Incompetent to Proceed Program."

Our response to the findings and recommendations found in your review is enclosed. If I may be of further assistance, please let me know.

Very truly yours,

/s/
Judge Kathleen A. Kearney
Secretary

Enclosure

1317 Winewood Boulevard • Tallahassee, Florida 32399-0700

The Department of Children and Families is committed to working in partnership with local communities to ensure safety, well-being and self-sufficiency for the people we serve.

¹⁶ The juvenile competency statute requires that any motion questioning a child's competency to proceed be served upon attorneys representing the Department of Children and Families.

RESPONSE TO OPPAGA'S JUSTIFICATION REVIEW OF THE
DEPARTMENT OF CHILDREN AND FAMILIES'
JUVENILES INCOMPETENT TO PROCEED PROGRAM

- Page 7, (second column, first complete paragraph) - We agree more information is needed to conclude or validate the relationship between age and restorability. We will continue to gather information to address age and restorability. We will also consult with the Florida Mental Health Institute on the relationship between age and restorability.
- Page 8, (first column) - We have concerns about who in the courts are receiving the satisfaction survey and the low response rate. We will begin incorporating the survey with the statewide survey sent to the circuit courts.
- Page 10-12 **Conclusions and Recommendations**
 - First Bullet** - We concur that Section 985.223, Florida Statutes, should be revised to address more precisely the number of evaluations required by the courts and the qualifications of the juvenile competency assessment evaluators.
 - **Second Bullet** - We concur that the admission process is significantly slowed down when the responsible parties are not notifying the Department as addressed in the Statute. Additional training in the circuit courts, as well as a web page would be beneficial.

OPPAGA Comment

To mitigate admission delays, we believe it will be important for the department to proactively work with the court system to develop a mechanism for tracking children who are court-referred for competency restoration training.

- **Third Bullet-** In prior years, the placement delays after receiving the court packet was due to a lack of budget authority. Although the budget is sufficient for Fiscal Year 2000/2001, we have begun to experience a decrease in available residential placements. Currently the demand for quality placements is higher than the available supply. We will work with our community partners to ensure these placements are satisfied.
- **Fourth Bullet-** Information is collected on delays for discharge. This information is being refined and will be a performance measure for the program in Fiscal Year 2001/2002.

Appendix A

Statutory Requirements for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes*, stipulates that OPPAGA Program Evaluation and Justification Reviews address nine issue areas. Our conclusions on these issues as they relate to the Department of Children and Families' Juveniles Incompetent to Proceed Program are summarized in Table A-1.

Table A-1
Summary of the Program Evaluation and Justification Review of the
Juveniles Incompetent to Proceed Program

Issue	OPPAGA Conclusions
The identifiable cost of the program	In Fiscal Year 1999-2000, the Juveniles Incompetent to Proceed Program operated with a budget of \$4.2 million. Most program funds (\$4.03 million) were allocated for contracted services. For Fiscal Year 2000-01 the budget is \$5.5 million, with 1.5 FTEs in the central office to oversee the program. Salaries for the program's district liaisons, who serve as liaisons in addition to their other non-program related duties, are not charged to the program.
The specific purpose of the program, as well as the specific public benefit derived therefrom	The purpose of the program is to restore adjudicative competency so that children can participate in their legal proceedings. The program is needed to meet statutory and constitutional requirements. The U.S. Supreme Court has ruled that children are entitled to the same due process protections as adults, which means they must be competent to stand trial. Florida appellate courts have held that Chapter 916, Florida's adult competency statute, does not apply to juveniles. Thus, there is a need for a separate process to deal with the juvenile competency issue.
The consequences of discontinuing the program	Without access to competency restoration training, some mentally ill and mentally retarded children would participate in court proceedings, although they may not understand the proceedings or be able to assist in their own defense. As a result, the state would be vulnerable to costly challenges to juvenile court decisions based on due process and competency issues.
Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part	Given the constitutional issues associated with this program, it is sound public policy for the program to be continued. The program is highly privatized.
Progress towards achieving the outputs and outcomes associated with the program	Since it began providing services in 1997, the program has restored the competency of 72% of the children court-ordered to participate in competency restoration training. As reflected in the program's performance standards, mentally ill children are restored at a higher rate than mentally retarded children. Most children are restored within six months. With three years of data about serving incompetent youth, the program is now in a position to establish realistic performance standards.
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, <i>F.S.</i> , associated with the program	While the program is relatively successful in restoring adjudicative competency in a timely manner, community partners express mixed satisfaction with the program. Partners are generally satisfied with the competency restoration training, but are concerned about the methods used to assess juvenile competency; delays securing services and placements for some children; and delays discharging children from the program. Some admission and discharge delays are a result of court processes, and are not within the program's sphere of influence.

Issue	OPPAGA Conclusions
Whether the information reported pursuant to s. 216.03(5), <i>F.S.</i> , has relevance and utility for the evaluation of the program	<p>The program uses three primary measures to report on performance: the effectiveness of competency restoration training; the length of time it takes to complete training; and community partners' satisfaction with the program. These measures are directly related to the program's purpose, which is to restore adjudicative competency and return children to the juvenile justice system to proceed with their delinquency proceedings.</p> <p>The program's recently completed database system provides additional useful information on the effectiveness of Florida's approach to serving incompetent youth. It tracks the dates and major events in each child's case, information which will enable the program to monitor and report on court processes that affect timely admission to and discharge from the program.</p>
Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports	<p>The department could not provide us with the documentation needed to validate the program results presented in its performance reports. However, since our analysis of program data produced results similar to performance data presented in the agency's annual performance reports, we concluded that the department accurately presents program performance data. The department should formalize the control system used to ensure the integrity of program data, including establishing systems to ensure accurate entry of data into the program's new database system.</p>
Alternative courses of action that would result in administering the program more efficiently and effectively	<ul style="list-style-type: none"> • To ensure adequate methods are used to assess juvenile competency, the Legislature should ensure consistent statutory language, i.e., it should clarify that determinations of competency need to be based on more than one evaluation of the child's mental condition. It should also establish a process for selecting qualified professionals to evaluate children who may potentially be ordered into a secure residential environment. The process could be similar to the one recently adopted for the children's mental health system. • To increase the timeliness of program admission processes, the department should develop strategies to improve its coordination with the court system and with the Department of Juvenile Justice. It should also devise new strategies for educating the court system about the juvenile competency process. • To address problems with discharge delays, the department should monitor program discharge processes to identify gaps in community services and placement slots for children being discharged from the program.

Source: OPPAGA analysis.

Appendix B

Table B-1

Florida Statutes Prescribe a Method for Dealing with the Issue of Juvenile Incompetency

Event	Process / Responsibility
A child is arrested for a crime that would be a felony if committed by an adult.	Detention screening is conducted by the Department of Juvenile Justice.
A child's adjudicative competence is questioned.	The issue of incompetency can be raised by any interested party, including a judge, attorney, Department of Juvenile Justice detention center staff, or the child's parents. ¹
A court hearing is held to establish competency.	Finding of fact based on evaluation of the child's mental condition.
A court order determines competency.	Judge establishes the nature of the incompetency, i.e., mental illness or mental retardation, and whether the child meets criteria for secure placement.
A child enters the Department of Children and Families' (DCF's) Juveniles Incompetent to Proceed Program.	Upon filing of the court order finding a child incompetent to proceed, the clerk of the court notifies DCF that the child has been referred for competency restoration training.
A child undergoes competency treatment or training.	The Department of Children and Families contracts with the Brown Schools of Florida to provide treatment and training services.
The court remains apprised of the child's status.	The court may retain jurisdiction of the child for up to two years and receives a written status report from the service provider every six months.
The child attains competency or is determined to be unrestorable.	If the court agrees that a child has attained competency, custody and supervision of the child is transferred to the Department of Juvenile Justice, and delinquency proceedings are continued. If the child does not attain competency, the department develops a plan for providing needed services for the child. Charges may be dropped or the child may be ordered into a residential program or facility designated for mentally ill or mentally retarded children.

¹ Any motion questioning the child's competency to proceed must be served upon the child's attorney, the state attorney, the attorneys representing the Department of Juvenile Justice, and the attorneys representing the Department of Children and Families. These parties must also be notified of any future motions, notices of hearing, orders, or other legal pleadings relating to the child's competency to proceed.

Source: Section 985.223, *F.S.*

Appendix C

Table C-1
Competency Restoration Training Employs a Variety of Methods

Objective	Sample Methods and Activities ¹
Develop knowledge of:	
<ul style="list-style-type: none"> • why individual is participating in competency restoration training 	Discuss the behavior that led to an arrest.
<ul style="list-style-type: none"> • legal terms 	Study vocabulary words; view commercial movie with courtroom scenes, e.g., <i>My Cousin Vinny</i> .
<ul style="list-style-type: none"> • legal rights 	Role play an arrest scenario.
<ul style="list-style-type: none"> • criminal charges and possible consequences 	Read crime scenarios and discuss possible punishments.
<ul style="list-style-type: none"> • community control, sanctions and restitution 	Play the game of "concentration," with some cards representing seriousness of offense, and other cards representing possible consequences.
<ul style="list-style-type: none"> • various roles and the adversarial process of court 	Play a bingo game, with titles of courtroom participants displayed on the game board, and <i>roles</i> of courtroom participants announced by the caller.
<ul style="list-style-type: none"> • types of pleas 	Play the game of "concentration," with some cards representing types of pleas, and other cards representing a description of each plea.
<ul style="list-style-type: none"> • plea bargains 	Participate in a lecture or question/answer session.
<ul style="list-style-type: none"> • assisting in the court process 	View a commercial movie with courtroom scenes.
<ul style="list-style-type: none"> • participating in a courtroom hearing 	Participate in a mock adjudicatory hearing.

¹ These activities represent a sample, not a complete list, of typical competency restoration objectives and training activities. A particular method may be used to achieve more than one objective.

Source: OPPAGA compilation and summary of information contained in program training materials, developed by the Florida Mental Health Institute of the University of South Florida.

Appendix D

Table D-1

PB² Performance - Juveniles Incompetent to Proceed to Juvenile Justice

Measure	Fiscal Year				Comments
	1997-98 (actual)	1998-99 (actual)	1999-2000 (actual)	2000-01 (performance standard)	
Outcome Measures					
Percent of children restored to competency and recommended to proceed with a judicial hearing					
(a) with mental illness	90%	90%	87%	90%	A core performance measure
(b) with mental retardation	54%	68.3%	58.5%	54%	A core performance measure; standard represents decreased performance
Percent of community partners satisfied based upon a survey	47%	59%	73.5%	90%	Low response rate compromises validity. Program should monitor processes that affect satisfaction, such as delays with court-ordered admissions and discharges.
Percent of children with mental illness restored to competency OR determined unrestoreable in less than 180 days	63%	49.3%	55%	80%	The program should have internal measures that capture the number of days of training.
Percent of children with mental retardation restored to competency OR determined unrestoreable in less than 365 days	99%	94.5	88.5%	80%	Standard represents a decline in performance. Historical performance data shows there is no basis for different timeliness expectations for mentally ill and mentally retarded children. Measures should be revised to reflect that 180 days is a reasonable timeline for completing training for both groups.
Percent of children returned to court for a competency hearing and the court concurs with the recommendation of the provider	95%	97%	98%	95%	Standard represents decreased performance.
Output Measures					
Number served who are incompetent to proceed	160	210	266	266	With increased budget allocation, the number served should increase.
Number of days following the determination by the mental health service provider of restoration of competency or unrestoreability of competency to the date of the court hearing on the determination of competency	Not available	Not available	Directed to include measure in 2000-2001 LBR	To be determined	Useful as an internal measure to monitor judicial processes related to the program

Source: Department of Children and Families data.

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