

STATE OF VERMONT
VERMONT SUPREME COURT

TERM, 2024

Order Amending Rule 1(i)(2)(B) and (i)(7) of the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 1(i)(2)(B) and (i)(7) of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined; deleted matter struck through):

RULE 1. PROCEDURE FOR JUVENILE DELINQUENCY PROCEEDINGS

(i) Determination of Competence to Be Subject to Delinquency Proceedings.

(2) *Mental Examination.* Competence shall be determined through a mental examination conducted by a psychologist or psychiatrist selected by the court. In addition to the factors ordinarily considered in determining competence in criminal proceedings, the examiner shall consider the following as appropriate to the circumstances of the child:

- (A) The age and developmental maturity of the child;
- (B) whether the child ~~suffers from mental illness~~ has a psychiatric disability, mental health condition or a developmental disorder disability, including ~~mental retardation~~ an intellectual disability;
- (C) whether the child has any other disability that affects the child's competence; and
- (D) any other factor that affects the child's competence.

The child, or the state, shall have the right to obtain an independent examination by an expert.

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(7) *Determination of Incompetence.* If the court determines that the child is not competent to be subject to delinquency proceedings, the court shall dismiss the petition without prejudice; provided that, if the child is found incompetent by reason of developmental disabilities or ~~mental retardation~~ intellectual disability, the dismissal may be with prejudice.

Reporter's Notes—2024 Amendment

V.R.F.P. 1(i)(2)(B) and (i)(7) are amended for the sole purpose of replacing outdated terminology. The amendments do not reflect an intent to change in any manner the range of disabilities covered by the previous terminology.

2. That this amendment be prescribed and promulgated, effective on _____. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2024.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice