

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **ENROLLED**

## **House Bill 5520**

BY DELEGATES HILLENBRAND, KELLY, STEELE, WARD,

THORNE, AKERS, AND GARCIA

[Passed March 8, 2024; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §49-4-727 and §49-4-729 of the Code of West Virginia, 1931, as  
2 amended, all relating to juvenile competency; modifying the presumption of competence  
3 of a child 13 and over; modifying the presumption of incompetence to age 12 and under;  
4 clarifying that the presumption applies to the adjudicatory phase of the case and  
5 authorizing pre-adjudicatory procedures; allowing cases where the juvenile is presumed  
6 to be competent to proceed up to adjudication but no further if his or her competency is at  
7 issue.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 4. COURT ACTIONS.**

#### **§49-4-727. Juvenile competency proceedings.**

2 (a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the  
3 prosecuting attorney, or the court may raise the issue of his or her competency to participate in  
4 the proceeding any time during proceedings under this article.

5 (b) In any delinquency proceeding pursuant to this article, a juvenile 13 years of age or  
6 older is presumed to be competent. If a juvenile's attorney, the prosecuting attorney, or the court  
7 raise the issue of competency, all adjudication or disposition proceedings shall be stayed until the  
8 issue of competency is resolved: *Provided*, That the juvenile's attorney, guardian ad litem, or  
9 prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case  
10 specific alternatives permitted by the Rules of Juvenile Procedure while the issue of competency  
11 is pending. A juvenile has the burden of proof to rebut this presumption by showing incompetency  
12 by a preponderance of the evidence.

13 (c) In any delinquency proceeding pursuant to this article, if the juvenile is under 13 years  
14 of age, there exists a rebuttable presumption that he or she is incompetent to be adjudicated,  
15 unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728

16 through §49-4-734 of this code: *Provided*, That the juvenile’s attorney, guardian ad litem, or  
17 prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case  
18 specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives  
19 set forth in §49-4-734 of this code for a juvenile presumed incompetent. The state has the burden  
20 of proof to rebut this presumption by showing competency by a preponderance of the evidence.

21 (d) Regardless of the age of the juvenile, the court may dismiss the petition without  
22 ordering a competency evaluation or competency hearing if the prosecuting attorney, the  
23 juvenile’s attorney, and the guardian ad litem, if previously appointed, agree that there is  
24 compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*,  
25 That a court may not order services authorized by §49-4-733 of this code without a competency  
26 evaluation.

27 (e) If and when the issue of a juvenile’s competency is raised under subsection (b) of this  
28 section or, a rebuttable presumption of incompetency exists under subsection (c) of this section,  
29 the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is  
30 requested to establish a training program for persons acting as guardians ad litem in juvenile  
31 competency matters.

**§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 13 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 13 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.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

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*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2024.

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*Governor*