

BHDCJS Youth Subcommittee Handout: Legislative Oversight Committee Hearing
Juvenile Restoration and Competency
August 11, 2022

Problem Statement:

Issues related to competency to stand trial and restoration services in Colorado have remained an ongoing focus. In prior years, the Legislative Oversight Committee supported Senate Bill 17-12, which clarified the Office Of Behavioral Health's role in providing restoration services, and House Bill 18-1050, which enacted a juvenile specific definition of incompetent to proceed.

While the BHDCJS Task Force's work has addressed some issues related to juvenile competency, other issues and questions remain outstanding. For example, the Colorado Supreme Court's decision *In Re People vs. B.B.A.M.*, which reversed a lower court decision and remanded the case for a restoration review hearing in lieu of a second evaluation, highlighted a lack of definitional clarity in Colorado's juvenile competency statutes and that Colorado's statutes do not provide for a competency reevaluation in juvenile cases.

Additionally, the Office of Behavioral Health (OBH) has implemented SB 17-12. However, the court is the only party OBH is authorized to communicate with, resulting in requests for information from attorneys and GALs that cannot be provided directly. Information sent to courts is not uploaded into the court's system, resulting in hearing delays. Legal advocates have expressed concerns that extended case length when competency is at issue can lead children and youth to spend even more time under the jurisdiction of the court than they would had they been adjudicated for the charged offenses, raising possible due process and developmental concerns.

Subcommittee members bring varying perspectives on the legislative solution but do agree that without revisions to the statute, juvenile competency issues will persist and juveniles' length of stay in the juvenile justice system—and, in some cases, detained settings—will likely remain long. During the last legislative session, House Bill 22-1386, a non-task force bill, was introduced with juvenile-specific revisions that were subsequently removed due to ongoing debate about the proposed statute revisions related to juveniles among the varying legal perspectives in the subcommittee. The subcommittee has continued to meet in an effort to achieve consensus where possible and to distill the essential components of a bill that would address juvenile competency restoration issues.

Background:

Research indicates that juveniles found to be incompetent disproportionately have special education service needs, mental health treatment needs, and demonstrated histories of trauma exposures.¹ Colorado has codified juvenile competency standards, and the statute recognizes contributing factors to incompetency such as mental health, developmental, and intellectual disability.

¹ O'Donnell et al. (2012). Developmental incompetence to stand trial in juvenile courts. *Journal of Forensic Sciences*, 57(4), 989-996; Upton et al. (2020). Determining reasonableness: Identification of the non-restorable person adjudicated incompetent to stand trial. *The Journal of Forensic Psychiatry & Psychology*, 1-18.

Data on restoration services provided by the Office of Behavioral Health (OBH) indicates a greater length of stay for juveniles obtaining outpatient restoration and for juveniles as compared to adults:

Length of Stay Data

Comparison of Juveniles Inpatient v Outpatient (Median Length of Stay)

	Inpatient	Outpatient
FY19-20	71.5	230.5
FY20-21	77.0	259.0

Comparison of Juveniles Outpatient v Adults Outpatient (Median Length of Stay)

	Juvenile	Adult
FY19-20	230.5	198
FY20-21	259.0	175

Additionally, inconsistencies among jurisdictions make it difficult to manage cases statewide. For example, in March 2021, there were a total of 178 orders for outpatient restoration services. Ninety of the 178 were from one jurisdiction. There is wide variation in how districts are considering issues related to incompetency to proceed and restoration.

Strategies:

While the members of the subcommittee have not obtained complete consensus on all aspects of legislation, agreement as to the elements that need immediate attention exists. In addition, there is agreement that no single element alone can address the concerns. Therefore, we recommend that the below strategies be addressed collectively to address inconsistencies in interpretation and practice in jurisdictions.

Confidentiality. Statute needs to clarify when information exchange is authorized. For example, currently the court is the only entity CDHS is authorized to release information to which limits the ability of information exchange among the parties. Any statutory revisions to allow the exchange of information should be narrowly tailored to be consistent with youth's due process and privacy rights.

Definitional clarity of Re-Assessment. Definitional clarity is needed related to ***re-assessment***. Currently, **re-evaluation** is not authorized as a result of the B.B.A.M. decision. However, a mechanism is needed in jurisdictions to uniformly use ***re-assessment*** as a tool for ongoing progress monitoring in restoration services, and to address the due process and developmental considerations outlined below.

Due Process and Child Development Considerations. While there is agreement that it is advisable to have qualified professionals speak to progress in restoration services, subcommittee members do not agree on whether re-assessment should be limited in frequency, and whether adjustments to the overall timeframes within which a case can remain open should be made. Youth advocates are concerned that multiple re-assessments that extend case length rather than result in earlier resolution will lead to poor outcomes for youth who are already vulnerable due to the conditions resulting in findings of incompetent to proceed.

Addressing issues in the categories above would improve the provision of services to juveniles in Colorado where competency has been raised.