

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 681

BY SENATORS DEEDS AND WOELFEL

[Originating in the Committee on the Judiciary;

reported on February 24, 2023]

1 A BILL to amend and reenact §49-4-728, §49-4-729, and §49-4-734 of the Code of West Virginia,
2 1931, as amended, all relating to clarifying that the juvenile competency determination
3 process extends to status offenders; and clarifying that there is no presumption of
4 incompetence based on age for status offenders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

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

1 As used in §49-4-727 through §49-4-734, inclusive, of this code:

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

8 "Competency attainment services" means services provided to a juvenile to assist the
9 juvenile in attaining competency.

10 "Department" means the Department of Health and Human Resources.

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

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

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

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

23 "Proceeding" means any delinquency or status offense proceeding under this article.

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

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

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

3 (1) A juvenile age 14 or older is incompetent to proceed in the delinquency action, that
4 party shall file a motion for a determination of competency. The motion shall state any known
5 facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by written
6 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, the
8 prosecuting attorney shall file a motion for determination of competency. The motion shall state
9 the basis to believe the juvenile is competent to proceed despite the presumption of incompetency
10 due to age and shall state any known facts to the prosecuting attorney in support of the motion.
11 If the court raises the issue sua sponte, the court by written order shall set forth the factual basis
12 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 dismiss the case, pursuant to §49-4-727(d) of this code;

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. The 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) Notwithstanding any other provisions of this code, the court shall provide in its order
29 that the qualified forensic evaluator shall have access to all relevant confidential and public
30 records related to the juvenile, including competency evaluations and reports conducted in prior
31 delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the
32 petition and the names and contact information for the judge, prosecutor, juvenile's attorney, and
33 parents or legal guardians.

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

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

42 (d) For purposes of this article, there is no presumption of incompetence based on age for
43 status offenders.

§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 delinquency or status offense proceeding in accordance
3 with this article.

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 determines 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 on whether a child
10 abuse 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 the juvenile and his or her parents,
13 guardians, or custodians and other family members to services for psychiatric or other medical
14 care, or psychological, welfare, legal, education, or other social services, as appropriate to the
15 needs of 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 terms and conditions ~~as~~ determined to be in the best interests
18 of the juvenile and the public, ~~which~~ the conditions may include the provision of out-patient
19 services 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.