

10-741. Order for evaluation of competency to stand trial.

[For use with Rule 10-242 NMRA]

STATE OF NEW MEXICO
COUNTY OF _____
_____ JUDICIAL DISTRICT
IN THE CHILDREN’S COURT

In the Matter of _____, a Child. No. _____

ORDER FOR EVALUATION OF COMPETENCY TO STAND TRIAL

This matter came before the court on the motion of _____, and after being fully advised, the court **FINDS** good cause exists, and

IT IS HEREBY ORDERED as follows:

1. The proceedings in this matter shall be stayed pending a determination of competency.
2. If the child is charged with an offense that would be a misdemeanor if committed by an adult, only the first evaluation listed below shall be performed. If the child is charged with an offense that would be a felony if committed by an adult, both the first and second evaluations listed below shall be performed.

An evaluation of the child’s competency to stand trial shall be performed by _____
_____ (insert name and address of a doctoral level licensed psychologist performing the evaluation)¹; the report shall, at a minimum, contain an evaluation of the current ability to stand trial, measured by the capacity of the child to understand the proceedings, to consult meaningfully with counsel through the adjudication proceedings, measured by a capacity with a reasonable degree of rational and factual understanding of the proceedings, and to assist in the defense.²

If the child is charged with an offense that would be a felony if committed by an adult and the child is found to be incompetent, an evaluation of whether the child can be treated to competency shall be performed by _____
_____ (insert name and address of a doctoral level licensed psychologist overseeing/supervising the evaluation). A proposed treatment plan shall be included in the report.³

3. Defense counsel shall cause this order to be served so that it is received by the evaluator no later than five (5) days from the date of entry of this order and shall file with the court a

certificate of service.

4. Child is in detention at _____

or

Child's address and telephone number are _____.

5. If the evaluator is unable to contact the child, the evaluator shall immediately contact defense counsel, who will contact the child and set up the evaluation or notify the court that the evaluator cannot contact the child.

6. A copy of the evaluation report shall be sent to the child's attorney

within thirty (30) days of the date of receipt of this order if the child is in custody.

within forty-five (45) days of the date of receipt of this order if the child is not in custody.

7. If the child needs to be transported to effect the evaluation, a separate transport order needs to be obtained.

8. Defense counsel shall file a certificate of service with the court showing the date the evaluation report was received.

DISTRICT JUDGE

Children's Court Attorney

Attorney for Child

USE NOTE

1. The evaluator will be selected from a list supplied by the Children, Youth and Families Department.

2. See *State v. Rotherham*, 1996-NMSC-048, 122 N.M. 246, 251, 923 P.2d 1131, 1136 (citing *Dusky v. United States*, 362 U.S. 402 (1960)).

3. See NMSA 1978, § 32A-2-21(G) (2005) ("If the child has been accused of an act that would be considered a misdemeanor if the child were an adult and the child is found to be incompetent to stand trial, the court shall dismiss the petition with prejudice and may recommend that the children's court attorney initiate proceedings pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.").

[Adopted by Supreme Court Order No. 11-8300-030, effective September 9, 2011; 10-496A
recompiled and amended as 10-741 by Supreme Court Order No. 16-8300-017, effective for all
cases pending or filed on or after December 31, 2016.]