

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0277.02 Jane Ritter x4342

HOUSE BILL 18-1050

HOUSE SPONSORSHIP

Singer, Benavidez

SENATE SPONSORSHIP

Fields, Martinez Humenik

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COMPETENCY TO PROCEED FOR JUVENILES INVOLVED IN**
102 **THE JUVENILE JUSTICE SYSTEM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. The bill establishes a juvenile-specific definition of "competent to proceed" and "incompetent to proceed" for juveniles involved in the juvenile justice system, as well as specific definitions for "developmental disability", "mental capacity", and "mental

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
February 7, 2018

disability" when used in this context. The bill clarifies the procedures for establishing incompetency, as well as for establishing the restoration of competency.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 19-2-103, **amend** the
3 introductory portion; and **add** (3.3), (5.5), (9.5), (12.3), (12.4), and (14.3)
4 as follows:

5 **19-2-103. Definitions.** For purposes of this ~~article~~ ARTICLE 2:

6 (3.3) "COMPETENT TO PROCEED" MEANS THAT A JUVENILE HAS
7 SUFFICIENT PRESENT ABILITY TO CONSULT WITH HIS OR HER ATTORNEY
8 WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO
9 ASSIST IN THE DEFENSE AND THAT HE OR SHE HAS A RATIONAL AS WELL AS
10 A FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR HER.

11 (5.5) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY THAT
12 IS MANIFESTED BEFORE THE PERSON REACHES HIS OR HER ~~TWENTY-SECOND~~
13 BIRTHDAY, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE
14 AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO AN INTELLECTUAL
15 DISABILITY OR OTHER NEUROLOGICAL CONDITIONS WHEN THOSE
16 CONDITIONS RESULT IN IMPAIRMENT OF GENERAL INTELLECTUAL
17 FUNCTIONING OR ADAPTIVE BEHAVIOR SIMILAR TO THAT OF A PERSON
18 WITH AN INTELLECTUAL DISABILITY. UNLESS OTHERWISE SPECIFICALLY
19 STATED, THE FEDERAL DEFINITION OF "DEVELOPMENTAL DISABILITY", 42
20 U.S.C. SEC. 15001 ET SEQ., DOES NOT APPLY.

21 (9.5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON AN
22 INTELLECTUAL OR DEVELOPMENTAL DISABILITY, MENTAL DISABILITY, OR
23 LACK OF MENTAL CAPACITY, A JUVENILE DOES NOT HAVE SUFFICIENT
24 PRESENT ABILITY TO CONSULT WITH HIS OR HER ATTORNEY WITH A

1 REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST
2 IN THE DEFENSE OR THAT HE OR SHE DOES NOT HAVE A RATIONAL AS WELL
3 AS A FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR
4 HER.

5 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO
6 MEET ALL OF THE FOLLOWING CRITERIA:

7 (a) APPRECIATE THE CHARGES OR ALLEGATIONS AGAINST HIM OR
8 HER;

9 (b) APPRECIATE THE NATURE OF THE ADVERSARIAL PROCESS,
10 WHICH INCLUDES HAVING A FACTUAL AND RATIONAL UNDERSTANDING OF
11 THE PARTICIPANTS IN THE PROCEEDING AND THEIR ROLES, INCLUDING THE
12 JUDGE, DEFENSE COUNSEL, PROSECUTOR, AND, IF APPLICABLE, THE
13 GUARDIAN AD LITEM AND THE JURY;

14 (c) APPRECIATE THE RANGE AND NATURE OF ALLOWABLE
15 DISPOSITIONS THAT MAY BE IMPOSED BY THE COURT;

16 (d) THE ABILITY TO COMMUNICATE TO COUNSEL INFORMATION
17 KNOWN TO THE JUVENILE REGARDING THE ALLEGATIONS AGAINST THE
18 JUVENILE, AS WELL AS INFORMATION RELEVANT TO THE PROCEEDING AT
19 ISSUE; AND

20 (e) UNDERSTAND AND APPRECIATE THE RIGHT TO TESTIFY AND TO
21 VOLUNTARILY EXERCISE THE RIGHT.

22 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
23 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
24 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH
25 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
26 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
27 MANIFESTED ONLY BY ANTI SOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE

1 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
2 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
3 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
4 A MENTAL DISABILITY.

5 (14.3) "RESTORATION TO COMPETENCY HEARING" MEANS A
6 HEARING TO DETERMINE WHETHER A JUVENILE WHO HAS PREVIOUSLY
7 BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS ACHIEVED OR IS
8 RESTORED TO COMPETENCY.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 19-2-1300.2 as
10 follows:

11 **19-2-1300.2. Legislative declaration.** (1) THE GENERAL
12 ASSEMBLY FINDS AND DECLARES THAT:

13 (a) THE JUVENILE JUSTICE SYSTEM IS CIVIL IN NATURE AND
14 FOCUSED ON REHABILITATION RATHER THAN PUNISHMENT;

15 (b) JUVENILES DIFFER IN SIGNIFICANT AND SUBSTANTIVE WAYS
16 FROM ADULTS, THEREFORE, DIFFERENT STANDARDS FOR COMPETENCY ARE
17 NECESSARY FOR JUVENILES AND ADULTS; AND

18 (c) NOTWITHSTANDING THE DIFFERENCES BETWEEN ADULTS AND
19 JUVENILES, AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
20 WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT
21 CAPACITIES FOR COMPETENCE.

22 **SECTION 3.** In Colorado Revised Statutes, 19-2-1301, **amend**
23 (2) as follows:

24 **19-2-1301. Incompetency to proceed - effect - how and when
25 raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is
26 incompetent to proceed, as defined in ~~section 16-8.5-101 (11), C.R.S.~~
27 SECTION 19-2-103 (9.5), at that stage of the proceedings against him or

1 her. JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO PROCEED,
2 AS DEFINED IN SECTION 19-2-103 (3.3), UNTIL SUCH TIME AS THEY ARE
3 FOUND INCOMPETENT TO PROCEED THROUGH A DECISION BY THE COURT.
4 A DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION OF
5 DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL
6 CAPACITY. AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
7 WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT
8 CAPACITIES FOR COMPETENCE.

9 **SECTION 4.** In Colorado Revised Statutes, 19-2-1302, **amend**
10 (3), (4)(a), and (4)(c) as follows:

11 **19-2-1302. Determination of incompetency to proceed.** (3) If
12 the question of a juvenile's incompetency to proceed is raised after a jury
13 is impaneled to try the issues raised by a plea of not guilty or after the
14 court as the finder of fact begins to hear evidence and the court
15 determines that the juvenile is incompetent to proceed or orders the
16 juvenile referred for a competency examination, the court may declare a
17 mistrial. If the court declares a mistrial under these circumstances, the
18 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
19 regard to the charges at issue. The juvenile may be tried on, and sentenced
20 if adjudicated for, the same charges after he or she has ACHIEVED OR been
21 ~~found to be~~ restored to competency.

22 (4) (a) If the court orders a competency evaluation, the court shall
23 order that the competency evaluation be conducted in the least-restrictive
24 environment, INCLUDING HOME OR COMMUNITY PLACEMENT IF
25 APPROPRIATE, taking into account the public safety and the best interests
26 of the juvenile.

27 (c) The competency evaluation ~~shall~~ MUST, at a minimum, include

1 an opinion regarding whether the juvenile is ~~competent~~ INCOMPETENT to
2 proceed as defined in ~~section 16-8.5-101 (4), C.R.S.~~ SECTION 19-2-103
3 (9.5). If the evaluation concludes the juvenile is incompetent to proceed,
4 the evaluation ~~shall~~ MUST include a recommendation as to whether THERE
5 IS A LIKELIHOOD THAT the juvenile may ACHIEVE OR be restored to
6 competency and identify appropriate services to restore the juvenile to
7 competency.

8 **SECTION 5.** In Colorado Revised Statutes, 19-2-1304, **amend**
9 (1) and (3) as follows:

10 **19-2-1304. Restoration to competency hearing.** (1) The court
11 may order a restoration TO COMPETENCY hearing, as defined in ~~section~~
12 ~~16-8.5-101 (13), C.R.S.~~ SECTION 19-2-103 (14.3), at any time on its own
13 motion, on motion of the prosecuting attorney, or on motion of the
14 juvenile. The court shall order a RESTORATION OF COMPETENCY hearing
15 if a ~~mental health professional who has been treating the juvenile~~
16 COMPETENCY EVALUATOR WITH THE QUALIFICATIONS DESCRIBED IN
17 SECTION 19-2-1302 (4)(b) files a report certifying that the juvenile is
18 mentally competent to proceed.

19 (3) At the RESTORATION TO COMPETENCY hearing, the court shall
20 determine whether the juvenile HAS ACHIEVED OR is restored to
21 competency.

22 **SECTION 6.** In Colorado Revised Statutes, 19-2-1305, **amend**
23 (1) and (2) as follows:

24 **19-2-1305. Procedure after restoration to competency hearing.**
25 (1) If a juvenile is found to ~~be~~ HAVE ACHIEVED OR BEEN restored to
26 competency after a RESTORATION TO COMPETENCY hearing, as provided
27 in section 19-2-1304, or by the court during a review, as provided in

1 section 19-2-1303 (2), the court shall resume or recommence the trial or
2 sentencing proceeding or order the sentence carried out. The court may
3 credit any time the juvenile spent in confinement or detention while
4 incompetent TO PROCEED against any term of commitment imposed after
5 ACHIEVEMENT OF OR restoration to competency.

6 (2) If the court determines that the juvenile remains ~~mentally~~
7 incompetent to proceed and the delinquency petition is not dismissed, the
8 court may continue or modify any orders entered at the time of the
9 original determination of incompetency or enter any new order necessary
10 to facilitate the juvenile's ACHIEVEMENT OF OR restoration to ~~mental~~
11 competency.

12 **SECTION 7. Effective date.** This act takes effect July 1, 2018,
13 and applies to acts committed on or after July 1, 2018.

14 **SECTION 8. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.