

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5520

By Delegates Hillenbrand, Kelly, Steele, Ward,

Thorne, Akers, and Garcia

[Introduced February 8, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-727, §49-4-729, and §49-4-733 of the Code of West Virginia,
2 1931, as amended, all relating to juvenile competency; repealing the presumption of
3 competence of a child 14 years of age or older; repealing the presumption of incompetence
4 of a child under the age of 14 years; and clarifying that a juvenile under the age of 14 years
5 may not be detained in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-727. Juvenile competency proceedings.

1 ~~(a) Subject to the provisions of subsection (c) of this section, a~~ A juvenile's attorney, the
2 prosecuting attorney, or the court may raise the issue of his or her competency to participate in the
3 proceeding any time during proceedings under this article. Once competency is raised, all
4 proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A
5 ~~juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated~~
6 ~~unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c)~~
7 ~~of this section.~~

8 ~~(b) In any delinquency proceeding pursuant to this article, a juvenile 14 years or older is~~
9 ~~presumed to be competent. A juvenile has the burden of proof to rebut this presumption by~~
10 ~~showing incompetency by a preponderance of the evidence.~~

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

17 ~~(d)~~(b) ~~Regardless of the age of the juvenile, the~~ 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
20 compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*,
21 That a court may not order services authorized by §49-4-733 of this code without a competency
22 evaluation.

23 ~~(e)(c)~~ If and when the issue of a juvenile's competency is raised under subsection (a) of
24 this section, ~~or, a rebuttable presumption of incompetency exists under subsection (c) of this~~
25 ~~section~~ the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals
26 is requested to establish a training program for persons acting as guardians ad litem in juvenile
27 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 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 facts
5 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 the
9 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. If
11 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 in
16 the proceedings and dismiss the case pursuant to §49-4-727~~(d)~~(b) 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 a
20 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 the
36 juvenile that are in the prosecutor's possession.

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

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

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 resume 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 qualified forensic evaluator's report described in §49-4-731(d)
13 of this code, and are subject to the conditions and time periods required pursuant to this section
14 measured from 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 the
17 juvenile. If the juvenile has been released on temporary orders and refuses or fails to cooperate
18 with the service provider, the court may modify the orders to require a more appropriate setting for
19 further services. A juvenile may not be placed in a Bureau of Juvenile Services facility to receive
20 competency attainment services. Additionally, a ~~juvenile presumed incompetent under §49-4-~~
21 ~~727(c) of this code~~ under 14 years of age shall not be placed in a Bureau of Juvenile Services
22 facility, except in compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules
23 of Juvenile Procedure as adopted by the Supreme Court of Appeals of West Virginia.

24 (3) A juvenile shall not 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 not
35 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 shall 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 as
49 determined 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 qualified forensic evaluator shall submit a report to the court prior to any review
52 hearing, and upon 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 the
55 applicable period of time set forth in subdivision (3), 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 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 the lack of cooperation is significantly impeding
61 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 the
64 juvenile. The provider shall include in the report an assessment of the danger the juvenile poses to
65 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 him or her, to assist in his or her defense, and to
70 understand and appreciate the consequences that may be imposed or result from the proceedings
71 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 subdivision (3), 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 this
76 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, if
79 any. The court shall provide copies of any reports made by the provider to the juvenile's parents or
80 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 is
84 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 time
86 as set forth in subdivision (3), subsection (b) of this section.

NOTE: The purpose of this bill is to clarify competency proceedings for juvenile delinquency court actions.

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