

CHAPTER 56

**CHILDREN AND DOMESTIC MATTERS**

**HOUSE BILL 18-1050**

BY REPRESENTATIVE(S) Singer, Benavidez, Buckner, Exum, Herod, Humphrey, Kraft-Tharp, Lee, Lontine, Melton, Michaelson Jenet, Pettersen, Reyher, Rosenthal, Salazar, Weissman, Young; also SENATOR(S) Fields, Martinez Humenik, Aguilar, Court, Kagan, Kefalas, Moreno, Todd, Williams A.

**AN ACT**

**CONCERNING COMPETENCY TO PROCEED FOR JUVENILES INVOLVED IN THE JUVENILE JUSTICE SYSTEM.**

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

**SECTION 1.** In Colorado Revised Statutes, 19-2-103, **amend** the introductory portion; and **add** (3.3), (5.5), (9.5), (12.3), (12.4), and (14.3) as follows:

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

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

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

(9.5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY, MENTAL DISABILITY, OR LACK OF MENTAL CAPACITY,

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

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

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

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

(b) APPRECIATE THE NATURE OF THE ADVERSARIAL PROCESS, WHICH INCLUDES HAVING A FACTUAL AND RATIONAL UNDERSTANDING OF THE PARTICIPANTS IN THE PROCEEDING AND THEIR ROLES, INCLUDING THE JUDGE, DEFENSE COUNSEL, PROSECUTOR, AND, IF APPLICABLE, THE GUARDIAN AD LITEM AND THE JURY;

(c) APPRECIATE THE RANGE AND NATURE OF ALLOWABLE DISPOSITIONS THAT MAY BE IMPOSED BY THE COURT;

(d) THE ABILITY TO COMMUNICATE TO COUNSEL INFORMATION KNOWN TO THE JUVENILE REGARDING THE ALLEGATIONS AGAINST THE JUVENILE, AS WELL AS INFORMATION RELEVANT TO THE PROCEEDING AT ISSUE; AND

(e) UNDERSTAND AND APPRECIATE THE RIGHT TO TESTIFY AND TO VOLUNTARILY EXERCISE THE RIGHT.

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

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

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

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

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

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

(c) NOTWITHSTANDING THE DIFFERENCES BETWEEN ADULTS AND JUVENILES, AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT CAPACITIES FOR COMPETENCE.

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

**19-2-1301. Incompetency to proceed - effect - how and when raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is incompetent to proceed, as defined in ~~section 16-8.5-101(11), C.R.S.~~ SECTION 19-2-103 (9.5), at that stage of the proceedings against him or her. JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO PROCEED, AS DEFINED IN SECTION 19-2-103 (3.3), UNTIL SUCH TIME AS THEY ARE FOUND INCOMPETENT TO PROCEED THROUGH A DECISION BY THE COURT. A DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION OF DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL CAPACITY. AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT CAPACITIES FOR COMPETENCE.

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

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

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

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

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

**19-2-1304. Restoration to competency hearing.** (1) The court may order a restoration TO COMPETENCY hearing, as defined in ~~section 16-8.5-101(13), C.R.S.~~ SECTION 19-2-103 (14.3), at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a

RESTORATION OF COMPETENCY hearing if a ~~mental health professional who has been treating the juvenile~~ COMPETENCY EVALUATOR WITH THE QUALIFICATIONS DESCRIBED IN SECTION 19-2-1302 (4)(b) files a report certifying that the juvenile is ~~mentally~~ competent to proceed.

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

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

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

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

**SECTION 7. Effective date - applicability.** This act takes effect July 1, 2018, and applies to acts committed on or after July 1, 2018.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 22, 2018