

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

BILL A

LLS NO. 15-0058.01 Jane Ritter x4342

HOUSE BILL

HOUSE SPONSORSHIP

Rosenthal,

SENATE SPONSORSHIP

Newell,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING COMPETENCY TO PROCEED FOR JUVENILES INVOLVED IN**
102 **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 Treatment of Persons with Mental Illness Who Are Involved in the Criminal Justice Systems. The bill establishes a juvenile-specific definition of "incompetent to proceed" for juveniles involved in the juvenile justice

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.*

system, as well as specific definitions for "developmental disability", "intellectual disability", "mental capacity", and "mental disability" when used in this context. The bill clarifies the procedures for establishing incompetency, as well as for establishing the restoration of competency.

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 DOES
16 NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH HIS OR HER
17 ATTORNEY WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING
18 IN ORDER TO ASSIST IN THE DEFENSE OR THAT HE OR SHE DOES NOT HAVE
19 A RATIONAL AS WELL AS A FACTUAL UNDERSTANDING OF THE
20 PROCEEDINGS AGAINST HIM OR HER.

21 (9.6) "INTELLECTUAL DISABILITY" MEANS A DISORDER WITH ONSET
22 DURING THE DEVELOPMENTAL PERIOD THAT INCLUDES BOTH
23 INTELLECTUAL AND ADAPTIVE FUNCTIONING DEFICITS IN CONCEPTUAL,

1 SOCIAL, AND PRACTICAL DOMAINS AND INCLUDES THE FOLLOWING
2 CRITERIA:

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

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

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

17 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO
18 MEET ALL OF THE FOLLOWING CRITERIA:

19 (a) COMPREHEND AND APPRECIATE THE CHARGES OR ALLEGATIONS
20 AGAINST HIM OR HER;

21 (b) UNDERSTAND THE ADVERSARIAL NATURE OF THE
22 PROCEEDINGS, INCLUDING THE ROLE OF THE JUDGE, THE DEFENDANT'S
23 ATTORNEY, THE PROSECUTING ATTORNEY, THE DEFENDANT'S GUARDIAN
24 AD LITEM, IF APPLICABLE, OR WITNESSES, AND BE ABLE TO ASSIST IN HIS
25 OR HER DEFENSE;

26 (c) COMPREHEND AND APPRECIATE THE CONSEQUENCES THAT MAY
27 BE IMPOSED BY THE COURT OR RESULT FROM THE PROCEEDINGS;

1 (d) DISCLOSE TO COUNSEL FACTS PERTINENT TO THE PROCEEDINGS
2 AT ISSUE;

3 (e) DISPLAY APPROPRIATE COURTROOM BEHAVIOR; AND

4 (f) TESTIFY RELEVANTLY.

5 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
6 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
7 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH
8 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
9 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
10 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
11 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
12 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
13 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
14 A MENTAL DISABILITY.

15 (14.3) "RESTORATION TO COMPETENCY HEARING" MEANS A
16 HEARING TO DETERMINE WHETHER A DEFENDANT WHO HAS PREVIOUSLY
17 BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS ACHIEVED OR IS
18 RESTORED TO COMPETENCY.

19 **SECTION 2.** In Colorado Revised Statutes, **add** 19-2-1300.2 as
20 follows:

21 **19-2-1300.2. Legislative declaration.** (1) THE GENERAL
22 ASSEMBLY FINDS AND DECLARES THAT:

23 (a) THE JUVENILE JUSTICE SYSTEM IS CIVIL IN NATURE AND
24 FOCUSED ON TREATMENT RATHER THAN PUNISHMENT;

25 (b) IT IS CRUCIAL TO AVOID THE NEGATIVE CONSEQUENCES OF
26 PROSECUTION WHENEVER NECESSARY AND POSSIBLE, AND TO PROMOTE
27 MENTAL HEALTH TREATMENT PATHWAYS FOR JUVENILES IN THE JUVENILE

1 JUSTICE SYSTEM;

2 (c) JUVENILES DIFFER IN SIGNIFICANT AND SUBSTANTIVE WAYS
3 FROM ADULTS; THEREFORE, DIFFERENT STANDARDS FOR COMPETENCY ARE
4 NECESSARY FOR JUVENILES AND ADULTS;

5 (d) JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO
6 PROCEED UNTIL SUCH TIME AS THEY ARE FOUND INCOMPETENT TO
7 PROCEED THROUGH A FORMAL COMPETENCY EVALUATION; AND

8 (e) AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
9 WITHOUT A FINDING THAT THE YOUTH ACTUALLY LACKS THE RELEVANT
10 CAPACITIES FOR COMPETENCE.

11 **SECTION 3.** In Colorado Revised Statutes, 19-2-1301, **amend**
12 (2) as follows:

13 **19-2-1301. Incompetency to proceed - effect - how and when**
14 **raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is
15 incompetent to proceed, as defined in section ~~16-8.5-101 (11), C.R.S.~~
16 19-2-103 (9.5), at that stage of the proceedings against him or her. A
17 DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION OF
18 DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL
19 CAPACITY.

20 **SECTION 4.** In Colorado Revised Statutes, 19-2-1302, **amend**
21 (3), (4) (a), and (4) (c) as follows:

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

1 mistrial. If the court declares a mistrial under these circumstances, the
2 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
3 regard to the charges at issue. The juvenile may be tried on, and sentenced
4 if adjudicated for, the same charges after he or she has ACHIEVED OR been
5 found to be restored to competency.

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

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

19 **SECTION 5.** In Colorado Revised Statutes, 19-2-1304, **amend**
20 (1) and (3) as follows:

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

1 (3) At the RESTORATION TO COMPETENCY hearing, the court shall
2 determine whether the juvenile HAS ACHIEVED OR is restored to
3 competency.

4 **SECTION 6.** In Colorado Revised Statutes, 19-2-1305, **amend**
5 (1) and (2) as follows:

6 **19-2-1305. Procedure after restoration to competency hearing.**

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

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

21 **SECTION 7. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.