

## CHAPTER 267

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**CHILDREN AND DOMESTIC MATTERS**


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**HOUSE BILL 05-1034**

BY REPRESENTATIVE(S) Stafford, Cloer, Jahn, Boyd, Carroll M., Coleman, Frangas, Green, McFadyen, Merrifield, Solano, Todd, Berens, Hoppe, and Paccione;  
also SENATOR(S) Windels, Anderson, and Johnson.

**AN ACT**

**CONCERNING CREATION OF A COMPETENCY-TO-PROCEED STATUTE FOR JUVENILE DELINQUENCY ACTIONS.**

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

**SECTION 1.** Article 2 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 13  
COMPETENCY TO PROCEED**

**19-2-1301. Mental incompetency to proceed - effect - how and when raised.** (1) THE PROVISIONS OF THIS PART 13 SHALL ONLY APPLY TO PROCEEDINGS UNDER TITLE 19.

(2) A JUVENILE SHALL NOT BE TRIED OR SENTENCED IF THE JUVENILE IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION 16-8-102 (3), C.R.S., AT THAT STAGE OF THE PROCEEDINGS AGAINST HIM OR HER.

(3) WHEN A PARTY SPECIFIED IN THIS SUBSECTION (3) HAS REASON TO BELIEVE THAT A JUVENILE IS INCOMPETENT TO PROCEED IN A DELINQUENCY ACTION, THE PARTY SHALL RAISE THE QUESTION OF THE JUVENILE'S COMPETENCY IN THE FOLLOWING MANNER:

(a) ON ITS OWN MOTION, THE COURT SHALL SUSPEND THE PROCEEDING AND DETERMINE THE COMPETENCY OR INCOMPETENCY OF THE JUVENILE AS PROVIDED IN SECTION 19-2-1302.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(b) BY MOTION OF THE PROSECUTION, PROBATION OFFICER, GUARDIAN AD LITEM, OR DEFENSE, MADE IN ADVANCE OF THE COMMENCEMENT OF THE PARTICULAR PROCEEDING. THE MOTION MAY BE FILED AFTER THE COMMENCEMENT OF THE PROCEEDING IF, FOR GOOD CAUSE SHOWN, THE MENTAL CONDITION OF THE JUVENILE WAS NOT KNOWN OR APPARENT BEFORE THE COMMENCEMENT OF THE PROCEEDING.

(c) BY THE JUVENILE'S PARENT OR LEGAL GUARDIAN.

(4) IF THE ISSUE OF COMPETENCY IS RAISED AT THE TIME CHARGES ARE FILED OR AT ANY TIME THEREAFTER AND THE JUVENILE IS NOT REPRESENTED BY COUNSEL, THE COURT MAY IMMEDIATELY APPOINT COUNSEL AND MAY ALSO APPOINT A GUARDIAN AD LITEM TO ASSURE THE BEST INTERESTS OF THE JUVENILE ARE ADDRESSED IN ACCORDANCE WITH EXISTING LAW.

**19-2-1302. Determination of incompetency to proceed.** (1) WHENEVER THE QUESTION OF A JUVENILE'S COMPETENCY TO PROCEED IS RAISED, THE COURT SHALL MAKE A PRELIMINARY FINDING THAT THE JUVENILE IS OR IS NOT COMPETENT TO PROCEED. IF THE COURT FEELS THAT THE INFORMATION AVAILABLE TO IT IS INADEQUATE FOR MAKING SUCH A FINDING, IT SHALL ORDER A COMPETENCY EXAMINATION.

(2) THE COURT SHALL IMMEDIATELY NOTIFY THE PROSECUTING ATTORNEY AND DEFENSE COUNSEL OF THE PRELIMINARY FINDING REGARDING COMPETENCY. THE PROSECUTING ATTORNEY OR THE DEFENSE COUNSEL MAY REQUEST A HEARING ON THE PRELIMINARY FINDING BY FILING A WRITTEN REQUEST WITH THE COURT WITHIN TEN DAYS AFTER THE DATE ON WHICH THE COURT ISSUES THE PRELIMINARY FINDING, UNLESS THE COURT EXTENDS THE TIME PERIOD FOR GOOD CAUSE. THE PRELIMINARY FINDING BECOMES A FINAL DETERMINATION IF NEITHER THE PROSECUTING ATTORNEY NOR DEFENSE COUNSEL REQUESTS A HEARING. UPON THE TIMELY WRITTEN REQUEST OF EITHER THE PROSECUTING ATTORNEY OR DEFENSE COUNSEL, THE COURT SHALL HOLD A COMPETENCY HEARING. IF THE COURT DID NOT ORDER A COMPETENCY EXAMINATION OR OTHER EVALUATION PRIOR TO ITS PRELIMINARY DETERMINATION AND THE COURT DETERMINES ADEQUATE MENTAL HEALTH INFORMATION IS NOT AVAILABLE, THE COURT SHALL REFER THE JUVENILE FOR A COMPETENCY EXAMINATION PRIOR TO THE HEARING. AT THE CONCLUSION OF THE COMPETENCY HEARING, THE COURT SHALL MAKE A FINAL DETERMINATION REGARDING THE JUVENILE'S COMPETENCY TO PROCEED. AT A COMPETENCY HEARING HELD PURSUANT TO THIS SUBSECTION (2), THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE ARE UPON THE PARTY ASSERTING THE INCOMPETENCY OF THE JUVENILE.

(3) IF THE QUESTION OF A JUVENILE'S INCOMPETENCY TO PROCEED IS RAISED AFTER A JURY IS IMPANELED TO TRY THE ISSUES RAISED BY A PLEA OF NOT GUILTY OR AFTER THE COURT AS THE FINDER OF FACT BEGINS TO HEAR EVIDENCE AND THE COURT DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED OR ORDERS THE JUVENILE REFERRED FOR A COMPETENCY EXAMINATION, THE COURT MAY DECLARE A MISTRIAL. IF THE COURT DECLARES A MISTRIAL UNDER THESE CIRCUMSTANCES, THE JUVENILE SHALL NOT BE DEEMED TO HAVE BEEN PLACED IN JEOPARDY WITH REGARD TO THE CHARGES AT ISSUE. THE JUVENILE MAY BE TRIED ON, AND SENTENCED IF ADJUDICATED FOR, THE SAME CHARGES AFTER HE OR SHE HAS BEEN FOUND TO BE RESTORED TO COMPETENCY.

(4) (a) IF THE COURT ORDERS A COMPETENCY EVALUATION, THE COURT SHALL ORDER THAT THE COMPETENCY EVALUATION IS CONDUCTED IN THE LEAST-RESTRICTIVE ENVIRONMENT, TAKING INTO ACCOUNT THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE.

(b) A COMPETENCY EVALUATION SHALL BE CONDUCTED BY A LICENSED PSYCHIATRIST OR LICENSED PSYCHOLOGIST WHO IS EXPERIENCED IN THE CLINICAL EVALUATION OF JUVENILES AND TRAINED IN FORENSIC COMPETENCY ASSESSMENTS, OR A PSYCHIATRIST OR PSYCHOLOGIST WHO IS IN FORENSIC TRAINING AND UNDER THE SUPERVISION OF A LICENSED FORENSIC PSYCHIATRIST OR LICENSED PSYCHOLOGIST WITH EXPERTISE IN FORENSIC PSYCHOLOGY.

(c) THE COMPETENCY EVALUATION SHALL, AT A MINIMUM, INCLUDE AN OPINION REGARDING WHETHER THE JUVENILE IS COMPETENT TO PROCEED AS DEFINED IN SECTION 16-8-102 (3), C.R.S. IF THE EVALUATION CONCLUDES THE JUVENILE IS INCOMPETENT TO PROCEED, THE EVALUATION SHALL INCLUDE A RECOMMENDATION AS TO WHETHER THE JUVENILE MAY BE RESTORED TO COMPETENCY AND IDENTIFY APPROPRIATE SERVICES TO RESTORE THE JUVENILE TO COMPETENCY.

(d) THE EVALUATOR CONDUCTING THE COMPETENCY EVALUATION SHALL FILE THE EVALUATION WITH THE COURT WITHIN:

(I) THIRTY DAYS AFTER ISSUANCE OF THE ORDER FOR THE COMPETENCY EVALUATION, UNLESS GOOD CAUSE IS SHOWN FOR A DELAY, IF THE JUVENILE IS HELD IN A SECURE DETENTION FACILITY;

(II) FORTY-FIVE DAYS AFTER ISSUANCE OF THE ORDER FOR THE COMPETENCY EVALUATION, UNLESS GOOD CAUSE IS SHOWN FOR A DELAY, IF THE JUVENILE IS NOT HELD IN A SECURE DETENTION FACILITY.

**19-2-1303. Procedure after determination of competency or incompetency.**

(1) IF THE COURT FINALLY DETERMINES PURSUANT TO SECTION 19-2-1302 THAT THE JUVENILE IS COMPETENT TO PROCEED, THE COURT SHALL ORDER THAT THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL HAS BEEN DECLARED, SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

(2) IF THE COURT FINALLY DETERMINES PURSUANT TO SECTION 19-2-1302 THAT THE JUVENILE IS INCOMPETENT TO PROCEED, BUT MAY BE RESTORED TO COMPETENCY, 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. THE COURT SHALL REVIEW THE JUVENILE'S PROGRESS TOWARD COMPETENCY AT LEAST EVERY NINETY DAYS UNTIL COMPETENCY IS RESTORED. THE COURT SHALL NOT MAINTAIN JURISDICTION LONGER THAN THE MAXIMUM POSSIBLE SENTENCE FOR THE ORIGINAL OFFENSE, UNLESS THE COURT MAKES SPECIFIC FINDINGS OF GOOD CAUSE TO RETAIN JURISDICTION. HOWEVER, IN NO CASE SHALL THE JUVENILE COURT'S JURISDICTION EXTEND BEYOND THE JUVENILE'S TWENTY-FIRST BIRTHDAY.

(3) (a) IF THE COURT FINALLY DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED AND CANNOT BE RESTORED TO COMPETENCY, THE COURT 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 IS 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 SHALL, 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.

(b) THE MANAGEMENT PLAN MAY INCLUDE:

(I) PLACEMENT OPTIONS INCLUDED IN ARTICLE 10 OR 10.5 OF TITLE 27, C.R.S.;

(II) A TREATMENT PLAN DEVELOPED BY A LICENSED MENTAL HEALTH PROFESSIONAL;

(III) AN INFORMED SUPERVISION MODEL;

(IV) INSTITUTION OF A GUARDIANSHIP PETITION; OR

(V) ANY OTHER REMEDY DEEMED APPROPRIATE BY THE COURT.

(c) IF THE CHARGES ARE NOT DISMISSED EARLIER BY THE DISTRICT ATTORNEY, THE CHARGES AGAINST A JUVENILE FOUND TO BE INCOMPETENT AND UNRESTORABLE SHALL BE DISMISSED NO LATER THAN THE MAXIMUM POSSIBLE SENTENCE FOR THE ORIGINAL OFFENSE AFTER THE DATE OF THE COURT'S FINDING OF INCOMPETENT AND UNRESTORABLE, UNLESS THE COURT MAKES SPECIFIC FINDINGS OF GOOD CAUSE TO RETAIN JURISDICTION. HOWEVER, IN NO CASE, SHALL THE JUVENILE COURT'S JURISDICTION EXTEND BEYOND THE JUVENILE'S TWENTY-FIRST BIRTHDAY.

(4) A DETERMINATION UNDER SUBSECTION (2) OF THIS SECTION THAT A JUVENILE IS INCOMPETENT TO PROCEED SHALL NOT PRECLUDE THE COURT FROM CONSIDERING THE RELEASE OF THE JUVENILE ON BAIL UPON COMPLIANCE WITH THE STANDARDS AND PROCEDURES FOR SUCH RELEASE PRESCRIBED BY STATUTE. AT ANY HEARING TO DETERMINE ELIGIBILITY FOR RELEASE ON BAIL, THE COURT MAY CONSIDER ANY EFFECT THE JUVENILE'S INCOMPETENCY MAY HAVE ON THE JUVENILE'S ABILITY TO INSURE HIS OR HER PRESENCE FOR TRIAL.

**19-2-1304. Restoration to competency.** (1) THE COURT MAY ORDER A RESTORATION HEARING, AS DEFINED IN SECTION 16-8-102 (7), C.R.S., AT ANY TIME ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING ATTORNEY, OR ON MOTION OF THE JUVENILE. THE COURT SHALL ORDER A HEARING IF A MENTAL HEALTH PROFESSIONAL WHO HAS BEEN TREATING THE JUVENILE FILES A REPORT CERTIFYING THAT THE JUVENILE IS MENTALLY COMPETENT TO PROCEED.

(2) AT THE HEARING, IF THE QUESTION IS CONTESTED, THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE SHALL BE UPON THE PARTY ASSERTING THAT THE JUVENILE IS COMPETENT.

(3) AT THE HEARING, THE COURT SHALL DETERMINE WHETHER THE JUVENILE IS RESTORED TO COMPETENCY.

**19-2-1305. Procedure after hearing concerning restoration to competency.**

(1) IF A JUVENILE IS FOUND TO BE RESTORED TO COMPETENCY AFTER A HEARING, AS PROVIDED IN SECTION 19-2-1304, OR BY THE COURT DURING A REVIEW, AS PROVIDED IN SECTION 19-2-1303 (2), THE COURT SHALL RESUME OR RECOMMENCE THE TRIAL OR SENTENCING PROCEEDING OR ORDER THE SENTENCE CARRIED OUT. THE COURT MAY CREDIT ANY TIME THE JUVENILE SPENT IN CONFINEMENT OR DETENTION WHILE INCOMPETENT AGAINST ANY TERM OF COMMITMENT IMPOSED AFTER RESTORATION TO COMPETENCY.

(2) IF THE COURT DETERMINES THAT THE JUVENILE REMAINS MENTALLY INCOMPETENT TO PROCEED AND THE DELINQUENCY PETITION IS NOT DISMISSED, THE COURT MAY CONTINUE OR MODIFY ANY ORDERS ENTERED AT THE TIME OF THE ORIGINAL DETERMINATION OF INCOMPETENCY OR ENTER ANY NEW ORDER NECESSARY TO FACILITATE THE JUVENILE'S RESTORATION TO MENTAL COMPETENCY.

(3) EVIDENCE OBTAINED DURING A COMPETENCY EVALUATION OR DURING TREATMENT RELATED TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY AND THE DETERMINATION AS TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY ARE NOT ADMISSIBLE ON THE ISSUES RAISED BY A PLEA OF NOT GUILTY.

**SECTION 2. Repeal.** 19-2-702, Colorado Revised Statutes, is repealed.

**SECTION 3.** 19-2-508 (3) (b) (III), Colorado Revised Statutes, is amended to read:

**19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions.** (3) (b) (III) When the mental health professional finds, as a result of the prescreening, that the juvenile may be mentally ill, the mental health professional shall recommend to the court that the juvenile be evaluated pursuant to section 27-10-105 or 27-10-106, C.R.S. ~~and the court shall proceed as provided in section 19-2-702.~~

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2005, and shall apply to delinquency petitions filed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2005