

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 659**

By Senators Trump, Woelfel, and Deeds

[Introduced February 16, 2023; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-728, §49-4-729, §49-4-733, and §49-4-734 of the Code of  
2 West Virginia, 1931, as amended, all relating to clarifying that the juvenile competency  
3 determination process extends to 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 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 has  
4 a rational as well as factual understanding of the proceedings against him or her. A juvenile is  
5 incompetent if, due to developmental disability, intellectual disability, or mental illness, the juvenile  
6 is presently incapable of understanding the nature and objective of proceedings against him or her  
7 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 §49-4-729  
27 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 or status  
4 offense action, that party shall file a motion for a determination of competency. The motion  
5 shall state any known facts 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 or status  
8 offense action, the prosecuting attorney shall file a motion for determination of competency.  
9 The motion shall state the basis to believe the juvenile is competent to proceed despite the  
10 presumption of incompetency due to age and shall state any known facts to the prosecuting  
11 attorney in support of the motion. If the court raises the issue sua sponte, the court by written  
12 order shall set forth the factual basis supporting the finding that the juvenile is competent to  
13 proceed.

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

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

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

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

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

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

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

38 (3) Within five judicial days after the court orders an evaluation, the juvenile's attorney shall  
39 deliver to the qualified forensic evaluator copies of police reports and other records including, but  
40 not limited to, educational, medical, psychological, and neurological records that are relevant to  
41 the evaluation and that are in the attorney's possession. Upon good cause shown, the court may  
42 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 or status offense proceedings shall resume as provided by  
4 law.

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

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

16 (2) The court shall order that the competency attainment services ordered are provided in  
17 the least restrictive environment, taking into account the public safety and the best interests of the  
18 juvenile. If the juvenile has been released on temporary orders and refuses or fails to cooperate  
19 with the service provider, the court may modify the orders to require a more appropriate setting for  
20 further services. A juvenile may not be placed in a Bureau of Juvenile Services facility to receive  
21 competency attainment services. Additionally, a juvenile presumed incompetent under §49-4-  
22 727(c) of this code shall not be placed in a Bureau of Juvenile Services facility, except in  
23 compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules of Juvenile  
24 Procedure as adopted by the Supreme Court of Appeals of West Virginia.

25 (3) A juvenile shall not be required to participate in competency attainment services for

26 longer than is necessary to attain competency or after the court determines that there is no  
27 reasonable likelihood that competency can be attained. The following maximum time limits apply  
28 to the participation of a juvenile:

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

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

37 (4) Not later than 10 judicial days after the court orders competency attainment services,  
38 the department shall identify the appropriate entity and location to provide those services.

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

42 (A) The name and address of the juvenile's counsel;

43 (B) A copy of the juvenile's petition;

44 (C) A copy of the competency evaluation report;

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

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

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

49 (c) The court shall order and conduct review hearings no less often than every 90 days as  
50 determined appropriate by the court. The multidisciplinary team shall meet prior to any review  
51 hearing and provide a written status report to the court prior to the hearing. Unless sooner ordered

52 by the court, the qualified forensic evaluator shall submit a report to the court prior to any review  
53 hearing, and upon completion or termination of services, and shall include the following:

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

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

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

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

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

63 (2) The current setting is no longer the least restrictive setting that is consistent with the  
64 juvenile's ability to attain competency taking into account public safety and the best interests of the  
65 juvenile. The provider shall include in the report an assessment of the danger the juvenile poses to  
66 himself, herself or others and an assessment of the appropriateness of the placement.

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

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

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

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

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

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

84 (i) If the court determines that the juvenile is not making progress toward competency or is  
85 so uncooperative that attainment services cannot be effective, the court may order a change in  
86 setting or services that would help the juvenile attain competency within the relevant period of time  
87 as set forth in subdivision (3), 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 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 conditions may include the provision of out-patient services by  
19 any suitable public or private agency; or

20           (4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20 days  
21 to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to §27-5-1  
22 *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.

NOTE: The purpose of this bill is to clarify that the juvenile competency determination process extends to status offenders.

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