

CHAPTER 205

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 23-1012

BY REPRESENTATIVE(S) Amabile, Bacon, Boeseucker, Brown, deGruy Kennedy, Dickson, Epps, Garcia, Gonzales-Gutierrez, Herod, Jodeh, Joseph, Lieder, Lindsay, Lindstedt, Mabrey, McCormick, Parenti, Ricks, Story, Velasco, Weissman, Young; also SENATOR(S) Rodriguez, Simpson, Coleman, Cutter, Exum, Gonzales, Moreno, Priola.

AN ACT

CONCERNING ISSUES RELATED TO JUVENILE COMPETENCY TO PROCEED, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 19-2.5-102, **repeal** (8), (25), and (44) as follows:

19-2.5-102. Definitions. In addition to the terms defined in section 19-1-103, as used in this article 2.5, unless the context otherwise requires:

(8) ~~"Competent to proceed" means that a juvenile has sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist in the defense and that the juvenile has a rational as well as a factual understanding of the proceedings.~~

(25) ~~"Incompetent to proceed" means that, based on an intellectual or developmental disability, mental health disorder, or lack of mental capacity, a juvenile does not have sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist in the defense or that the juvenile does not have a rational as well as a factual understanding of the proceedings taking place.~~

(44) ~~"Restoration to competency hearing" means a hearing to determine whether a juvenile who has previously been determined to be incompetent to proceed has achieved or is restored to competency.~~

SECTION 2. In Colorado Revised Statutes, **add** 19-2.5-701.5 as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

19-2.5-701.5. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMPETENCY EVALUATION" MEANS AN EVALUATION CONDUCTED BY A COMPETENCY EVALUATOR THAT MEETS THE REQUIREMENTS DESCRIBED IN SECTION 19-2.5-703 (4). "COMPETENCY EVALUATION" INCLUDES BOTH COURT-ORDERED EVALUATIONS PERFORMED BY THE DEPARTMENT AND SECOND EVALUATIONS.

(2) "COMPETENCY EVALUATOR" MEANS AN INDIVIDUAL WITH THE QUALIFICATIONS DESCRIBED IN SECTION 19-2.5-703 (4)(b).

(3) "COMPETENCY HEARING" MEANS AN INITIAL HEARING TO DETERMINE WHETHER A JUVENILE IS COMPETENT TO PROCEED.

(4) "COMPETENT TO PROCEED" MEANS THAT A JUVENILE HAS THE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE JUVENILE'S ATTORNEY, WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING, TO ASSIST THE ATTORNEY IN THE JUVENILE'S DEFENSE, AND THAT THE JUVENILE HAS A RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF THE PROCEEDINGS.

(5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY, MENTAL HEALTH DISORDER, OR LACK OF MENTAL CAPACITY, A JUVENILE DOES NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE JUVENILE'S ATTORNEY WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST THE ATTORNEY IN THE JUVENILE'S DEFENSE OR THAT THE JUVENILE DOES NOT HAVE A RATIONAL AS WELL AS A FACTUAL UNDERSTANDING OF THE PROCEEDINGS.

(6) "RESTORATION EVALUATION" MEANS AN EVALUATION CONDUCTED BY A COMPETENCY EVALUATOR TO DETERMINE IF THE JUVENILE HAS BECOME COMPETENT TO PROCEED OR WILL BE ABLE TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE. "RESTORATION EVALUATION" INCLUDES BOTH COURT-ORDERED EVALUATIONS BY THE DEPARTMENT AND SECOND EVALUATIONS.

(7) "RESTORATION PROGRESS REVIEW HEARING" MEANS A HEARING IN WHICH THE JUVENILE'S PROGRESS IN RESTORATION TO COMPETENCY EDUCATION AND OTHER APPLICABLE SERVICES IS REVIEWED, BASED ON RESTORATION EDUCATION, TREATMENT RECORDS, AND ANY PRIOR COMPETENCY EVALUATION REPORTS.

(8) "RESTORATION TO COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER A JUVENILE WHO HAS PREVIOUSLY BEEN DETERMINED TO BE INCOMPETENT TO PROCEED IS NOW COMPETENT TO PROCEED.

(9) "SECOND EVALUATION" MEANS AN EVALUATION IN RESPONSE TO A COURT-ORDERED COMPETENCY EVALUATION OR COURT-ORDERED RESTORATION EVALUATION REQUESTED BY THE JUVENILE THAT IS PERFORMED BY A COMPETENCY EVALUATOR AND THAT IS NOT PERFORMED BY, UNDER THE DIRECTION OF, OR PAID FOR BY THE DEPARTMENT.

SECTION 3. In Colorado Revised Statutes, 19-2.5-702, **amend** (2) as follows:

19-2.5-702. Incompetent to proceed - effect - how and when raised. (2) A juvenile must not be tried or sentenced if the juvenile is incompetent to proceed, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, at that stage of the proceedings. Juveniles, like adults, are presumed competent to proceed, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, until such time as they are found incompetent to proceed through a decision by the court. A determination of competency must include an evaluation of intellectual and developmental disabilities, mental health disorders, and mental capacity. Age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

SECTION 4. In Colorado Revised Statutes, 19-2.5-703, **amend** (4)(c) as follows:

19-2.5-703. Determination of incompetency to proceed. (4) (c) The competency evaluation must, at a minimum, include an opinion regarding whether the juvenile is incompetent to proceed as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation must include a recommendation as to whether there is a likelihood that the juvenile may achieve or be restored to competency IN THE REASONABLY FORESEEABLE FUTURE and identify appropriate services to restore the juvenile to competency.

SECTION 5. In Colorado Revised Statutes, **add** 19-2.5-703.5 as follows:

19-2.5-703.5. Waiver of privilege - exchange of information - admissibility of statements. (1) WHEN THE COURT DETERMINES THAT A JUVENILE IS INCOMPETENT TO PROCEED, ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE BY THE JUVENILE OR THE JUVENILE'S PARENT OR LEGAL GUARDIAN IS DEEMED WAIVED WITHIN THE CASE TO ALLOW THE COURT AND PARTIES TO DETERMINE ISSUES RELATED TO THE JUVENILE'S COMPETENCY, RESTORATION, AND ANY MANAGEMENT PLAN DEVELOPED BY THE COURT PURSUANT TO SECTION 19-2.5-704 (3). THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATORS, ANY RESTORATION TREATMENT PROVIDERS, AND THE COURT ARE GRANTED ACCESS, WITHOUT WRITTEN CONSENT OF THE JUVENILE OR FURTHER ORDER OF THE COURT, TO:

(a) COMPETENCY EVALUATIONS AND RESTORATION EVALUATIONS, INCLUDING ALL SECOND EVALUATIONS;

(b) INFORMATION AND DOCUMENTS RELATED TO COMPETENCY EVALUATIONS THAT ARE CREATED, OBTAINED, REVIEWED, OR RELIED ON BY A COMPETENCY EVALUATOR PERFORMING A COURT-ORDERED COMPETENCY EVALUATION;

(c) INFORMATION AND DOCUMENTS RELATING TO COMPETENCY RESTORATION THAT ARE CREATED, OBTAINED, REVIEWED, OR RELIED ON BY A COMPETENCY PROVIDER PERFORMING COURT-ORDERED RESTORATION SERVICES;

(d) THE COMPETENCY EVALUATOR, FOR THE PURPOSE OF DISCUSSING THE COMPETENCY EVALUATION; AND

(e) THE PROVIDERS OF COURT-ORDERED RESTORATION SERVICES FOR THE PURPOSE OF DISCUSSING SUCH SERVICES.

(2) UPON A REQUEST BY EITHER PARTY OR THE COURT FOR INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE COMPETENCY EVALUATOR OR RESTORATION SERVICES PROVIDER SHALL PROVIDE THE INFORMATION TO THE PARTY OR COURT FOR USE IN PREPARING FOR A COMPETENCY HEARING, RESTORATION PROGRESS REVIEW HEARING, RESTORATION TO COMPETENCY HEARING, OR HEARING REGARDING A MANAGEMENT PLAN PURSUANT TO SECTION 19-2.5-704 (3) AND FOR USE IN ANY SUCH HEARING.

(3) A COMPETENCY EVALUATOR OR RESTORATION SERVICES PROVIDER ASSIGNED PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS ARTICLE 2.5 SHALL PROVIDE PROCEDURAL INFORMATION TO THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATORS, ANY RESTORATION TREATMENT PROVIDERS, AND THE COURT CONCERNING:

(a) THE JUVENILE'S LOCATION;

(b) THE JUVENILE'S HOSPITAL OR FACILITY ADMISSION STATUS;

(c) THE STATUS OF EVALUATION PROCEDURES;

(d) THE STATUS OF RESTORATION SERVICES PROCEDURES; AND

(e) ANY OTHER PROCEDURAL INFORMATION RELEVANT TO THE JUVENILE'S COMPETENCY, RESTORATION, OR MANAGEMENT PLAN.

(4) NOTHING IN THIS SECTION LIMITS THE COURT'S ABILITY TO ORDER, IN ADDITION TO THE INFORMATION SET FORTH IN SUBSECTIONS (1) AND (3) OF THIS SECTION, ADDITIONAL INFORMATION BE PROVIDED TO THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, THE GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATOR, ANY RESTORATION TREATMENT PROVIDER, AND THE COURT, UNLESS IT IS OTHERWISE PROTECTED FROM DISCLOSURE BY OTHER LAW. NOTHING IN THIS SECTION LIMITS THE INFORMATION THAT IS AVAILABLE WITH THE WRITTEN CONSENT OF THE JUVENILE.

(5) THE COURT SHALL ORDER THE PARTIES TO EXCHANGE THE NAMES, ADDRESSES, REPORTS, AND STATEMENTS OF EACH PHYSICIAN OR PSYCHOLOGIST WHO EXAMINED OR TREATED THE JUVENILE FOR COMPETENCY.

(6) EVIDENCE OBTAINED DURING A COMPETENCY EVALUATION OR DURING COMPETENCY RESTORATION SERVICES THAT IS RELATED TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY IS ONLY ADMISSIBLE TO DETERMINE THE JUVENILE'S COMPETENCY, INCOMPETENCY, OR TO DETERMINE ORDERS RELATED TO RESTORATION, RESTORATION SERVICES, OR A MANAGEMENT PLAN AND IS NOT ADMISSIBLE ON THE ISSUES RAISED BY A PLEA OF NOT GUILTY.

SECTION 6. In Colorado Revised Statutes, 19-2.5-704, **amend** (2)(a) and (3)(a); and **add** (2)(c) and (2.5) as follows:

19-2.5-704. Procedure after determination of competency or incompetency.

(2) (a) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is incompetent to proceed but may be restored to competency IN THE REASONABLY FORESEEABLE FUTURE, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation, unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile, and that the provision of the services and the juvenile's participation in those services occur in a timely manner. The court shall ~~review the provision of and the juvenile's participation in the services and the juvenile's progress toward competency~~ HOLD A RESTORATION PROGRESS REVIEW HEARING at least every ninety-one days until competency is restored, unless the juvenile is in custody, in which event the court shall ~~review the case~~ HOLD A RESTORATION PROGRESS REVIEW HEARING every thirty-five days to ensure the prompt provision of services in the least-restrictive environment. The court shall not maintain jurisdiction longer than the maximum possible sentence for the ~~original~~ MOST SERIOUS offense, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(c) THE COURT OR A PARTY MAY RAISE, AT ANY TIME, THE NEED FOR A RESTORATION EVALUATION OF A JUVENILE'S COMPETENCY. IF RAISED, THE COURT SHALL ORDER A RESTORATION EVALUATION ONLY WHEN THERE IS CREDIBLE INFORMATION THAT THE JUVENILE'S CIRCUMSTANCES HAVE CHANGED, THE COURT CANNOT FAIRLY DETERMINE WHETHER THE JUVENILE HAS BEEN RESTORED TO COMPETENCY OR WILL BE ABLE TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, AND THE CAUSE FOR A RESTORATION EVALUATION OUTWEIGHS THE NEGATIVE IMPACT OF A RESTORATION EVALUATION UPON THE JUVENILE AND ANY DELAY THAT WILL BE CAUSED BY A RESTORATION EVALUATION. THE COURT MAY HOLD A HEARING TO DETERMINE IF A RESTORATION EVALUATION MUST BE ORDERED. IF THE COURT ORDERS A RESTORATION EVALUATION, SUCH EVALUATION MUST MEET THE REQUIREMENTS OF SECTION 19-2.5-703 (4).

(2.5) (a) IF THE COURT FINDS A JUVENILE IS INCOMPETENT TO PROCEED AND THE JUVENILE HAS BEEN INCOMPETENT TO PROCEED FOR A PERIOD OF TIME THAT EXCEEDS THE TIME LIMITS SET FORTH IN THIS SUBSECTION (2.5), THE COURT SHALL ENTER A FINDING THAT THE JUVENILE IS UNRESTORABLE TO COMPETENCY AND SHALL DETERMINE WHETHER A MANAGEMENT PLAN FOR THE JUVENILE IS NECESSARY PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION. THE TIME LIMITS ARE AS FOLLOWS:

(I) IF THE HIGHEST CHARGED ACT CONSTITUTES A MISDEMEANOR, A MISDEMEANOR DRUG OFFENSE, A PETTY OFFENSE, OR A TRAFFIC OFFENSE, AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF SIX MONTHS, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY;

(II) IF THE HIGHEST CHARGED ACT CONSTITUTES A CLASS 4, 5, OR 6 FELONY, OR A LEVEL 3 OR 4 DRUG FELONY, AND THE JUVENILE IS NOT RESTORED TO COMPETENCY

AFTER A PERIOD OF ONE YEAR, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY;

(III) IF THE HIGHEST CHARGED ACT CONSTITUTES A CLASS 3 FELONY OR A LEVEL 1 OR 2 DRUG FELONY, EXCEPT FOR A CHARGE THAT CONSTITUTES AN ACT THAT ALLEGES THE JUVENILE IS AN AGGRAVATED JUVENILE OFFENDER PURSUANT TO SECTION 19-2.5-1125 (4), AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF TWO YEARS, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY; OR

(IV) IF THE HIGHEST CHARGED ACT CONSTITUTES A CLASS 1 OR 2 FELONY OR FOR A CHARGE THAT CONSTITUTES AN ACT THAT ALLEGES THE JUVENILE IS AN AGGRAVATED JUVENILE OFFENDER PURSUANT TO SECTION 19-2.5-1125 (4) AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF FIVE YEARS, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY.

(b) UPON A MOTION FROM THE PROSECUTING ATTORNEY FILED PRIOR TO THE EXPIRATION OF THE TIME LIMITS SET FORTH IN SUBSECTION (2.5)(a) OF THIS SECTION, THE COURT MAY EXTEND THE TIME LIMITS SET FORTH IN SUBSECTION (2.5)(a) OF THIS SECTION FOR AN ADDITIONAL THREE MONTHS IF THE COURT, AFTER A HEARING, MAKES FACTUAL FINDINGS THAT:

(I) THE JUVENILE HAS FAILED TO ATTEND OR SUBSTANTIALLY COOPERATE WITH RESTORATION TREATMENT;

(II) THERE IS A REASONABLE LIKELIHOOD OF RESTORATION IN THE FORESEEABLE FUTURE IF THE JUVENILE COOPERATES WITH RESTORATION TREATMENT; AND

(III) THE JUVENILE'S LACK OF COOPERATION IS NOT THE RESULT OF AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, MENTAL OR BEHAVIORAL HEALTH DISORDER, OR A LACK OF MENTAL CAPACITY.

(c) NOTHING IN THIS SUBSECTION (2.5) PRECLUDES A COURT FROM DETERMINING A JUVENILE IS UNLIKELY TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE AND ENTERING AN ORDER THAT THE JUVENILE IS UNRESTORABLE TO COMPETENCY PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION THROUGH A COMPETENCY HEARING OR RESTORATION TO COMPETENCY HEARING CONDUCTED AT ANY TIME PRIOR TO THE EXPIRATION OF THE TIME LIMITS SET FORTH IN SUBSECTION (2.5)(a) OF THIS SECTION, BASED UPON THE AVAILABLE EVIDENCE.

(3) (a) If the court finally determines pursuant to section 19-2.5-703 OR 19-2.5-703.5 that the juvenile is incompetent to proceed and cannot be restored to competency IN THE REASONABLY FORESEEABLE FUTURE, the court shall ENTER AN ORDER FINDING THE JUVENILE UNRESTORABLE TO COMPETENCY AND SHALL determine whether a management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is unnecessary, the court may continue any treatment or plan already in place for the juvenile. The management plan must, at a minimum,

address treatment for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

SECTION 7. In Colorado Revised Statutes, 19-2.5-705, **amend** (1) as follows:

19-2.5-705. Restoration to competency hearing. (1) The court may order a restoration to competency hearing, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a restoration of competency hearing if a competency evaluator with the qualifications described in section 19-2.5-703 (4)(b) files a report certifying that the juvenile is competent to proceed.

SECTION 8. In Colorado Revised Statutes, **add** 19-2.5-707 as follows:

19-2.5-707. Evaluation at the request of the juvenile. A JUVENILE HAS THE RIGHT TO REQUEST A SECOND EVALUATION IN RESPONSE TO A COURT-ORDERED COMPETENCY EVALUATION OR A COURT-ORDERED RESTORATION EVALUATION WITHIN SEVEN DAYS AFTER THE RECEIPT OF AN EVALUATION. IF A JUVENILE WANTS A SECOND EVALUATION TO BE CONDUCTED BY A COMPETENCY EVALUATOR OF THE JUVENILE'S CHOICE IN CONNECTION WITH A PROCEEDING HELD PURSUANT TO THIS ARTICLE 2.5, THE COURT, UPON TIMELY MOTION, SHALL ORDER THAT THE COMPETENCY EVALUATOR BE GIVEN REASONABLE OPPORTUNITY TO CONDUCT THE SECOND EVALUATION PRIOR TO ANY COMPETENCY OR RESTORATION HEARING.

SECTION 9. Appropriation. (1) For the 2023-24 state fiscal year, \$120,000 is appropriated to the judicial department. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$100,800 for use by the office of the state public defender for mandated costs; and
- (b) \$19,200 for use by the office of the alternate defense counsel for mandated costs.

SECTION 10. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 16, 2023