



**STATE OF FLORIDA  
DEPARTMENT OF JUVENILE JUSTICE**

**JUVENILE JUSTICE INFORMATION SYSTEM  
BUSINESS RULE**

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**SUBJECT:** INCOMPETENT TO PROCEED

**PROCEDURE NUMBER:** 00-008

**EFFECTIVE DATE:** AUGUST 9, 2000

**REVISED DATE:** August 31, 2001; January 6, 2005; December 2016,  
January 2020

**PROGRAM AREA(S):** INTAKE

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**POLICY/PROCEDURE:**

When the juvenile court has found a youth incompetent to proceed (ITP), the following guidelines are to be followed:

**Phase I: Pending Competency Restoration**

1. Disposition - enter a primary disposition of *Incompetent to Proceed* [this will assign Intake - Held Open by Judicial Order case type]
  - a. Referrals/charges are to remain OPEN until final disposition
2. Enter Youth Note - Note Description is to include court instructions
3. Placement-
  - a. Youth remains placed on Intake
  - b. When applicable, add NEW placement of Intervention- *Medical-Mental Health* or *Intervention- Residential Treatment* via Youth Placement- Probation Module

NOTE: Upon the filing of a motion alleging incompetency to proceed; pending the evaluation process and the written order of competency; a Circuit may choose to enter the primary disposition of *Held Open/No Actn* as a temporary disposition.

If used, it is to be deleted and replaced with Incompetent to Proceed when the court declares the youth Incompetent or deleted upon competency finding

**Phase II: Competency Restoration**

- A. Restored
  1. Disposition- enter the appropriate secondary disposition based on court order
  2. Primary dispo is NOT to be deleted
  3. Update Youth Note
  4. Placement- When applicable, release from placement of Intervention- *Medical-Mental Health* or *Intervention- Residential Treatment* via Youth Placement- Probation Module

B. Not Restored

1. Disposition- enter a secondary disposition of *Dismissed*
2. Update Youth Note
3. Close charge/referral(s)
4. Placement- update to applicable current location

**NOTES**

1. All determinations of competency shall be based on the evaluation of the child's mental condition made by no less than 2 and no more than 3 experts appointed by the court, §985.19(1)(b), though other competent evidence may be introduced at the hearing. Rule 8.095(c)(1).
2. Incompetence follows a case (as in number), not a child.
3. The court shall retain jurisdiction of a child adjudicated incompetent to proceed for up to 2 years after the date of the order of incompetency, with reviews at least every 6 months to determine competency.
4. If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition or petition alleging violation of juvenile probation.
5. If, at the end of the 2-year period following the date of the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year, the court must dismiss the delinquency petition.
6. If youth is on probation and is subsequently found incompetent- Unless the probation case has been "Stayed" due to incompetence and an order stating such has been signed by the Court, then the youth still must be supervised on Probation.

**REFERENCES**

Florida Juvenile Delinquency Benchbook September 2010  
FSS 985.19 Incompetency in juvenile delinquency cases.  
Florida Juvenile Court Rules of Procedure