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Seventieth General Assembly  
STATE OF COLORADO

DRAFT  
10.14.15

**BILL 2**

LLS NO. 16-0312.02 Jane Ritter x4342

**INTERIM COMMITTEE BILL**

**Legislative Oversight Committee Concerning the Treatment of Persons  
With Mental Illness in the Criminal and Juvenile Justice Systems**

BILL TOPIC: "Competency To Proceed For Juveniles"

**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 Concerning the Treatment of Persons With Mental Illness in the Criminal and Juvenile Justice Systems.** The bill establishes a juvenile-specific definition of "competent to proceed" and "incompetent to proceed" for juveniles involved in the

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

juvenile justice system, as well as specific definitions for "developmental 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.

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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** (3.3),  
3 (5.5), (9.5), (12.3), (12.4), and (14.3) as follows:

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

5           (3.3) "COMPETENT TO PROCEED" MEANS THAT A JUVENILE HAS  
6 SUFFICIENT PRESENT ABILITY TO CONSULT WITH HIS OR HER ATTORNEY  
7 WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO  
8 ASSIST IN THE DEFENSE AND THAT HE OR SHE HAS A RATIONAL AS WELL AS  
9 A FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR HER.

10           (5.5) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY THAT  
11 IS MANIFESTED BEFORE THE PERSON REACHES HIS OR HER TWENTY-FIRST  
12 BIRTHDAY, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE  
13 AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO AN INTELLECTUAL  
14 DISABILITY OR OTHER NEUROLOGICAL CONDITIONS WHEN THOSE  
15 CONDITIONS RESULT IN IMPAIRMENT OF GENERAL INTELLECTUAL  
16 FUNCTIONING OR ADAPTIVE BEHAVIOR SIMILAR TO THAT OF A PERSON  
17 WITH AN INTELLECTUAL DISABILITY. UNLESS OTHERWISE SPECIFICALLY  
18 STATED, THE FEDERAL DEFINITION OF "DEVELOPMENTAL DISABILITY", 42  
19 U.S.C. SEC. 15001 ET SEQ., SHALL NOT APPLY.

20           (9.5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON A  
21 DEVELOPMENTAL DISABILITY, MENTAL DISABILITY, OR LACK OF MENTAL  
22 CAPACITY, A JUVENILE DOES NOT HAVE SUFFICIENT PRESENT ABILITY TO  
23 CONSULT WITH HIS OR HER ATTORNEY WITH A REASONABLE DEGREE OF

1 RATIONAL UNDERSTANDING IN ORDER TO ASSIST IN THE DEFENSE OR THAT  
2 HE OR SHE DOES NOT HAVE A RATIONAL AS WELL AS A FACTUAL  
3 UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR HER.

4 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO  
5 MEET ALL OF THE FOLLOWING CRITERIA:

6 (a) APPRECIATE THE CHARGES OR ALLEGATIONS AGAINST HIM OR  
7 HER;

8 (b) APPRECIATE THE NATURE OF THE ADVERSARIAL PROCESS AND  
9 PROCEEDINGS, INCLUDING:

10 (I) HAVING A FACTUAL UNDERSTANDING OF THE PARTICIPANTS IN  
11 THE PROCEEDING, INCLUDING THE JUDGE; DEFENSE COUNSEL; ATTORNEY  
12 FOR THE STATE; MENTAL HEALTH EXPERT; AND GUARDIAN AD LITEM,  
13 WHEN APPLICABLE; AND

14 (II) HAVING A RATIONAL UNDERSTANDING OF THE ROLE OF EACH  
15 PARTICIPANT IN THE PROCEEDINGS;

16 (c) APPRECIATE THE RANGE AND NATURE OF ALLOWABLE  
17 DISPOSITIONS THAT MAY BE IMPOSED AGAINST THE JUVENILE IN THE  
18 PROCEEDINGS;

19 (d) DISCLOSE TO COUNSEL FACTS PERTINENT TO THE PROCEEDINGS  
20 AT ISSUE;

21 (e) GENERALLY DISPLAY APPROPRIATE COURTROOM BEHAVIOR;  
22 AND

23 (f) TESTIFY RELEVANTLY.

24 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF  
25 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN  
26 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH  
27 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE

1 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION  
2 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE  
3 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,  
4 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL  
5 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE  
6 A MENTAL DISABILITY.

7 (14.3) "RESTORATION TO COMPETENCY HEARING" MEANS A  
8 HEARING TO DETERMINE WHETHER A JUVENILE WHO HAS PREVIOUSLY  
9 BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS ACHIEVED OR IS  
10 RESTORED TO COMPETENCY.

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

13 **19-2-1300.2. Legislative declaration.** (1) THE GENERAL  
14 ASSEMBLY FINDS AND DECLARES THAT:

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

17 (b) JUVENILES DIFFER IN SIGNIFICANT AND SUBSTANTIVE WAYS  
18 FROM ADULTS; THEREFORE, DIFFERENT STANDARDS FOR COMPETENCY ARE  
19 NECESSARY FOR JUVENILES AND ADULTS;

20 (c) JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO  
21 PROCEED UNTIL SUCH TIME AS THEY ARE FOUND INCOMPETENT TO  
22 PROCEED THROUGH A DECISION BY THE COURT; AND

23 (d) AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE  
24 WITHOUT A FINDING THAT THE YOUTH ACTUALLY LACKS THE RELEVANT  
25 CAPACITIES FOR COMPETENCE.

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

1           **19-2-1301. Incompetency to proceed - effect - how and when**  
2 **raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is  
3 incompetent to proceed, as defined in ~~section 16-8.5-101 (11), C.R.S.~~  
4 SECTION 19-2-103 (9.5), at that stage of the proceedings against him or  
5 her. A DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION  
6 OF DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL  
7 CAPACITY.

8           **SECTION 4.** In Colorado Revised Statutes, 19-2-1302, **amend**  
9 (3), (4) (a), and (4) (c) as follows:

10           **19-2-1302. Determination of incompetency to proceed.** (3) If  
11 the question of a juvenile's incompetency to proceed is raised after a jury  
12 is impaneled to try the issues raised by a plea of not guilty or after the  
13 court as the finder of fact begins to hear evidence and the court  
14 determines that the juvenile is incompetent to proceed or orders the  
15 juvenile referred for a competency examination, the court may declare a  
16 mistrial. If the court declares a mistrial under these circumstances, the  
17 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with  
18 regard to the charges at issue. The juvenile may be tried on, and sentenced  
19 if adjudicated for, the same charges after he or she has ACHIEVED OR been  
20 ~~found to be~~ restored to competency.

21           (4) (a) If the court orders a competency evaluation, the court shall  
22 order that the competency evaluation be conducted in the least-restrictive  
23 environment, INCLUDING HOME OR COMMUNITY PLACEMENT IF  
24 APPROPRIATE, taking into account the public safety and the best interests  
25 of the juvenile.

26           (c) The competency evaluation ~~shall~~ MUST, at a minimum, include  
27 an opinion regarding whether the juvenile is ~~competent~~ INCOMPETENT to

1 proceed as defined in ~~section 16-8.5-101 (4), C.R.S.~~ SECTION 19-2-103  
2 (9.5). If the evaluation concludes the juvenile is incompetent to proceed,  
3 the evaluation ~~shall~~ MUST include a recommendation as to whether THERE  
4 IS A LIKELIHOOD THAT the juvenile may ACHIEVE OR be restored to  
5 competency and identify appropriate services to restore the juvenile to  
6 competency.

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

9 **19-2-1304. Restoration to competency hearing.** (1) The court  
10 may order a restoration TO COMPETENCY hearing, as defined in ~~section~~  
11 ~~16-8.5-101 (13), C.R.S.~~ SECTION 19-2-103 (14.3), at any time on its own  
12 motion, on motion of the prosecuting attorney, or on motion of the  
13 juvenile. The court shall order a RESTORATION OF COMPETENCY hearing  
14 if a mental health professional who has been treating the juvenile files a  
15 report certifying that the juvenile is ~~mentally~~ competent to proceed.

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

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

21 **19-2-1305. Procedure after restoration to competency hearing.**

22 (1) If a juvenile is found to ~~be~~ HAVE ACHIEVED OR BEEN restored to  
23 competency after a RESTORATION TO COMPETENCY hearing, as provided  
24 in section 19-2-1304, or by the court during a review, as provided in  
25 section 19-2-1303 (2), the court shall resume or recommence the trial or  
26 sentencing proceeding or order the sentence carried out. The court may  
27 credit any time the juvenile spent in confinement or detention while

1 incompetent TO PROCEED against any term of commitment imposed after  
2 ACHIEVEMENT OF OR restoration to competency.

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

9 **SECTION 7. Effective date.** This act takes effect July 1, 2016.

10 **SECTION 8. Safety clause.** The general assembly hereby finds,  
11 determines, and declares that this act is necessary for the immediate  
12 preservation of the public peace, health, and safety. <{Safety clause  
13 OK?}>