

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 14-0199.01 Jane Ritter x4342

HOUSE BILL

HOUSE SPONSORSHIP

Rosenthal, Wright

SENATE SPONSORSHIP

Newell, Tochtrop

House Committees

Senate Committees

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

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

juveniles in order to distinguish it from that used for adults in the criminal justice system.

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 HIS OR HER TWENTY-FIRST
7 BIRTHDAY, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE
8 AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO AN INTELLECTUAL
9 DISABILITY OR OTHER NEUROLOGICAL CONDITIONS WHEN THOSE
10 CONDITIONS RESULT IN IMPAIRMENT OF GENERAL INTELLECTUAL
11 FUNCTIONING OR ADAPTIVE BEHAVIOR SIMILAR TO THAT OF A PERSON
12 WITH AN INTELLECTUAL DISABILITY. UNLESS OTHERWISE SPECIFICALLY
13 STATED, THE FEDERAL DEFINITION OF "DEVELOPMENTAL DISABILITY", 42
14 U.S.C. SEC. 15001 ET 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 LACK OF MENTAL CAPACITY, LACKS A REASONABLE
18 DEGREE OF RATIONAL AND FACTUAL UNDERSTANDING OF THE
19 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 INCLUDES THE FOLLOWING

1 CRITERIA:

2 (a) DEFICITS IN INTELLECTUAL FUNCTIONS, SUCH AS REASONING,
3 PROBLEM SOLVING, PLANNING, ABSTRACT THINKING JUDGMENT,
4 ACADEMIC LEARNING, AND LEARNING FROM EXPERIENCE, CONFIRMED BY
5 BOTH CLINICAL ASSESSMENT AND INDIVIDUALIZED, STANDARDIZED
6 INTELLIGENCE TESTING;

7 (b) DEFICITS IN ADAPTIVE FUNCTIONING THAT RESULT IN FAILURE
8 TO MEET DEVELOPMENTAL AND SOCIO-CULTURAL STANDARDS FOR
9 PERSONAL INDEPENDENCE AND SOCIAL RESPONSIBILITY. WITHOUT
10 ONGOING SUPPORT, THE ADAPTIVE DEFICITS LIMIT FUNCTIONING IN ONE OR
11 MORE ACTIVITIES OF DAILY LIFE, SUCH AS COMMUNICATION, SOCIAL
12 PARTICIPATION, AND INDEPENDENT LIVING, ACROSS MULTIPLE
13 ENVIRONMENTS, SUCH AS HOME, SCHOOL, WORK, AND COMMUNITY; AND

14 (c) THE ONSET OF INTELLECTUAL AND ADAPTIVE DEFICITS DURING
15 THE DEVELOPMENTAL PERIOD.

16 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO:

17 (a) COMPREHEND AND APPRECIATE THE CHARGES OR ALLEGATIONS
18 AGAINST HIM OR HER; OR

19 (b) UNDERSTAND THE ADVERSARIAL NATURE OF THE
20 PROCEEDINGS, INCLUDING THE ROLE OF THE JUDGE, DEFENSE COUNSEL,
21 PROSECUTING ATTORNEY, GUARDIAN AD LITEM OR COURT-APPOINTED
22 SPECIAL ADVOCATE, OR WITNESSES, AND BE ABLE TO ASSIST IN HIS OR HER
23 DEFENSE; OR

24 (c) COMPREHEND AND APPRECIATE THE CONSEQUENCES THAT MAY
25 BE IMPOSED BY THE COURT OR RESULT FROM THE PROCEEDINGS.

26 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
27 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN

1 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH
2 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
3 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
4 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
5 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
6 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
7 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
8 A MENTAL DISABILITY.

9 (14.3) "RESTORATION HEARING" MEANS A HEARING TO DETERMINE
10 WHETHER A DEFENDANT WHO HAS PREVIOUSLY BEEN DETERMINED TO BE
11 INCOMPETENT TO PROCEED HAS ACHIEVED OR IS RESTORED TO
12 COMPETENCY.

13 **SECTION 2.** In Colorado Revised Statutes, 19-2-1301, **amend**
14 (2) as follows:

15 **19-2-1301. Mental incompetency to proceed - effect - how and**
16 **when raised.** (2) A juvenile shall not be tried or sentenced if the juvenile
17 is incompetent to proceed, as defined in section ~~16-8.5-101 (11)~~, C.R.S.
18 19-2-103 (9.5), at that stage of the proceedings against him or her.

19 **SECTION 3.** In Colorado Revised Statutes, 19-2-1302, **amend**
20 (3), (4) (a), and (4) (c) as follows:

21 **19-2-1302. Determination of incompetency to proceed.** (3) If
22 the question of a juvenile's incompetency to proceed is raised after a jury
23 is impaneled to try the issues raised by a plea of not guilty or after the
24 court as the finder of fact begins to hear evidence and the court
25 determines that the juvenile is incompetent to proceed or orders the
26 juvenile referred for a competency examination, the court may declare a
27 mistrial. If the court declares a mistrial under these circumstances, the

1 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
2 regard to the charges at issue. The juvenile may be tried on, and sentenced
3 if adjudicated for, the same charges after he or she has been found to ~~be~~
4 ACHIEVE OR BE restored to competency.

5 (4) (a) If the court orders a competency evaluation, the court shall
6 order that the competency evaluation be conducted in the least-restrictive
7 environment, INCLUDING HOME OR COMMUNITY PLACEMENT IF
8 APPROPRIATE, taking into account the public safety and the best interests
9 of the juvenile.

10 (c) The competency evaluation ~~shall~~ MUST, at a minimum, include
11 an opinion regarding whether the juvenile is ~~competent~~ INCOMPETENT to
12 proceed as defined in section ~~16-8.5-101 (4), C.R.S.~~ 19-2-103 (9.5). If the
13 evaluation concludes the juvenile is incompetent to proceed, the
14 evaluation ~~shall~~ MUST include a recommendation as to whether the
15 juvenile may ACHIEVE OR be restored to competency and identify
16 appropriate services to restore the juvenile to competency.

17 **SECTION 4.** In Colorado Revised Statutes, 19-2-1304, **amend**
18 (1) and (3) as follows:

19 **19-2-1304. Restoration to competency.** (1) The court may order
20 a restoration hearing, as defined in section ~~16-8.5-101 (13), C.R.S.~~
21 19-2-103 (14.3), at any time on its own motion, on motion of the
22 prosecuting attorney, or on motion of the juvenile. The court shall order
23 a hearing if a mental health professional who has been treating the
24 juvenile files a report certifying that the juvenile is ~~mentally~~ competent
25 to proceed.

26 (3) At the hearing, the court shall determine whether the juvenile
27 HAS ACHIEVED OR is restored to competency.

1 **SECTION 5.** In Colorado Revised Statutes, 19-2-1305, **amend**
2 (1) and (2) as follows:

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

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

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