ADVANCE SHEET HEADNOTE
October 4, 2022

2022 CO 49

No. 22SA73, *People in Int. of A.C.*—Juveniles—Competency to Stand Trial—Assessing Restoration to Competency—Reassessment Evaluation.

The supreme court considers whether the Juvenile Justice Code authorizes a magistrate to order a juvenile—who has been found incompetent to proceed—to undergo a "reassessment evaluation" as part of the restoration review or restoration hearing procedures outlined in sections 19-2.5-704 to -706, C.R.S. (2022), to determine whether the juvenile has been restored to competency. The court concludes that a juvenile court has the authority pursuant to section 19-2.5-706(2), C.R.S. (2022), to order a reassessment evaluation after determining that a juvenile remains incompetent during a review pursuant to section 19-2.5-704(2), C.R.S. (2022,) or following a restoration hearing pursuant to section 19-2.5-705, C.R.S. (2022), if the delinquency petition is not dismissed. The court further concludes that type of evaluation, which can only be ordered after a juvenile court determines that a juvenile remains incompetent, is distinct from the

second competency evaluation at issue in *People in Int. of B.B.A.M.*, 2019 CO 103, 453 P.3d 1161.

Because the district court did not err in affirming the magistrate's order requiring the juvenile to submit to a reassessment evaluation, the rule to show cause is discharged.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 49

Supreme Court Case No. 22SA73
Original Proceeding Pursuant to C.A.R. 21
Weld County District Court Case No. 20JD302
Honorable Marcelo Kopcow, Judge

In Re

Petitioner:

The People of the State of Colorado,

In the Interest of:

A.C., juvenile.

Rule Discharged
en banc
October 4, 2022

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No appearance on behalf of Petitioner.

JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HART, and JUSTICE SAMOUR** joined.
CHIEF JUSTICE BOATRIGHT, joined by **JUSTICE HART**, specially concurred.
JUSTICE SAMOUR specially concurred.
JUSTICE HOOD, joined by **JUSTICE GABRIEL**, dissented.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 We accepted original jurisdiction under C.A.R. 21 to consider whether the Juvenile Justice Code authorizes a magistrate to order a juvenile—who has been found incompetent to proceed—to undergo a "reassessment evaluation" as part of the restoration review or restoration hearing procedures outlined in sections 19-2.5-704 to -706, C.R.S. (2022), to determine whether the juvenile has been restored to competency.

¶2 A.C., the juvenile, argues that such an evaluation is prohibited by our holding in *People in Interest of B.B.A.M.*, 2019 CO 103, ¶ 34, 453 P.3d 1161, 1168. In *B.B.A.M.*, we held that section 19-2.5-703(1), C.R.S. (2022),[1] did not authorize a juvenile court to order a "second competency evaluation" to help the court determine if a juvenile had been restored to competency. We stated that the juvenile court "should have held a restoration hearing or a restoration review

[1] At the time *B.B.A.M.* was decided, the Colorado Children's Code codified sections 19-2-1300.2 to -1305, C.R.S. (2019), governing juvenile competency proceedings. While this case was proceeding in the juvenile court, the General Assembly amended and reorganized the Juvenile Justice Code, effective October 1, 2021, and moved the statutory provisions regarding juvenile competency to ch. 136, sec. 2, § 19-2.5-701 to -706, 2021 Colo. Sess. Laws 610–14. The General Assembly made minor changes to the statutory language, none affecting the resolution of this case. For clarity, we refer to the updated statutory provisions and language.

instead." *B.B.A.M.*, ¶ 34, 453 P.3d at 1168. The parties in *B.B.A.M.* did not brief—thus we did not have the opportunity to consider—what authority the General Assembly intended to confer on juvenile courts in sections 19-2.5-704 to -706, which govern the restoration hearing and review processes. That argument is squarely presented in this case, and we now hold that a juvenile court has the authority pursuant to section 19-2.5-706(2), C.R.S. (2022), to order a reassessment evaluation after determining that a juvenile remains incompetent and that this type of evaluation is distinct from the second competency evaluation at issue in *B.B.A.M.* Accordingly, we discharge the rule to show cause and remand for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶3 The People filed a petition in delinquency against A.C. A.C.'s counsel moved for a competency evaluation, noting that A.C. had trouble paying attention and was on an individualized education plan at school due to his Attention Deficit Hyperactivity Disorder ("ADHD"). The magistrate granted the motion and ordered the Colorado Department of Human Services ("CDHS") to perform a competency evaluation pursuant to the court's authority under section 19-2.5-703(1). John Edwards, Ph.D., performed the competency evaluation. His diagnostic impression was that A.C. had ADHD. Based on his evaluation, Dr. Edwards concluded that A.C. did not have the ability to

(1) factually and rationally understand the proceedings or (2) assist in the defense. *See* § 16-8.5-101(12), C.R.S. (2022) (defining "incompetent to proceed"). Dr. Edwards noted that A.C. "did not appear to be able to retain" or apply legal concepts, opining that A.C. would not likely "be able to effectively assist his attorney in his defense due to his lack of formal exposure to the legal system and the effects of his demonstrated psychiatric disorder manifesting in attention and concentration difficulties." Ultimately, Dr. Edwards concluded that A.C. was incompetent to proceed but that the "prognosis for restoring [A.C.] to competency . . . [was] fair to good." The magistrate found A.C. incompetent to proceed, stayed the proceedings, and ordered CDHS to provide restoration services.

¶4 Almost six months later, the magistrate held a hearing to determine whether A.C. had been restored to competency. Dr. Edwards and A.C.'s restoration services provider testified at the hearing, but neither opined as to whether A.C. had been "restored to competency." Dr. Edwards noted that he was unable to form an opinion as to A.C.'s current state because he had not seen A.C. since the initial evaluation based on his belief that *B.B.A.M.* prevented him from performing a reassessment evaluation. Afterward, the magistrate issued a written order finding that it had "limited information as to whether" A.C. was competent to proceed and ordered A.C. to participate in a reassessment evaluation. A.C. objected, arguing that a reassessment evaluation was equivalent to a second

competency evaluation of the type prohibited by our decision in *B.B.A.M.* The magistrate denied A.C.'s objection, stating that a reassessment evaluation, which "appear[s] to be contemplated" by section 19-2.5-705(1), C.R.S. (2022), "is distinct from a second competency evaluation and permitted under" *B.B.A.M.* A.C. then petitioned the Weld County District Court to review the magistrate's order. After reviewing the record and the briefing, the district court adopted the magistrate's order.

¶5 A.C. then filed a petition for a rule to show cause, which we granted.

II. Original Jurisdiction

¶6 Under C.A.R. 21(a)(1), this court has discretion to exercise its original jurisdiction in extraordinary circumstances "when no other adequate remedy" is available. We consider whether a party will suffer irreparable harm without our intervention: that is, harm that cannot be remedied through the ordinary appellate process. *See, e.g.*, *Hoffman v. Brookfield Republic, Inc.*, 87 P.3d 858, 861 (Colo. 2004) (electing to exercise original jurisdiction when the harm caused by an "improper order" could not "be remedied on appeal"). We also consider whether the petition raises an issue "of significant public importance that we have not yet considered." *B.B.A.M.*, ¶ 16, 453 P.3d at 1166 (quoting *Wesp v. Everson*, 33 P.3d, 191, 194 (Colo. 2001)). A.C. argues, and we agree, that both considerations justify our exercise of original jurisdiction here.

¶7 First, absent our intervention, A.C. will suffer irreparable harm, and, thus, he has no adequate alternative remedy. The juvenile court ordered A.C. to participate in a reassessment evaluation over his objection. We have recognized that a party suffers irreparable harm when a court forces the party to undergo a competency evaluation without statutory authority to do so. *B.B.A.M.*, ¶ 19, 453 P.3d at 1166.

¶8 Second, this is "an issue of first impression that is of significant public importance." *Id.* at ¶ 20, 453 P.3d at 1166. We have not yet considered whether sections 19-2.5-704 to -706 empower a juvenile court to order a juvenile—who remains incompetent to proceed—to undergo a subsequent reassessment evaluation to determine whether the juvenile has been restored to competency. Our decision today will have far-reaching consequences for many juveniles in Colorado whose competency to proceed is in question. Accordingly, we elect to exercise our original jurisdiction to provide guidance to juvenile courts and clarify the statutory scheme.

III. Analysis

¶9 We begin by reviewing the applicable standard of review, the principles of statutory interpretation, and the statutes governing juvenile competency determinations. We then review our decision in *B.B.A.M.* and consider whether it is dispositive of the issue before us. We conclude that it is not. To be sure,

section 19-2.5-703, which concerns a juvenile court's initial determination regarding competency, does not empower a juvenile court to order a second competency evaluation. However, sections 19-2.5-704 and -705 do. These sections concern the juvenile court's responsibility to monitor and evaluate a juvenile's progress. And in conjunction with section 19-2.5-706(2), these provisions authorize a juvenile court to order a reassessment evaluation after the court determines a juvenile remains incompetent. Finally, we apply the rule to the facts of this case and hold that the district court did not err by adopting the magistrate's order requiring A.C. to undergo a reassessment evaluation. Accordingly, we discharge the rule to show cause and remand for further proceedings.

A. Standard of Review and Principles of Statutory Interpretation

¶10 Whether the juvenile court had authority to order a reassessment evaluation is a matter of statutory interpretation. This inquiry is a question of law, which we review de novo. *B.B.A.M.*, ¶ 23, 453 P.3d at 1166–67. When we interpret a statute, our primary goal is to give effect to the General Assembly's intent, which we do by giving "words and phrases their plain and ordinary meanings" and reading the statutory "scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts," *McCoy v. People*, 2019 CO 44, ¶¶ 37–38, 442 P.3d 379, 389. Further, we cannot read the statute in a manner that would "lead to illogical or

absurd results." *Id.* at ¶ 38, 442 P.3d at 389. If the statute is unambiguous—that is, not open to multiple interpretations—then our work is done. *Id.*

B. Reassessment Evaluations

¶11 The district court argues that it properly adopted the magistrate's order because (1) section 19-2.5-705(1) contemplates that juvenile courts will receive evaluations concerning juveniles' restoration to competency, (2) the competency evaluations under section 19-2.5-703(1) that we addressed in *B.B.A.M.* are distinct from the reassessment evaluation that the magistrate ordered here, and (3) section 19-2.5-706(2) permits a juvenile court to "enter any new order necessary to facilitate the juvenile's achievement of or restoration to competency." We agree in part.

¶12 We begin our consideration of these issues with a review of the specific statutes governing juvenile competency proceedings. Whenever the question of a juvenile's competency to proceed is raised, section 19-2.5-703(1) requires a juvenile court to "make a preliminary finding that the juvenile is or is not competent to proceed." But, if the court believes "that the information available to it is inadequate," section 19-2.5-703(1) further requires the juvenile court to "order a competency examination." If the court finds, based on the competency evaluation, that the juvenile is incompetent to proceed, the court cannot try or sentence the juvenile, § 19-2.5-702(2), C.R.S. (2022), until the juvenile has been restored to

competency, § 19-2.5-706(1). If the court additionally finds that the juvenile may be restored to competency, the Juvenile Justice Code outlines two procedures that the court must perform: (1) competency reviews governed by section 19-2.5-704, C.R.S. (2022) (the "review statute"), or (2) restoration to competency hearings governed by section 19-2.5-705 (the "hearing statute").

¶13 The review and hearing statutes empower and impose a number of important obligations on a juvenile court after it finds that a juvenile is incompetent to proceed but may be restorable. The review statute mandates that the juvenile court "shall order . . . restoration services." § 19-2.5-704(2)(a). Additionally, the statute imposes an ongoing obligation on juvenile courts to monitor the juvenile's status and ensure that the juvenile is advancing towards competency. *Id.* Accordingly, juvenile courts must review: (1) "the provision of . . . the [restoration] services," (2) "the juvenile's participation in those services," and (3) "the juvenile's progress toward competency" periodically "*until competency is restored*." *Id.* (emphasis added).

¶14 The hearing statute, in turn, authorizes, and in some cases requires, juvenile courts to hold restoration hearings. Juvenile courts may order restoration hearings sua sponte or on the motion of either party but *must* order them if a "competency evaluator . . . files a report certifying that the juvenile is competent to proceed." § 19-2.5-705(1).

¶15 These statutory provisions work in tandem with section 19-2.5-706, which describes the procedures a juvenile court must follow after a restoration to competency review or restoration hearing has been held. It provides,

> If a juvenile is found to have achieved or been restored to competency after a restoration to competency hearing, pursuant to section 19-2.5-705, or by the court during a review, pursuant to section 19-2.5-704(2), the court shall resume or recommence the trial or sentencing proceeding or order the sentence carried out.

§ 19-2.5-706(1).

¶16 The statute further provides, however, that if the court finds a juvenile remains incompetent to proceed after a hearing held pursuant to section 19-2.5-705, or during a review pursuant to section 19-2.5-704, and the delinquency petition is not dismissed, "the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order necessary to facilitate the juvenile's achievement of or restoration to competency." § 19-2.5-706(2). These statutes guide our review.

¶17 This statutory scheme compels a juvenile court to track a juvenile's progress until the juvenile reaches a certain milestone: the achievement of competency. § 19-2.5-704(2)(a). The statutory scheme further authorizes (and in some cases requires) the juvenile court to hold a hearing to determine whether that milestone has been reached. § 19-2.5-705(1). Only after that milestone has been completed is the juvenile court permitted to proceed with the underlying case.

§ 19-2.5-706(1). By tying the juvenile court's obligations and its very ability to move the juvenile's case forward to this specific milestone, the General Assembly made clear its intent that juvenile courts possess the tools and means necessary to determine if that milestone has been achieved.

¶18 To be sure, in many cases, a juvenile court will be able to make a finding that a juvenile has achieved competency or has been restored to competency based on the evidence regarding the restoration process alone, without any additional evidence. For example, in some cases, the restoration services consist of simply teaching a juvenile about our system of justice and the role of the various participants and then testing the juvenile to assess how much they have learned. In this type of case, evidence regarding the restoration process, including the juvenile's passing or failing test scores, may be all that is needed to support a restoration determination.

¶19 In other—more complicated—cases, a juvenile court may need to hear additional evidence, including expert testimony, to determine if competency has been achieved or restored. This may be the situation, for instance, when a juvenile is found incompetent during the initial competency evaluation because they suffered from an active, but temporary, psychosis due to an untreated major depressive disorder and because the psychosis interfered with the juvenile's ability to understand the proceeding or assist with their defense. In this type of

case, the expert may need to reassess the juvenile's progress toward competency following the restoration intervention, to be able to testify as to whether the juvenile has been restored or not. Put another way, the expert likely cannot reassess the juvenile's progress by giving them a quiz.

¶20 In these more complicated cases, if reassessment is needed and has not occurred, then the court must conclude that the juvenile remains incompetent. Once the juvenile court makes this determination, then it can appropriately enter other orders, including ordering a reassessment evaluation under section 19-2.5-706(2), as the court deems appropriate.[2]

¶21 Though the phrase "reassessment evaluation" is not spelled out in section 19-2.5-706(2), the overarching statutory scheme is not ambiguous. Any reading of these statutes that does not grant juvenile courts this authority is illogical: It recognizes that the juvenile court has important obligations with respect to competency restoration, but then ties the court's hands in any cases where restoration cannot be determined without expert testimony based on some degree of reassessment.[3] These statutes are, thus, not reasonably susceptible to

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[2] We address the specific contours of this type of evaluation below.

[3] Of course, a juvenile court may not need to order a reassessment evaluation after it determines that a juvenile has not been restored to competency. A juvenile court can decide what type of evaluation, if any, it needs before making such a

such interpretations. Contrary interpretations leave juvenile courts in an untenable limbo: unable to fulfill their legal responsibilities under the review and hearing statutes or even to determine what their legal duties are. A juvenile court reviewing an unrestored "juvenile's progress toward competency . . . *until competency is restored*," § 19-2.5-704(2)(a) (emphasis added), may not determine when its obligations are complete unless it is able to order a reassessment evaluation under section 19-2.5-706(2). Similarly, a juvenile court may not "determine whether the juvenile[,]" whom the court previously found was not restored, "has achieved or is restored to competency" during a restoration hearing, § 19-2.5-705(3), unless it has the authority to require a reassessment evaluation. Thus, a juvenile court must have the authority to order a reassessment evaluation after concluding a juvenile remains incompetent so it can "periodically review '[a] juvenile's progress toward competency'" and conduct "meaningful restoration hearing[s]." *B.B.A.M.*, ¶ 30, 453 P.3d at 1168 (quoting § 19-2.5-704(2)(a)).

¶22 Finally, we clarify the interplay between section 19-2.5-706(2), which governs juvenile court procedures after the court conducts a competency review or holds a restoration to competency hearing, and the review and hearing statutes

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determination on a case-by-case basis. It cannot, however, order a second competency evaluation.

themselves. While section 19-2.5-706(2) permits a juvenile court to enter "new order[s]," it also imposes an important condition on that authority: A juvenile court only has the power to enter new orders in those cases in which the juvenile court "determines that the juvenile *remains* incompetent to proceed." (Emphasis added.)[4]

¶23 For these reasons, we now hold that when a juvenile court determines during a restoration review, pursuant to section 19-2.5-704, or after a restoration hearing, pursuant to section 19-2.5-705, that a juvenile remains incompetent, the court has the authority to order the juvenile to submit to a reassessment evaluation to determine whether the juvenile has been restored to competency.

¶24 But what about our opinion in *B.B.A.M.*? In that case, we stated that section 19-2.5-703(1) did not authorize the juvenile court to order "a second competency evaluation in lieu of holding a restoration hearing or restoration review," *B.B.A.M.*, ¶ 3, 453 P.3d at 1163, and that the juvenile court should have undergone those processes instead, *id.* at ¶ 34, 453 P.3d at 1168. We conclude that the content of a reassessment evaluation is different than the second competency

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[4] If a juvenile court concludes, however, that a juvenile remains incompetent to proceed but *cannot* be restored to competency, the court should follow the procedures outlined in section 19-2.5-704(3)(a).

evaluation that we addressed in *B.B.A.M.*, and that a second competency evaluation is *legally* distinct from those ordered under section 19-2.5-706(2). Accordingly, our decision in *B.B.A.M.* is not dispositive of the issue before us today.

¶25 First, the evaluations have different statutory bases. The court in *B.B.A.M.* addressed a different statutory provision: Its analysis focused on section 19-2.5-703(1), which describes the first step in the competency evaluation process once the question of competency has been raised. The People there argued that section 19-2.5-703(1) permitted the juvenile court to order a competency evaluation "[w]henever the question of a juvenile's competency to proceed [was] raised." We disagreed and held that the "provision is narrower in scope than the" district court concluded. *Id.* at ¶ 26, 453 P.3d at 1167. Looking to the statutory language, we reasoned that the legislature *only* intended to grant a juvenile court authority to order a competency evaluation "[i]f the court feels that the information available to it is inadequate for making such a finding." § 19-2.5-703(1). And the phrase "such a finding" in section 19-2.5-703(1) refers to the "'*preliminary finding* that the juvenile is or is not competent to proceed.'" *B.B.A.M.*, ¶ 26, 453 P.3d at 1167 (quoting § 19-2.5-703(1)).

¶26 "In other words, [the court's authority to order a competency evaluation under section 19-2.5-703(1)] applies only when a juvenile's competency is *initially*

questioned—i.e., before [the court makes] a preliminary finding, let alone a final determination, of competency or incompetency . . . ." *Id.* Once the court makes a preliminary finding or final determination of incompetence, it has exhausted its authority to order subsequent competency evaluations under section 19-2.5-703(1). *Id.* Thus, the parties' argument and our reasoning centered around a stage in the proceeding and a type of evaluation that are not at issue here. And the question we confront now was not before us: Whether section 19-2.5-706(2) empowers a juvenile court to order a reassessment evaluation if the court determines a juvenile remains incompetent during a review or after a restoration hearing.

¶27 Second, the two types of evaluations have distinct purposes. The purpose of an initial competency evaluation pursuant to section 19-2.5-703(1) is to give the juvenile court sufficient information to make "*a preliminary finding of competency or incompetency*." *B.B.A.M.*, ¶ 27, 453 P.3d at 1167. Section 19-2.5-703(1), therefore, authorizes juvenile courts to order competency evaluations only before the courts make such preliminary findings. But, as we clarified in *B.B.A.M.*, after a juvenile court makes a final determination, the court's focus should then shift to whether the juvenile "*has been restored to competency*." *Id.* at ¶ 27, 453 P.3d at 1167. To be sure, juvenile courts cannot properly order second competency evaluations under section 19-2.5-703(1) because the purpose of competency evaluations under this

specific provision is to aid in making *preliminary* findings. But section 19-2.5-706(2), which describes the next steps that juvenile courts are required to follow after concluding that a juvenile *remains* incompetent, clearly contemplates that juvenile courts may order a reassessment evaluation to determine if and when juveniles are restored to competency. This type of evaluation differs from a second competency evaluation in a number of important respects, particularly as there is no need to gather all of the background information and medical history collected in an initial competency evaluation. This is why, for instance, a reassessment evaluation takes half the time to administer.

¶28 Without this type of more focused reassessment, juvenile courts—particularly in cases involving juveniles with more complicated and more serious mental health diagnoses—would lack the information necessary to ever determine, as it is required to do so at this stage of the process, whether a juvenile has been restored to competency. That is to say, that without this evidence in these more complicated cases, juvenile courts would have no choice but to serially conclude during each review and following each hearing that the juvenile remained incompetent to proceed.

C. Application

¶29 Here, the magistrate held a restoration hearing, as authorized by the hearing statute, and, after finding that she lacked the necessary information to make a determination, ordered a reassessment evaluation designed to evaluate A.C.'s comprehension of the material he had learned. We note the better practice when confronted with this situation at this stage of the proceeding is for the judicial officer to first make an explicit finding that the juvenile has not been restored to competency and then identify the specific type of reassessment evaluation being ordered pursuant to section 19-2.5-706(2).

¶30 But we do not require the use of talismanic language. Here, by finding that she lacked sufficient evidence to determine whether A.C. had achieved competency or had been restored to competency, the magistrate effectively determined that A.C. remained incompetent to proceed.

¶31 Since the plain language of section 19-2.5-706(2) contemplates that the magistrate had the authority to order such an evaluation under these circumstances, she did not err by issuing the order, and the district court did not err by adopting the magistrate's order.

IV. Conclusion

¶32 Section 19-2.5-706(2) grants juvenile courts the authority to order a reassessment evaluation after determining that a juvenile remains incompetent

during a review pursuant to section 19-2.5-704(2) or following a restoration hearing pursuant to section 19-2.5-705 if the delinquency petition is not dismissed. Accordingly, we discharge the rule to show cause.

CHIEF JUSTICE BOATRIGHT, joined by JUSTICE HART, specially concurred.

JUSTICE SAMOUR specially concurred.

JUSTICE HOOD, joined by JUSTICE GABRIEL, dissented.

CHIEF JUSTICE BOATRIGHT, joined by JUSTICE HART, specially concurring.

¶33 I agree with the majority that it was permissible in this instance for the court to order a reassessment evaluation of A.C. Nevertheless, today's holding is clearly an attempt to have a common-sense solution to the practical problems created by the wording of the statute and this court's subsequent interpretation in *People in Interest of B.B.A.M.*, 2019 CO 103, 453 P.3d 1161. Instead of courts engaging in an interpretive workaround to adapt to this practical problem, the General Assembly should clarify the statute.

¶34 Once a juvenile is deemed incompetent but may be restored to competency, the trial court must review the juvenile's progress toward competency at regular intervals. § 19-2.5-704(2)(a), C.R.S. (2022). Ultimately, the trial court is responsible for determining whether the juvenile has been restored to competency. *See* § 19-2.5-705(3), C.R.S. (2022). To determine so, section 19-2.5-705 requires that the trial court hold a restoration hearing but does not explicitly empower the court to order a second competency evaluation. Section 19-2.5-705(1) is the only portion of the statute that explicitly discusses the court's authority to order a competency evaluation, and in *B.B.A.M.*—though I did not agree—this court held that section 19-2.5-705 only refers to an *initial* competency evaluation and no more, leaving a reevaluation off the table. *See B.B.A.M.*, ¶ 26, 453 P.3d at 1167.

¶35 Without the authority to order a reevaluation, trial courts will always be in the untenable position of not being able to make fully informed decisions about when, or if, the juvenile has been restored to competency. This is simply unworkable. The juvenile justice system is focused on rehabilitating juveniles, § 19-2.5-701(1)(a), C.R.S. (2022), and to support that purpose, courts must be able to make fully informed decisions with the best information available. Right now, the law is unclear about the trial courts' ability to take such actions, which does not serve juveniles' rehabilitation interests. This is precisely the problem that the majority could not ignore today.

¶36 In response to this problem, the majority finds the trial court's authority to order follow-up competency evaluations in sections 19-2.5-704 to -706, C.R.S. (2022). Maj. op. ¶ 9. Because sections 19-2.5-704 and 19-2.5-705 compel a juvenile court to track a juvenile's progress toward competency and authorize the court to hold a hearing to determine whether competency has been restored, the majority reasons that the General Assembly intended for juvenile courts to possess the tools and means necessary to determine if competency has been restored. *Id*. at ¶ 17. The majority concludes that, although section 19-2.5-706, C.R.S. (2022), does not explicitly authorize reassessment evaluations, the statute permits a juvenile court to enter new orders—which the majority interprets to include reassessment evaluations—when the court determines that the juvenile remains incompetent to

proceed. *Id.* at ¶¶ 21–23. I agree with the judgment because this is a major problem in need of a solution.

¶37 The majority's holding is a reasonable accommodation to the current statute's wording, and the General Assembly should clarify the statute. A possible solution is to amend section 19-2.5-705(3) to read, "At the restoration to competency hearing, the court shall determine whether the juvenile has achieved or is restored to competency. *If the court finds that the information available to it is inadequate for making such a determination, it may order another competency evaluation or reassessment.*" By providing a solution like this, the General Assembly empowers the trial court to make a knowledgeable determination of the juvenile's competency, which is in the juvenile's best interest and honors the juvenile justice system's spirit of rehabilitation.

¶38 Accordingly, I concur with the majority that it was permissible for the court to order a reassessment evaluation of A.C. However, because I view today's holding as a good-faith workaround to the practical problems created by the wording of the statute, I ask that the General Assembly clarify the relevant language and allow courts to order evaluations to determine if a juvenile has been restored to competency. In so doing, it will empower trial courts to make fully informed decisions about rehabilitation and, in turn, serve juveniles' best interests.

¶39 Hence, I concur.

JUSTICE SAMOUR, specially concurring.

¶40 Our Chief Justice writes separately to urge the legislature to clarify section 19-2.5-705(3), C.R.S. (2022). But I believe that the primary obstacle here was the Office of Behavioral Health ("OBH"). It's the designation of OBH as "the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration," § 19-2.5-704(2)(b), C.R.S. (2021), that, in my view, most warrants the legislature's attention.[1] And that's because OBH doesn't seem to want this responsibility.

¶41 In *People in Interest of B.B.A.M.*, 2019 CO 103, ¶ 30, 453 P.3d 1161, 1167, the People requested a second full-blown competency evaluation because OBH claimed it had a "conflict of interest in opining about B.B.A.M.'s progress toward competency or likelihood of being restored to competency." In holding that the People were not entitled to a second full-blown evaluation, we rejected OBH's conflict contention, explaining that "[h]aving OBH's providers opine that a juvenile has not yet been restored to competency, is not progressing toward such

[1] Today the Behavioral Health Administration ("BHA"), not OBH, is "the entity responsible for the oversight of restoration education and coordination of services." § 19-2.5-704(2)(b), C.R.S. (2022). I refer to OBH in this special concurrence, however, because the earlier statutory scheme referred to OBH.

restoration, or is not likely to be so restored is not necessarily an adverse reflection on the efficacy of those services." *Id.* at ¶ 30 n.5, 453 P.3d at 1168 n.5.

¶42 Notably, we observed in *B.B.A.M.* that it was "difficult to envision how a juvenile court could ever comply with the requirement to periodically review 'the juvenile's progress toward competency' if the providers of the competency restoration services refuse to opine about his progress toward competency." *Id.* at ¶ 30, 453 P.3d at 1168. We added that "any individual agreeing to provide competency restoration services does so with the expectation that he or she will report to the court the juvenile's progress toward competency." *Id.* Without such information, we reasoned, courts would be unable to preside over meaningful competency hearings or conduct meaningful reviews. *Id.* And, we said, "[t]o the extent it wasn't comfortable allowing its providers to render any opinions, OBH, as the agency responsible for the 'coordination of competency restoration services' throughout the state, should . . . take[] it upon itself to find a qualified outside provider willing to do so." *Id.* (citation omitted).

¶43 Yet, despite those admonishments, OBH continues to prioritize its own policies over its duties under section 19-2.5-704(2)(b) and *B.B.A.M.* *See* Diss. op. ¶¶ 22–24. OBH flat-out refused to render an opinion on whether A.C. had been restored to competency or had made any progress toward restoration here. In contrast to its position in *B.B.A.M.*—that it was a conflict of interest to render any

competency-related opinions about someone it was attempting to restore to competency—this time OBH claimed that it could not opine about restoration to competency or progress toward such restoration without a second full-blown evaluation, which *B.B.A.M.* prohibits.[2] And, just as we predicted in *B.B.A.M.*, OBH's refusal to do what the legislature intended left the juvenile court hanging in the wind as it tried to discern whether the juvenile before it had been restored to competency or even made progress toward restoration.

¶44 As much as I disapprove of what I view as an affront by OBH (to both the legislature and our court), and as much as I therefore appreciate some of the sentiments expressed by my colleagues in the dissent, I join the majority in full because our juvenile courts need a solution to this seeming impasse. Until the legislature ensures that the entity charged with the oversight of competency restoration is willing to honor its responsibilities, we need to find a practical solution that is faithful to the statutory framework. I believe that our majority opinion does just that.

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[2] Under OBH's approach, there could potentially be an infinite number of full-blown competency evaluations because it would be entitled to a new one each time it is called upon to opine about a juvenile's restoration to competency or progress toward such restoration. However, we expressly rejected this claim in *B.B.A.M.* *See B.B.A.M.*, ¶¶ 7, 34–35, 453 P.3d at 1164, 1168.

¶45 I therefore respectfully concur fully in the majority opinion. I write separately, however, to alert the legislature to this serious, ongoing problem.[3]

[3] As mentioned, the responsibility for the education and coordination of restoration services in our state now lies with BHA, not OBH. (OBH no longer exists; it is now called the Office of Civil and Forensic Mental Health.) It's possible that the recent restructuring of our behavioral health system will address the concerns we foreshadowed in *B.B.A.M.*, which I have reiterated here. Hope springs eternal, of course. Out of an abundance of caution, however, I felt compelled to write this special concurrence. To the extent BHA adopts a same old, same old approach, delinquency cases will continue to be adversely affected.

JUSTICE HOOD, joined by JUSTICE GABRIEL, dissenting.

¶46 Because the majority's holding usurps the legislative authority of the Colorado General Assembly, I respectfully dissent.

I. Facts and Procedural History

¶47 I accept the facts as described by the majority, but I supplement them as necessary for my analysis.

¶48 On October 18, 2021, the court held a restoration hearing. At that hearing, Dr. Edwards testified to his original diagnosis but lamented that *People in Interest of B.B.A.M.*, 2019 CO 103, 453 P.3d 1161, prevented him from offering a more current assessment based on reevaluation. The most recent restoration treatment provider, Dorinda Brown, testified that she had completed four sessions with A.C. (after other treatment providers had already reviewed all the standard educational treatment modules with him). She stated that the juvenile seemed to generally grasp the relevant legal concepts, but she noted that she had not personally reviewed the factual allegations with him. No one asked her to opine on whether the juvenile was competent to proceed (or about his ability to understand the proceedings or assist in his defense). And while the court took judicial notice of a seventeen-page summary of eight months of restoration treatment, the subsequent order suggests that the court didn't rely on this report.

¶49 In the written order dated October 27, 2021, a juvenile magistrate cited to the dissent in *B.B.A.M.* and then concluded that she couldn't determine whether A.C. was competent to proceed. Therefore, without making any finding that the juvenile remained incompetent, the magistrate ordered the Office of Behavioral Health ("OBH")[1] to conduct a reassessment evaluation addressing A.C.'s progress in treatment and to opine as to his present competency. The district court affirmed the magistrate's decision.

II. The Statutory Framework Doesn't Permit This Reassessment Evaluation

¶50 The Colorado legislature has established a clear set of procedures for courts to follow when a party to a delinquency action questions a juvenile's competency. "Reassessment evaluations" are nowhere to be found among those procedures.

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[1] The most recent version of the section 19-2.5-704(2)(b), C.R.S. (2022), designates "the behavioral health administration [("BHA")] in the department of human services" as the entity responsible for overseeing competency restoration services in the state. The BHA, "a new cabinet member-led agency," became operational on July 1, 2022. *About the BHA*, Colo. Dep't of Human Servs. (2022), https://bha.colorado.gov/about-us [https://perma.cc/9U4V-LGKP]. Previously, oversight responsibility fell to OBH. *See* § 19-2.5-704(2)(b), C.R.S. (2021). As part of the recent reforms to Colorado's behavioral health system, OBH is now called the Office of Civil and Forensic Mental Health, but because the earlier statutory scheme at issue refers to OBH, we do the same. *Civil and Forensic Mental Health*, Colo. Dep't of Human Servs. (2022), https://cdhs.colorado.gov/behavioral-health [https://perma.cc/6B2K-C8GZ].

Had the legislature intended to permit such evaluations, it would have done so. *See People v. Johnson*, 2016 CO 69, ¶ 20, 381 P.3d 316, 320 (denying a trial court power to order new mental health assessments because "[i]f the General Assembly intended to grant such a power to a trial court, it would have done so explicitly"). It did not.

¶51 Instead, section 19-2.5-704(2)(a), C.R.S. (2022), tells us the procedure to use if a juvenile like A.C. is deemed "incompetent to proceed but may be restored to competency." Subsection 704(2)(a) details a competency review process, which requires the court to "review the provision of and the juvenile's participation in the services and the juvenile's progress toward competency." Subsection 704(2)(b) designates OBH as "the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration."

¶52 Next, section 19-2.5-705, C.R.S. (2022), enables a court to order "a restoration to competency hearing," § 19-2.5-705(1), at which "the court shall determine whether the juvenile has achieved or is restored to competency," § 19-2.5-705(3).

¶53 Finally, section 19-2.5-706(1), C.R.S. (2022), sets forth two ways a previously incompetent juvenile can be restored to competency—either "after a restoration to competency hearing, pursuant to section 19-2.5-705, or by the court during a review, pursuant to section 19-2.5-704(2)." *See B.B.A.M.*, ¶ 32, 453 P.3d at 1167 ("[A]fter a court has made a final determination of incompetency and a juvenile

has started receiving restoration services, the court must determine whether the juvenile has been restored to competency either at a restoration hearing . . . or during a restoration review . . . .").

¶54 Subsection 706(2) states in full:

> If the court *determines* that the juvenile remains incompetent to proceed and the delinquency petition is not dismissed, the court may continue or modify any orders entered at the time of the original determination of incompetency or enter any new order *necessary to facilitate the juvenile's achievement of or restoration to competency*.

(Emphases added.)

¶55 Because new orders may not be entered without the trial court first meeting these threshold requirements laid out by the legislature, the words "determines" and "necessary to facilitate the juvenile's achievement of or restoration to competency" merit closer examination. I discuss each in turn.

¶56 Subsection 706(2)'s introductory clause explains that the subsection is applicable "[i]f the court *determines* that the juvenile remains incompetent to proceed." (Emphasis added.) The legislature's use of the word "determines" necessitates a finding by the trial court. *See* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/*determine* [https://perma.cc/GU2Z-K4MX] (defining "determine" as "to fix conclusively or authoritatively" and "to find out or come to a decision about by investigation, reasoning, or calculation"). That is, for the court to properly invoke the order-making authority

granted in the second half of subsection 706(2), it must first make a finding that the juvenile remains incompetent. That did not happen here.

¶57 Moreover, the majority's interpretation allows courts to "determine" that a juvenile remains incompetent (or to make no finding, which the majority summarily treats as tantamount) without any meaningful effort to use existing information to assess whether the juvenile's diagnosed mental condition (as opposed to his youth and his initial lack of education) currently prevents him from understanding the proceedings or assisting in his defense.

¶58 After today's holding, notwithstanding the majority's aspirational statements about how to handle less complicated cases, trial courts can simply invoke subsection 706(2) without a closer look at restoration efforts and without *any* competency finding. This promotes the misconception that the court can't make findings about competency (even by a preponderance of the evidence) without a formal opinion from a forensic psychiatrist or psychologist. It also creates a recipe for trial courts to routinely seek such reassessments and to blindly defer to OBH about protocol. That is not what the legislature envisioned.

¶59 Not only does the majority sidestep subsection 706(2)'s express requirement that the court first determine that the juvenile remains incompetent to proceed before entering new orders, but it also enables trial courts to do so without establishing that a reassessment is truly "necessary to facilitate the juvenile's

achievement of or restoration to competency." The legislature's use of the word "necessary" creates an obligation for the trial court to try to first assess the juvenile's competency without any formal reevaluation. The complete phrase also suggests that new orders should be designed to help the juvenile achieve competency. They are not a mechanism by which to acquire the blessing of the most qualified forensic expert under procedures separately created by an executive-branch agency.

¶60 Here, the trial court, using authority contemplated by the statutory scheme in subsection 704(2)(a), could have ordered OBH to have its restoration treatment provider submit a report opining on the "juvenile's progress toward competency." Subsection 704(2)(a) mandates court review of "the provision of and the juvenile's participation in the services and the juvenile's progress toward competency." The legislature wouldn't have created this scheme if it hadn't intended for OBH and its providers to expressly and directly report "to the court the juvenile's progress toward competency." *See B.B.A.M.*, ¶ 30, 453 P.3d at 1168. On balance, greater fidelity to the existing statutory scheme would improve efficiency and leave forensic psychiatrists and psychologists better able to provide their finite services to others in our state.

¶61 Unlike the Attorney General in his brief to us, the majority invokes the absurdity doctrine to justify its conclusion. Of course, the absurdity doctrine is no

license to impose this court's view of what would make a statute better. *See Soppet v. Enhanced Recovery Co.*, 679 F.3d 637, 642 (7th Cir. 2012) ("When a text can be applied as written, a court ought not revise it by declaring the legislative decision 'absurd.'"). Yet that is exactly what the majority does here. With more robust use of the tools the legislature expressly provided, the legislature could have concluded that there was no need for routine "reassessment evaluations." It is hardly absurd for the General Assembly to have decided that this statutory regime can exist without them.

III. *B.B.A.M.* Should Have Foreclosed This Reassessment Evaluation

¶62 *B.B.A.M.* also answers the question presented here. In that decision, we made clear that a juvenile court "lack[s] authority to order [a juvenile] to submit to a second competency evaluation to determine whether he ha[s] been restored to competency." *B.B.A.M.*, ¶ 34, 453 P.3d at 1168. Rather, *B.B.A.M.* requires courts to "determine whether the juvenile has been restored to competency either at a restoration hearing . . . or during a restoration review." *Id.* at ¶ 32, 453 P.3d at 1168.

¶63 In *B.B.A.M.*, a juvenile was deemed incompetent to proceed; provided restoration services; and then "ordered, over his objection, [to take] a second competency evaluation to determine whether he had been restored to competency." ¶ 1, 453 P.3d at 1163. Here, A.C. was deemed incompetent to proceed; provided restoration services; and then ordered, over his objection, to

take a second competency evaluation to determine whether he had been restored. (Even Dr. Edwards, in an affidavit, confirmed that "there is zero difference in the reassessment evaluation as they are now called and the second competency evaluation as outlined in *B.B.A.M.*").

¶64 The majority asserts that the two evaluations at issue—the second competency evaluations in *B.B.A.M.* and the reassessment evaluations here—"have distinct purposes," Maj. op. ¶ 27, which it claims sufficiently distinguishes the two. That is, the majority claims that a reassessment evaluation's focus is distinctly different because it determines whether the juvenile has been "restored to competency," while an initial evaluation is aimed at "making *preliminary* findings." *Id.* However, the only practical difference the majority identifies between the two types of assessments is that a preliminary assessment "takes half the time to administer" because "there is no need to gather all of the background and medical history collected in an initial competency evaluation." *Id.*

¶65 While the majority teases out these minor differences between the two assessments, during both exams, the inquiry is the same: Is the juvenile competent to stand trial? The majority explains that a preliminary exam is focused on "preliminary findings," but this language actually refers to *the court* under section 19-2.5-703, C.R.S. (2022), rather than the preliminary competency evaluation. Indeed, section 703 refers to "preliminary finding" five times. In

subsection 703(1), it explains that a court "shall make a preliminary finding" and that if it feels that it lacks necessary information, it "shall order a competency evaluation." And in subsection 703(2), the repeated reference to "preliminary finding" refers to *the court's* initial finding as to competency per subsection 703(1), and it differentiates these findings from the results of a competency examination under subsection 703(4). In contrast, a preliminary competency evaluation, per subsection 703(4)(c), "must, at a minimum, include an opinion regarding whether the juvenile is incompetent to proceed." A reassessment evaluation serves the same purpose.

¶66 In *B.B.A.M.*, OBH attempted to assert that it had a "conflict of interest in opining about B.B.A.M.'s progress toward competency or likelihood of being restored to competency." ¶ 30, 453 P.3d at 1167. However, this court rejected the argument, noting that "it is difficult to envision how a juvenile court could ever comply with the requirement to periodically review 'the juvenile's progress toward competency' if the providers of the competency restoration services refuse to opine about his progress toward competency." *Id.* at 1168 (quoting § 19-2.5-704(2)(a)). It also recognized that "[t]o the extent it wasn't comfortable allowing its providers to render any opinions, OBH, as the agency responsible for the 'coordination of competency restoration services' throughout the state,

§ 27-60-105(2), [C.R.S. (2022),] should have taken it upon itself to find a qualified outside provider willing to do so." *B.B.A.M.*, ¶ 30, 453 P.3d at 1168.

¶67 So, it appears that OBH's policies avoid fulfilling its duties under *B.B.A.M.* and subsection 704(2)(b), which designates OBH as "the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration." Indeed, *B.B.A.M.* specifically calls for competency restoration service providers to "opine about [a juvenile's] *progress toward competency*" and explains that "any individual agreeing to provide competency restoration services does so with the expectation that he or she will *report to the court the juvenile's progress toward competency*." ¶ 30, 453 P.3d at 1168 (emphases added). And it recognized that without this information, courts would be unable to host meaningful competency hearings or conduct meaningful review, as occurred here. *Id.*

¶68 OBH provided A.C.'s outpatient care education reports to the court, but the report's cover letter was clear that "[t]hese reports will **not** include the following: Any opinion toward competency for this individual[;] Any opinion of restorability of this individual." And, at the restoration-to-competency hearing, Dr. Edwards had not met with A.C. since the initial competency assessment and could not offer an opinion, while the magistrate found that Dorinda Brown "could not render any opinion as to whether [A.C.] was restored to competency."

¶69 Thus, the facts of this case reveal OBH's failure to comply with *B.B.A.M.*'s mandate that restoration treatment providers must opine on a juvenile's competency, and if the provider is unable to do so, "OBH, as the agency responsible for the 'coordination of competency restoration services' throughout the state, § 27-60-105(2), should [take] it upon itself to find a qualified outside provider willing to do so." *B.B.A.M.*, ¶ 30, 453 P.3d at 1168. Instead of standing by that recent pronouncement, the majority now backpedals. Its opinion effectively rewards OBH for continuing its policy of refusing to provide meaningful progress reports to the court, as required by law.

Because the legislature has not authorized reassessment evaluations and *B.B.A.M.* prohibits them, I respectfully dissent.