

SB 2036
House Appropriations committee
Rep. Lawrence R. Klemin
April 3, 2025

Mr. Chairman and members of the Committee. SB 2036 was prepared by a work group of the interim Juvenile Justice Committee. The work group included a prosecutor, a defense attorney, a District Judge, and representatives from DHHS, with the assistance of consultants from the Council of State Governments Justice Center. The bill relates to the procedure for determining if a juvenile has the legal fitness to proceed in a delinquency case in Juvenile Court.

Sections 1, 2, 3 and 4 are clean up provisions and the deletion of some language that was moved to other sections in the Juvenile Court Act. A new Chapter 27-20.5 to the Juvenile Court Act relating to fitness to proceed is created in **Section 5** of the bill.

Section 27-20.5-01 contains definitions, including the definition of "fitness to proceed". This means whether a juvenile offender has sufficient present ability to consult with counsel and assist in presenting his defense with a reasonable degree of rational understanding.

Section 27-20.5-02 relates to the age of the minor. An individual under the age of 10 is deemed legally incapable of committing an offense. An individual age 10 or older can be assessed for mental fitness or capacity.

Section 27-20.5-03 provides that if there is any doubt whether a minor has fitness to proceed, then adjudication can't proceed until a determination on fitness is made.

Section 27-20.5-04 allows the court to take judicial notice of any previous fitness to proceed determination made in the last 12 months. The court can then dismiss the case.

Section 27-20.5-05 is a due process section and provides that if there is doubt about a minor's fitness to proceed, the case can't proceed until counsel is appointed for the minor and until the minor is found to have the mental capacity to proceed. The section also provides for the closing of any reports to the public and that they can't be opened except in the limited cases set out in this section.

Section 27-05.1-06 contains provisions relating to the fitness to proceed examination by a mental health professional in the least restrictive environment, the timing of the examination, and the timing for a written report to the court.

Section 27-05.1-07 requires a hearing to determine if the minor lacks fitness to proceed. If the court finds that the minor does have fitness to proceed then the delinquency proceedings must proceed. If the court finds that the minor lacks fitness to proceed or will not attain fitness to proceed within the time period set out in a

remediation order, the court must dispose of the case in accordance with the section on disposition.

Section 27-20.5-08 relates to remediation orders. The court can suspend the case until the minor either regains fitness or until it is determined that the minor will not regain fitness. A remediation provider must provide a report to the court on this issue. There are several time limits set out in this section for the remediation period and the report.

Section 27-05.1-09 relates to the disposition of the case. When the court receives a report from a mental health professional that the minor lacks fitness to proceed and there is a substantial likelihood that the minor is unable to be remediated within the time period set out in a remediation order, the court may dismiss the delinquency proceedings and release the minor to the minor's parent or legal guardian, or order mental health services be provided to the minor for a period not to exceed 60 days, subject to an extension of treatment for another 60 days. After that the court can dismiss the case and release the minor to the minor's parent or legal guardian. If release to the parent or legal guardian is inappropriate, the court can dismiss the case and direct that further proceedings can be held under Chapter 27-20.3 relating to children in need of protection.

Section 6 of the bill contains an appropriation of \$500,000 to DHHS for administering juvenile fitness to proceed mental health services for the next biennium.

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