Practical Help for Juvenile Delinquency Cases

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Primary Topics Covered

- Facilities
- Placement
- When to file D&N in JD cases
- Competencies

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Facilities

What questions should you be asking

Are your kid's needs being met

Dangers and Disparities

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What questions should you be asking?

- How can your kid contact you
- What are rules for outside communication
- 10/14 day staffings
  - Therapy updates
  - Rules/Levels/Behavior contracts
- What documentation are you getting
  - Incident Reports
    - Emails vs phone calls from facility

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What are your kid's needs

- Medications
- Assessments
- Family supports
- Plan for discharge

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Facilities and Placements

- Visits – yours and others
  - How often and in what form are they happening
  - Take a tour
    - What do you see
      - Setting
      - Staff
      - Interactions
  - What restrictions are put on professional contact

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Placement

Talk to your kid

Relative Affidavits

- have been developed for JD cases, but OCR is working on how to allow access

Who do you ask? EVERYONE

Least Restrictive Setting

Placement Packets

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When to file D&N case

Factors

- Safety
- Food or shelter insecurity
- Mental health of child or parent

Positive collateral consequences

- More services for family
- CASA
- Other children in the home

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Competency

- Ongoing consideration
- Consult with defense
- School IEPs and assessments can be helpful
- Previous hospitalizations and evaluations

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Competency Statutes

- CJD 04-06 V.E.3(e)
- CRS 19-2-1301
  - Effect; How and when raised
- CRS 19-2-1302
  - Determination of incompetency to proceed
- CRS 19-2-1303
  - Procedure after determination of incompetency
  - Now handled on the state level
- CRS 19-2-1304
  - Restoration of competency

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C.R.S. Title 19. Children's Code § 19-2-1301. Incompetent to proceed--effect--how and when raised

- (2) A juvenile shall not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section 19-2-103(9.5) , at that stage of the proceedings against him or her. Juveniles, like adults, are presumed competent to proceed, as defined in section 19-2-103(3.3) , until such time as they are found incompetent to proceed through a **decision by the court**. A determination of competency must include an evaluation of **developmental disabilities, mental disabilities, and mental capacity**. Age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

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C.R.S. Title 19. Children's Code § 19-2-103. Definitions

- (9.5) "Incompetent to proceed" means that, based on an intellectual or developmental disability, mental disability, or lack of mental capacity, a juvenile does not have sufficient present ability to **consult with his or her attorney** with a reasonable degree of rational understanding in order to assist in the defense or that he **or** she does not have **a rational as well as a factual understanding** of the proceedings against him or her.

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C.R.S. Title 19. Children's Code § 19-2-103. Definitions

- (3.3) "Competent to proceed" means that a juvenile has sufficient **present ability** to consult with his or her attorney with a reasonable degree of rational understanding in order to assist in the defense and that he or she has a rational as well as a factual understanding of the proceedings against him or her.

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C.R.S. Title 19. Children's Code § 19-2-1302. Determination of incompetency to proceed

- (1) Whenever the question of a juvenile's competency to proceed is raised, the court shall make a preliminary finding that the juvenile is or is not competent to proceed. **If the court feels that the information available to it is inadequate for making such a finding, it shall order a competency examination.**

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C.R.S. Title 19. Children's Code § 19-2-1302(2)

- (2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding regarding competency. The prosecuting attorney or the defense counsel may request a hearing on the preliminary finding by filing a written request with the court within ten days after the date on which the court issues the preliminary finding, unless the court extends the time period for good cause. **The preliminary finding becomes a final determination if neither the prosecuting attorney nor defense counsel requests a hearing.** Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a competency hearing. If the court did not order a competency examination or other evaluation prior to its preliminary determination and the court determines adequate mental health information is not available, the court shall refer the juvenile for a competency examination prior to the hearing. At the conclusion of the competency hearing, the court shall make a final determination regarding the juvenile's competency to proceed. At a competency hearing held pursuant to this subsection (2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the incompetency of the juvenile.

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C.R.S. Title 19. Children's Code § 19-2-1303. Procedure after determination of competency or incompetency

- (1) If the court finally determines pursuant to section 19-2-1302 that the juvenile is competent to proceed, the court shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.

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C.R.S. Title 19. Children's Code § 19-2-1303. Procedure after determination of competency or incompetency

- (2) If the court finally determines pursuant to section 19-2-1302 that the juvenile is incompetent to proceed, but may be restored to competency, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation unless the court makes specific findings that the recommended services in the competency evaluation are not justified.

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C.R.S. Title 19. Children's Code § 19-2-1303(2) - continued

- …The court shall order that the restoration services ordered are provided in the least restrictive environment, taking into account the public safety and the best interests of the juvenile, and that the provision of the services and the juvenile's participation in those services occurs in a timely manner. The court **shall review the provision of and the juvenile's participation in the services and the juvenile's progress toward competency at least every ninety days** until competency is restored, unless the **juvenile is in custody, in which event the court shall review the case every thirty days** to ensure the prompt provision of services in the least restrictive environment.

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C.R.S. Title 19. Children's Code § 19-2-1303(2) - continued

- …The court shall not maintain jurisdiction longer than the maximum possible sentence for the original offense, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday. Pursuant to section 27-60-105 , the office of behavioral health is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration.

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Office of Behavioral Health

- Colorado Department of Health Services (CDHS)
- Colorado Mental Health Institute at Pueblo (CMHIP) Admissions:719.546.4406
- Bridges Program Court Liaison

Current Summer of 2020:

- Jennifer Lott at in custody jennifer.lott@state.co.us (719) 546-4477
- Melyssa Belcher on bond evaluations melyssa.belcher@state.co.us (719) 546-4501.

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C.R.S. Title 19. Children's Code § 19-2-1303(3)

- (3)(a) If the court finally determines that the juvenile is incompetent to proceed and cannot be restored to competency, the court shall determine whether a **management plan** for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is unnecessary, the **court may continue any treatment or plan already in place for the juvenile**. The management plan shall, at a minimum, address treatment for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

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C.R.S. Title 19. Children's Code § 19-2-1303(3)(b)

- (b) The management plan may include:
- (I) Placement options included in article 10 or 10.5 of title 27, C.R.S.;
- (II) A treatment plan developed by a licensed mental health professional;
- (III) An informed supervision model;
- (IV) Institution of a guardianship petition; or
- (V) Any other remedy deemed appropriate by the court.

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C.R.S. Title 19. Children's Code § 19-2-1303(3)(c)

- (c) If the charges are not dismissed earlier by the district attorney, the charges against a juvenile found to be incompetent and unrestorable shall be dismissed no later than the maximum possible sentence for the original offense after the date of the court's finding of incompetent and unrestorable, unless the court makes specific findings of good cause to retain jurisdiction. However, in no case shall the juvenile court's jurisdiction extend beyond the juvenile's twenty-first birthday.
- (4) A determination under subsection (2) of this section that a juvenile is incompetent to proceed shall not preclude the court from considering the release of the juvenile on bail upon compliance with the standards and procedures for such release prescribed by statute. At any hearing to determine eligibility for release on bail, the court may consider any effect the juvenile's incompetency may have on the juvenile's ability to insure his or her presence for trial.

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Chief Justice Directive 04-06 V.E.3(e)

- 3. Conduct an independent investigation in a timely manner which shall include at a minimum out-of-court contact with the juvenile as set forth in Section IV.E.1; interviews with parents, kin and current and potential placement providers if applicable; interviews with other professionals or individuals necessary to assess and advocate for the juvenile's best interests, such as school personnel, pretrial service staff, probation officers and treatment providers. This investigation shall assess at a minimum:
- e. Whether there is reason to believe that a juvenile is incompetent to proceed;

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Final Thoughts

- A GAL shall "diligently take steps that s/he deems necessary to represent and protect the best interests of the child…"
- Use your local team
- Use your OCR staff
- Rely on your fellow GALs

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