

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 562

BY SENATOR TRUMP

[Introduced March 5, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto nine new sections, designated §49-4-727, §49-4-728,
 3 §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-733, §49-4-734, and §49-4-735, all
 4 relating to juvenile competency proceedings generally; creating a process to raise and
 5 resolve questions of a competency in juvenile delinquency matters; defining terms;
 6 creating a rebuttable presumption that juveniles 14 years of age and older are competent
 7 to proceed; creating a rebuttable presumption that juveniles under 14 years of age are
 8 incompetent to proceed; requiring the appointment of a guardian *ad litem* when a juvenile
 9 is determined to be incompetent; requesting the Supreme Court to establish a training
 10 program for guardians ad litem; establishing time frames for jurisdiction and competency
 11 attainment services; and establishing procedures for competency hearings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders or juvenile found incompetent to stand trial; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders or juvenile found incompetent to stand trial in a Division of Juvenile Services facility. ~~on or after January 1, 2016~~

1 (a) ~~The services~~ Services provided by the department ~~to for~~ juveniles adjudicated as status
 2 offenders shall be consistent with §49-2-1001 *et seq.* of this code. ~~and~~ Services provided by the
 3 department for juveniles adjudicated as status offender pursuant to §49-4-711 of this code and
 4 juveniles found to be incompetent to stand trial and in need of services pursuant to §49-4-
 5 734(b)(2) of this code shall be designed to develop skills and supports within families and to
 6 resolve problems related to the juveniles or conflicts within their families. Services may include,
 7 but are not limited to, referral of juveniles and parents, guardians or custodians and other family

8 members to services for psychiatric or other medical care, or psychological, welfare, legal,
9 educational or other social services, as appropriate to the needs of the juvenile and his or her
10 family.

11 (b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the
12 services provided in subsection (a) of this section, the department may petition the circuit court:

13 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance
14 with a service plan or to restrain actions that interfere with or defeat a service plan; or

15 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure
16 setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile
17 adjudicated as a status offender may not be placed in an out-of-home placement, excluding
18 placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status
19 or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or
20 probation for the current matter: *Provided, however*, That if the court finds by clear and convincing
21 evidence the existence of a significant and likely risk of harm to the juvenile, a family member or
22 the public and continued placement in the home is contrary to the best interests of the juvenile,
23 such juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds
24 the department has made all reasonable efforts to prevent removal of the juvenile from his or her
25 home, or that such reasonable efforts are not required due to an emergent situation.

26 (c) In ordering any further disposition under this section, the court is not limited to the relief
27 sought in the department's petition and shall make reasonable efforts to prevent removal of the
28 juvenile from his or her home or, as an alternative, to place the juvenile in a community-based
29 facility which is the least restrictive alternative appropriate to the needs of the juvenile and the
30 community. The disposition may include reasonable and relevant orders to the parents, guardians
31 or custodians of the juvenile as is necessary and proper to effectuate the disposition.

32 (d) (1) If the court finds that placement in a residential facility is necessary to provide the
33 services under subsection (a) of this section, except as prohibited by subdivision (2), subsection

34 (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated
35 on the record or reduced to writing and filed with the record or incorporated into the order of the
36 court.

37 (2) The findings of fact shall include the factors that indicate:

38 (A) The likely effectiveness of placement in a residential facility for the juvenile; and

39 (B) The community services which were previously attempted.

40 (e) The disposition of the juvenile may not be affected by the fact that the juvenile
41 demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than
42 mandatory referral to the department for services is subject to appeal to the Supreme Court of
43 Appeals.

44 (f) Following any further disposition by the court, the court shall inquire of the juvenile
45 whether or not appeal is desired and the response shall be transcribed; a negative response may
46 not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made
47 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.
48 A judge may grant a stay of execution pending further proceedings.

49 (g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent
50 to stand trial on or after January 1, 2016 may not be placed in a Bureau Division of Juvenile
51 Services facility.

§49-4-727. Juvenile competency proceedings.

1 (a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the
2 prosecuting attorney, or the court may raise the issue of his or her competency to participate in
3 the proceeding any time during proceedings under §49-4-701 et seq. of this code. Once
4 competency is raised, all proceedings unrelated to competency shall be stayed until the issue of
5 competency is resolved. No juvenile presumed incompetent under subsection (c) of this section
6 shall be adjudicated unless the presumption of incompetency has been rebutted as provided
7 hereafter.

8 (b) In any delinquency proceeding pursuant to §49-4-701 et seq. of this code, a juvenile
9 14 years or older is presumed to be competent. A juvenile has the burden of proof to rebut this
10 presumption by showing incompetency by a preponderance of the evidence.

11 (c) In any delinquency proceeding pursuant to §49-4-701 et seq. of this code, if the juvenile
12 is under 14 years of age, there exists a rebuttable presumption that he or she is incompetent to
13 proceed beyond the stage of the proceeding resolving the issue of competency, unless judicially
14 determined to be competent pursuant to the procedures set forth in §§49-4-728, §49-4-729, §49-
15 4-730, §49-4-731, §49-4-732, §49-4-733 and §49-4-734 of this code. The state has the burden of
16 proof to rebut this presumption by showing competency by a preponderance of the evidence.

17 (d) Regardless of the age of the juvenile, the court may dismiss the petition without
18 ordering a competency evaluation or competency hearing if the prosecuting attorney, the
19 juvenile's attorney, and the guardian *ad litem* if previously appointed agree that there is compelling
20 evidence that the juvenile is not competent to participate in the proceedings; however, a court
21 may not order services authorized by to §49-4-733 of this code without a competency evaluation.

22 (e) Upon a judicial determination that a juvenile is incompetent to proceed, the court shall
23 appoint a guardian *ad litem* for the juvenile. The Supreme Court of Appeals is requested to
24 establish a training program for persons acting as guardians *ad litem* in juvenile competency
25 matters.

§49-4-728. Definitions for juvenile competency proceedings.

1 As used in §49-4-727, §49-4-728, §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-
2 733 and §49-4-734 of this code:

3 (a) "Competent" and "competency" refer to whether or not a juvenile has sufficient present
4 ability to consult with his or her lawyer with a reasonable degree of rational understanding and
5 has a rational as well as factual understanding of the proceedings against him or her. A juvenile
6 is incompetent if, due to developmental disability, intellectual disability, or mental illness, the
7 juvenile is presently incapable of understanding the nature and objective of proceedings against

8 him or her or of assisting in his or her defense.

9 (b) "Competency Attainment Services" means services provided to a juvenile to assist the
10 juvenile in attaining competency.

11 (c) "Department" means the Department of Health and Human Resources.

12 (d) "Developmental disability" means a severe and chronic disability that is attributable to
13 a mental or physical impairment, including, but not limited to, neurological conditions that lead to
14 impairment of general intellectual functioning or adaptive behavior.

15 (e) "Developmental immaturity" means a condition based on a juvenile's chronological age
16 and significant lack of developmental skills when the juvenile has no significant mental illness or
17 intellectual disability.

18 (f) "Intellectual disability" means a disability characterized by significant limitations both in
19 intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical
20 domains.

21 (g) "Mental illness" means a manifestation in a person of significantly impaired capacity to
22 maintain acceptable levels of functioning in the areas of intellect, emotion, and physical well-
23 being.

24 (h) "Proceeding" means any delinquency proceeding under §49-4-701 *et seq.* of this code.

25 (i) "Qualified forensic evaluator" means a licensed psychologist or psychiatrist with
26 necessary education, training, and experience to perform juvenile competency evaluations, and
27 who has been approved to render such opinions for the court pursuant to the requirement of §49-
28 4-729 of this code.

§49-4-729. Motion for determination of competency, timeframes, order for evaluation.

1 (a) When the prosecuting attorney or the juvenile's attorney or the guardian *ad litem*
2 has reasonable basis to believe that:

3 (1) A juvenile age 14 or older is incompetent to proceed in the delinquency action, the

4 party so believing shall file a motion for a determination of competency. The motion shall state
5 such facts as are known to the movant of in support thereof. If the court raises the issue *sua*
6 *sponte*, it shall, by written order, set forth the basis for ordering a competency evaluation.

7 (2) A juvenile under the age of 14 is competent to proceed in the delinquency action,
8 the prosecuting attorney shall file a motion for determination of competency. The motion shall
9 state the basis to believe the juvenile is competent to proceed despite the presumption of
10 incompetency due to age and shall state such facts as are known to the movant in support of
11 the motion. If the court raises the issue *sua sponte*, the court by written order shall set forth
12 the factual basis supporting the finding that the juvenile is competent to proceed.

13 (b) Within 10 judicial days after a motion is made, the court shall make one of the following
14 determinations regardless of which presumption applies:

15 (1) Find that there is compelling evidence that the juvenile is not competent to participate
16 in the proceedings and dismisses the case pursuant to §49-4-727(d) of this code; or

17 (2) Without conducting a hearing, find that there exists a reasonable basis to conduct a
18 competency evaluation; or

19 (3) Schedule a hearing to determine whether there exists a reasonable basis to conduct
20 a competency evaluation. Such hearing shall be held within 30 judicial days. The court's
21 determination shall be announced no later than three judicial days after the conclusion of the
22 hearing.

23 (c) If the court determines there is a reasonable basis to order a competency evaluation
24 pursuant to §49-4-731 of this code or if the prosecutor and the juvenile's attorney agree to the
25 evaluation, the court shall order a competency evaluation. If the court orders a competency
26 evaluation, the court shall order that the competency evaluation be conducted in the least-
27 restrictive environment, taking into account the public safety and the best interests of the juvenile.

28 (1) The court shall provide in its order that the evaluator shall have access to all relevant

29 confidential, notwithstanding other provision of this code, and public records related to the
30 juvenile, including competency evaluations and reports conducted in prior delinquent
31 proceedings. The court shall provide to the evaluator a copy of the petition and the names and
32 contact information for the judge, prosecutor, juvenile's attorney, and parents or legal guardians.

33 (2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver
34 to the evaluator copies of relevant police reports and other background information relevant to
35 the juvenile that are in the prosecutor's possession.

36 (3) Within five judicial days after the court orders an evaluation, the juvenile's attorney
37 shall deliver to the evaluator copies of relevant police reports and other relevant records including,
38 but not limited to, educational, medical, psychological, and neurological records that are relevant
39 to the evaluation and that are in the attorney's possession. Upon good cause shown, the court
40 may extend the timeframe to deliver these documents noting that time is of the essence.

§49-4-730. Juvenile competency evaluator; qualifications.

1 (a) An evaluation ordered by the court shall be conducted by a qualified forensic evaluator.

2 (1) A qualified forensic evaluator shall have education and training in the following areas:

3 (A) Forensic evaluation procedures for juveniles, including accepted criteria used in
4 evaluating competency,

5 (B) Evaluation, diagnosis, and treatment of children and adolescents with developmental
6 disability, developmental immaturity, intellectual disability, or mental illness,

7 (C) Clinical understanding of child and adolescent development, and

8 (D) Familiarity with competency standards in this state.

9 (2) The department shall establish procedures for ensuring the training and qualifications
10 of individuals approved to conduct juvenile competency evaluations. Annually, the department
11 shall provide a list of qualified forensic evaluators to the Administrative Office of the Supreme
12 Court of Appeals of West Virginia.

§49-4-731. Juvenile competency evaluation.

1 (a) The evaluator shall file with the court a written competency evaluation report within 30
2 days after the date of entry of the order requiring the juvenile to be evaluated and appointing the
3 evaluator. For good cause shown, the court may extend the time for filing for a period not to
4 exceed an additional 30 days. The report shall include the evaluator's opinion as to whether or
5 not a juvenile, due to developmental disability, intellectual disability, or mental illness, has
6 sufficient present ability to consult with his or her lawyer with a reasonable degree of rational
7 understanding and whether the juvenile has a rational as well as factual understanding of the
8 proceedings against him or her. The report shall not include the evaluator's opinion as to the
9 details of the alleged offense or recite or reference any self-incriminating statements as reported
10 by the juvenile. No statement made by a juvenile during an evaluation or hearing conducted
11 pursuant to this article shall be used against the juvenile on the issue of responsibility or guilt in
12 subsequent court proceedings, including adjudication and disposition hearings.

13 (b) A competency evaluation report shall include:

14 (1) A statement of the procedures used, including psychometric tests administered,
15 records reviewed, and identity of persons interviewed;

16 (2) Pertinent background information, including history of educational performance,
17 psychiatric or psychological history, developmental and family history;

18 (3) Results of the mental status examination;

19 (4) A diagnosis, if one has been made, which shall address any psychological or
20 psychiatric conditions or cognitive deficiencies determined to exist; and

21 (5) An opinion as to the juvenile's developmental maturity or developmental immaturity as
22 it would affect his or her ability to proceed.

23 (c) If the evaluator opines that the juvenile is not competent to participate in the
24 proceedings, the competency evaluation report shall address the following questions:

25 (1) Whether the juvenile has a developmental disability, intellectual disability, or mental
26 illness.

27 (2) Whether the juvenile has sufficient present ability to consult with his or her lawyer with
28 a reasonable degree of rational understanding.

29 (3) Whether a juvenile has a rational as well as factual understanding of the proceedings
30 against him or her.

31 (4) Whether the juvenile can attain competency in the foreseeable future if provided with
32 a course of treatment, therapy, or training.

33 (d) If the evaluator opines that the juvenile is incompetent, but that there is a reasonable
34 probability that he or she can attain competency within the periods set forth in §49-4-733(c)(3) of
35 this code, the report shall include the following recommendations:

36 (1) A recommendation as to the treatment or therapy; and

37 (2) The least restrictive setting for juvenile competency attainment services consistent with
38 the juvenile's ability to attain competency and the safety of both the juvenile and the public.

39 (e) The court shall provide a copy of each competency evaluation report it receives to the
40 prosecutor, the juvenile's attorney, and guardian *ad litem* and may provide a copy upon request
41 to the juvenile's parents or legal guardian.

42 (f) The department shall pay qualified forensic evaluators for all matters related to
43 conducting a court-ordered competency evaluation. The department shall develop and implement
44 a process for prompt payment of qualified forensic evaluators including a rate schedule. The
45 amount of payment for court ordered evaluations shall reasonably compensate qualified forensic
46 evaluators for the work performed in a particular case.

§49-4-732. Hearing to determine juvenile's competency to participate in the proceeding.

1 (a) Not more than 15 judicial days after receiving the evaluator's report, the court shall
2 conduct a hearing to determine the juvenile's competency to participate in the proceeding. The
3 court may continue the hearing for good cause shown.

4 (b) The competency evaluation report shall be admissible in evidence in the competency
5 proceedings. The evaluator may be called as a witness and be subject to cross examination by

6 all parties. If authorized by the court, hearings held pursuant to this section may be conducted by
7 or participated in using teleconference or video conference technology. If the court contacts the
8 evaluator to obtain clarification of the report contents, the court shall promptly inform all parties
9 and allow each party to participate in each contact.

10 (c) In determining the competency of the juvenile to participate in the proceeding the court
11 shall consider the content of all competency evaluation reports admitted as evidence. The court
12 may consider additional evidence introduced at the hearing by the prosecuting attorney, the
13 juvenile's attorney, or guardian *ad litem*.

14 (d) (1) Except as otherwise provided, the court shall make a written determination as to
15 the juvenile's competency based on a preponderance of the evidence within 10 judicial days after
16 completion of the hearing. The burden of proof shall be on the State.

17 (2) The court shall not find a juvenile competent to proceed solely because the juvenile is
18 receiving or has received in-patient treatment or is receiving or has received psychotropic or other
19 medication, even if the juvenile might become incompetent to proceed without that medication.

§49-4-733. Procedure after determination of juvenile's competency to participate in the proceeding.

1 (a) After a hearing pursuant to §49-4-732 of this code, if the court determines by a
2 preponderance of the evidence that the juvenile is competent to proceed despite any presumption
3 that may have applied, the delinquency proceedings shall be resumed as provided by law.

4 (b) If the court determines by a preponderance of the evidence that a juvenile is
5 incompetent to proceed but is likely to attain competency within a reasonable time with services,
6 the court shall stay the proceedings and order the juvenile to receive services designated to assist
7 the juvenile in attaining competency, based upon the recommendations in the competency
8 evaluation report unless the court makes specific findings that the recommended services are not
9 justified. The court shall order the juvenile's parent or legal guardian to contact a court-designated
10 provider by a specified date to arrange for services.

11 (1) The competency attainment services provided to a juvenile shall be based on the
12 recommendations contained in the evaluator's report described in §49-4-731(d) of this code, and
13 are subject to the conditions and time periods required pursuant to this section measured from
14 the date the court approves the plan.

15 (2) The court shall order that the competency attainment services ordered are provided in
16 the least-restrictive environment, taking into account the public safety and the best interests of
17 the juvenile. If the juvenile has been released on temporary orders and refuses or fails to
18 cooperate with the service provider, the court may modify the orders to require a more appropriate
19 setting for further services. A juvenile may not be placed in a Bureau of Juvenile Services facility
20 to receive competency attainment services. Additionally, no juvenile presumed incompetent under
21 §49-4-727(c) of this code shall be placed in a Bureau of Juvenile Services facility, except in
22 compliance with §49-4-705 and §49-4-706 of this code and corresponding Rules of Juvenile
23 Procedure as adopted by the Supreme Court of Appeals of West Virginia.

24 (3) No juvenile shall be required to participate in competency attainment services for
25 longer than is necessary to attain competency or after the court determines that there is no
26 reasonable likelihood that competency can be attained. The following maximum time limits apply
27 to the participation of a juvenile:

28 (A) A juvenile charged with an act which would constitute a misdemeanor or nonviolent
29 felony if committed by an adult shall not be required to participate in competency attainment
30 services beyond his or her 19th birthday and there shall be a rebuttable presumption that
31 competency is not attainable if the juvenile has not attained competency after 90 days of services.

32 (B) A juvenile charged with an act which would constitute a felony crime of violence if
33 committed by an adult shall not be required to participate in competency attainment services
34 beyond his or her 21st birthday and there shall be a rebuttable presumption that competency is
35 not attainable if the juvenile has not attained competency after 180 days of services.

36 (4) Not later than 10 judicial days after the court orders competency attainment services,

37 the department will identify the appropriate entity and location to provide those services.

38 (5) Within 10 judicial days after the department identifies the appropriate entity and
39 location, the provider responsible for the juvenile's competency attainment services shall
40 commence. The court shall deliver to that provider:

41 (A) The name and address of the juvenile's counsel,

42 (B) A copy of the juvenile's petition,

43 (C) A copy of the competency evaluation report,

44 (D) The name, address, and phone number of the juvenile's parents or legal guardian,

45 (E) The name of the department's caseworker, if any, and

46 (F) Any other relevant documents or reports concerning the juvenile's health that have
47 come to the attention of the court.

48 (c) The court shall order and conduct review hearings no less often than every 90 days
49 as deemed appropriate by the court. The multidisciplinary team shall meet prior to any review
50 hearing and provide a written status report to the court prior to the hearing. Unless sooner ordered
51 by the court, the evaluator shall submit a report to the court prior to any review hearing, and upon
52 completion or termination of services and shall include the following:

53 (1) The services provided to the juvenile, including medication, education and counseling,

54 (2) The likelihood that the competency of the juvenile to proceed will be restored within
55 the applicable period of time set forth in paragraph (3) of subsection (b) of this section, and

56 (3) The progress made toward the goals and objectives for the restoration of competency
57 identified in the recommendations from the competency evaluation as adopted by the court.

58 (d) The provider responsible for the juvenile's competency attainment services shall report
59 to the court within three judicial days if he or she determines that:

60 (1) The juvenile is failing to cooperate and such lack of cooperation is significantly
61 impeding or precluding the attainment of competency; or

62 (2) The current setting is no longer the least restrictive setting that is consistent with the

63 juvenile's ability to attain competency taking into account public safety and the best interests of
64 the juvenile. The provider shall include in the report an assessment of the danger the juvenile
65 poses to himself, herself or others and an assessment of the appropriateness of the placement.

66 (e) The provider responsible for the juvenile's competency attainment services shall
67 request a subsequent evaluation when the provider has reason to believe:

68 (1) The juvenile has achieved the goals of the plan and would be able to understand the
69 nature and objectives of the proceedings against the juvenile, to assist in the juvenile's defense,
70 and to understand and appreciate the consequences that may be imposed or result from the
71 proceedings with or without reasonable accommodations; and

72 (2) The juvenile will not achieve the goals of the plan within the applicable period of time
73 pursuant to paragraph (3) of subsection (b) of this section.

74 (f) The evaluator shall assess the observation of the provider and provide a written report
75 to the court within 10 days of receiving a report from the provider pursuant to subsection (e) of
76 this section.

77 (g) The court shall provide copies of any report made by the provider to the prosecuting
78 attorney, the juvenile's attorney, the juvenile's case worker, and the juvenile's guardian *ad litem*,
79 if any. The court shall provide copies of any reports made by the provider to the juvenile's parents
80 or legal guardians, unless the court finds that doing so is not in the best interest of the juvenile.

81 (h) Within 15 judicial days after receiving an evaluator's report, the court may hold a
82 hearing to determine if new, additional, or further orders are necessary.

83 (i) If the court determines that the juvenile is not making progress toward competency or
84 is so uncooperative that attainment services cannot be effective, the court may order a change in
85 setting or services that would help the juvenile attain competency within the relevant period of
86 time as set forth in paragraph (3) of subsection (b) of this section.

§49-4-734. Disposition alternatives for incompetent juveniles.

1 (a) If the court determines that the juvenile has attained competency, the court shall

2 proceed with the delinquent juvenile's proceeding in accordance with §49-4-701 et seq. of this
3 code.

4 (b) After a hearing pursuant to §49-4-732 of this code, if the court determines by the
5 preponderance of the evidence that the juvenile is incompetent to proceed and cannot attain
6 competency within the period of time set forth in §49-4-733(b)(3) of this code, the court may
7 dismiss the petition without prejudice, or may take the following actions or any combination thereof
8 the court deems to be in the juvenile's best interest and the interest of protecting the public:

9 (1) Refer the matter to the department and request a determination whether a child abuse
10 or neglect petition, pursuant to §49-4-601 et seq. of this code, should be filed;

11 (2) Refer the juvenile to the department for services pursuant to §49-4-712 of this code.
12 Services may include, but are not limited to, referral of juvenile and parents, guardians or
13 custodians and other family members to services for psychiatric or other medical care, or
14 psychological, welfare, legal, education or other social services, as appropriate to the needs of
15 the juvenile and his or her family;

16 (3) Place the juvenile in the custody of his or her parents or other suitable person or private
17 or public institution or agency under such terms and conditions as deemed in the best interests
18 of the juvenile and the public, which conditions may include the provision of outpatient services
19 by any suitable public or private agency; or

20 (4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20
21 days to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to
22 §27-5-1 et seq. of this code if the juvenile has attained majority.

23 (c) A circuit court may, sua sponte or upon a motion by any party direct that a dangerous
24 assessment be performed prior to directing the resolutions set forth in subsection (b) of this
25 section.

§49-4-735. Stay of transfer to criminal jurisdiction.

1 If a juvenile is presumed incompetent under §49-4-727(c) of this code or if the issue of the

2 juvenile's competency to participate in the proceedings is raised at any time during the
3 proceedings for a juvenile presumed competent under §49-4-727(b), the procedures outlined in
4 §49-4-727 through §49-4-734 of this code shall be used to determine the juvenile's competency
5 and if appropriate, restore the juvenile's competency regardless of whether the case is to proceed
6 under the court's juvenile jurisdiction or transfer to adult criminal jurisdiction pursuant to §49-4-
7 710 of this code and corresponding Rules of Juvenile Procedure adopted by the Supreme Court
8 of Appeals of West Virginia.

NOTE: The purpose of this bill is to establish procedures for establishing juvenile competency to stand trial and to establish disposition alternative for incompetent juveniles.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.