Attachment F

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Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL 2

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LLS NO. 14-~~####.##~~ Jane Ritter x4342 **INTERIM COMMITTEE BILL**

Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems

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A BILL FOR AN ACT

101 **CONCERNING THE DETERMINATION OF COMPETENCY TO PROCEED FOR**
102 **INDIVIDUALS IN 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://www.leg.state.co.us/billsummaries.)

Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems. The bill creates a definition of "incompetent to proceed" that is specific to juveniles in order to distinguish it from that used for adults in the criminal

justice system.

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

2 **SECTION 1.** In Colorado Revised Statutes, 19-2-103, **add** (5.5),
3 (9.5), (9.6), (12.3), (12.4), and (14.3) as follows:

4 **19-2-103. Definitions.** For purposes of this article:

5 (5.5) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY THAT
6 IS MANIFESTED BEFORE THE PERSON REACHES TWENTY-TWO YEARS OF
7 AGE, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE AFFECTED
8 INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO AN INTELLECTUAL DISABILITY
9 OR OTHER NEUROLOGICAL CONDITIONS WHEN THOSE CONDITIONS RESULT
10 IN IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE
11 BEHAVIOR SIMILAR TO THAT OF A PERSON WITH AN INTELLECTUAL
12 DISABILITY. UNLESS OTHERWISE SPECIFICALLY STATED, THE FEDERAL
13 DEFINITION OF "DEVELOPMENTAL DISABILITY", 42 U.S.C. SEC. 15001 ET
14 SEQ., SHALL NOT APPLY.

15 (9.5) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE, DUE
16 TO MENTAL DISABILITY, DEVELOPMENTAL DISABILITY, INTELLECTUAL
17 DISABILITY, OR OTHERWISE DUE TO A LACK OF MENTAL CAPACITY, LACKS
18 A REASONABLE DEGREE OF RATIONAL AND FACTUAL UNDERSTANDING OF
19 THE PROCEEDINGS AGAINST HIM OR HER OR IS UNABLE TO CONSULT OR
20 COMMUNICATE WITH AND ASSIST HIS OR HER ATTORNEY IN PREPARING HIS
21 OR HER DEFENSE IN A MEANINGFUL MANNER.

22 (9.6) "INTELLECTUAL DISABILITY" MEANS A DISORDER WITH ONSET
23 DURING THE DEVELOPMENTAL PERIOD THAT INCLUDES BOTH
24 INTELLECTUAL AND ADAPTIVE FUNCTIONING DEFICITS IN CONCEPTUAL,
25 SOCIAL, AND PRACTICAL DOMAINS, AND MEETS THE FOLLOWING CRITERIA:

1 (a) DEFICITS IN INTELLECTUAL FUNCTIONS, SUCH AS REASONING,
2 PROBLEM SOLVING, PLANNING, ABSTRACT THINKING JUDGMENT,
3 ACADEMIC LEARNING, AND LEARNING FROM EXPERIENCE, CONFIRMED BY
4 BOTH CLINICAL ASSESSMENT AND INDIVIDUALIZED, STANDARDIZED
5 INTELLIGENCE TESTING;
6 (b) DEFICITS IN ADAPTIVE FUNCTIONING THAT RESULT IN FAILURE
7 TO MEET DEVELOPMENTAL AND SOCIO-CULTURAL STANDARDS FOR
8 PERSONAL INDEPENDENCE AND SOCIAL RESPONSIBILITY. WITHOUT
9 ONGOING SUPPORT, THE ADAPTIVE DEFICITS LIMIT FUNCTIONING IN ONE OR
10 MORE ACTIVITIES OF DAILY LIFE, SUCH AS COMMUNICATION, SOCIAL
11 PARTICIPATION, AND INDEPENDENT LIVING, ACROSS MULTIPLE
12 ENVIRONMENTS, SUCH AS HOME, SCHOOL, WORK, AND COMMUNITY; AND
13 (c) THE ONSET OF INTELLECTUAL AND ADAPTIVE DEFICITS DURING
14 THE DEVELOPMENTAL PERIOD.
15 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO:
16 (a) COMPREHEND AND APPRECIATE THE CHARGES OR ALLEGATIONS
17 AGAINST HIM OR HER; OR
18 (b) UNDERSTAND THE ADVERSARIAL NATURE OF THE
19 PROCEEDINGS, INCLUDING THE ROLE OF THE JUDGE, DEFENSE COUNSEL,
20 PROSECUTING ATTORNEY, GUARDIAN AD LITEM OR COURT-APPOINTED
21 SPECIAL ASSISTANT, OR WITNESSES, AND BE ABLE TO ASSIST IN HIS OR HER
22 DEFENSE; OR
23 (c) COMPREHEND AND APPRECIATE THE CONSEQUENCES THAT MAY
24 BE IMPOSED OR RESULT FROM THE PROCEEDINGS.
25 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
26 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
27 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH

1 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
2 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, OR ANY CONDITION
3 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
4 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
5 SUBSTANCE ABUSE THAT RESULTS IN LONG-TERM, SUBSTANTIAL DISORDER
6 OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE A MENTAL
7 DISABILITY.
8 (14.3) "RESTORATION HEARING" MEANS A HEARING TO DETERMINE
9 WHETHER A DEFENDANT WHO HAS PREVIOUSLY BEEN DETERMINED TO BE
10 INCOMPETENT TO PROCEED HAS ACHIEVED OR IS RESTORED TO
11 COMPETENCY.
12 **SECTION 2.** In Colorado Revised Statutes, 19-2-1301, **amend**
13 (2) as follows:
14 **19-2-1301. Mental incompetency to proceed - effect - how and**
15 **when raised.** (2) A juvenile shall not be tried or sentenced if the juvenile
16 is incompetent to proceed, as defined in section ~~16-8.5-101 (11), C.R.S.~~
17 19-2-103 (9.5), at that stage of the proceedings against him or her.
18 **SECTION 3.** In Colorado Revised Statutes, 19-2-1302, **amend**
19 (3), (4) (a), and (4) (c) as follows:
20 **19-2-1302. Determination of incompetency to proceed.** (3) If
21 the question of a juvenile's incompetency to proceed is raised after a jury
22 is impaneled to try the issues raised by a plea of not guilty or after the
23 court as the finder of fact begins to hear evidence and the court
24 determines that the juvenile is incompetent to proceed or orders the
25 juvenile referred for a competency examination, the court may declare a
26 mistrial. If the court declares a mistrial under these circumstances, the
27 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with

1 regard to the charges at issue. The juvenile may be tried on, and sentenced
2 if adjudicated for, the same charges after he or she has been found to ~~be~~
3 ACHIEVE OR BE restored to competency.
4 (4) (a) If the court orders a competency evaluation, the court shall
5 order that the competency evaluation be conducted in the least-restrictive
6 environment, INCLUDING HOME OR COMMUNITY PLACEMENT IF
7 APPROPRIATE, taking into account the public safety and the best interests
8 of the juvenile.
9 (c) The competency evaluation ~~shall~~ MUST, at a minimum, include
10 an opinion regarding whether the juvenile is competent to proceed as
11 defined in section ~~16-8.5-101 (4), C.R.S.~~ 19-2-103 (9.5). If the evaluation
12 concludes the juvenile is incompetent to proceed, the evaluation ~~shall~~
13 MUST include a recommendation as to whether the juvenile may ACHIEVE
14 OR be restored to competency and identify appropriate services to restore
15 the juvenile to competency.
16 **SECTION 4.** In Colorado Revised Statutes, 19-2-1304, **amend**
17 (1) and (3) as follows:
18 **19-2-1304. Restoration to competency.** (1) The court may order
19 a restoration hearing, as defined in section ~~16-8.5-101 (13), C.R.S.~~
20 19-2-103 (14.3), at any time on its own motion, on motion of the
21 prosecuting attorney, or on motion of the juvenile. The court shall order
22 a hearing if a mental health professional who has been treating the
23 juvenile files a report certifying that the juvenile is ~~mentally~~ competent
24 to proceed.
25 (3) At the hearing, the court shall determine whether the juvenile
26 HAS ACHIEVED OR is restored to competency.
27 **SECTION 5.** In Colorado Revised Statutes, 19-2-1305, **amend**

1 (1) and (2) as follows:

2 **19-2-1305. Procedure after hearing concerning restoration to**
3 **competency.** (1) If a juvenile is found to ~~be~~ HAVE ACHIEVED OR BEEN
4 restored to competency after a hearing, as provided in section 19-2-1304,
5 or by the court during a review, as provided in section 19-2-1303 (2), the
6 court shall resume or recommence the trial or sentencing proceeding or
7 order the sentence carried out. The court may credit any time the juvenile
8 spent in confinement or detention while incompetent against any term of
9 commitment imposed after ACHIEVEMENT OR restoration to competency.

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

16 **SECTION 6. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.