ADVANCE SHEET HEADNOTE
April 14, 2025

2025 CO 14

No. 24SA193, *In Re People in Int. of J.D.*—Statutory Construction—Plain Language—Juvenile Justice—Competency to Stand Trial.

The supreme court addresses whether the Children's Code authorizes the Colorado Department of Human Services to conduct restoration evaluations of juveniles receiving services in its care without a court order authorizing such an evaluation. Section 19-2.5-704(2)(b), C.R.S. (2024), governing juvenile restoration to competency procedures, provides that "the department is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration." Giving effect to the plain meaning of the statute, the supreme court holds that restoration evaluations are included in "services necessary to competency restoration," and are therefore encompassed by the grant of authority contained in section 19-2.5-704(2)(b).

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

2025 CO 14

Supreme Court Case No. 24SA193
Original Proceeding Pursuant to C.A.R. 21
El Paso County District Court Case Nos. 23JD115, 23JD126, 23JD132, 23JD222, 23JD238, 23JD722 & 23JD726
Honorable Linda M. Billings Vela, Judge
Honorable Diana May, Judge

In Re

The People of the State of Colorado,

In the Interest of Juvenile:

J.D.

Order Discharged
en banc
April 14, 2025

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

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 In this original proceeding, we consider whether the Department of Human Services ("Department") had the authority to reevaluate the competency of J.D., a juvenile defendant. J.D. argues that the juvenile court should not have accepted and relied upon the Department's restoration evaluation because the Department lacked the authority to complete such an evaluation absent a court order under section 19-2.5-704(2)(c), C.R.S. (2024). The People and the district court[1] argue that evaluating competency is part of providing restoration services and, therefore, a separate court order to conduct such an evaluation is unnecessary.

¶2 We agree with the People and the district court. Section 19-2.5-704(2)(b) expressly designates the Department as "the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration." Applying the plain language of the statute, we hold that restoration evaluations are included in "services necessary to competency restoration." Hence, the Department may conduct such evaluations without a court order under subsection (2)(c). Because the Department's restoration evaluation was proper, we discharge the order to show cause.

[1] The district court submitted a brief in response to this court's order to show cause.

I. Facts and Procedural History

¶3 J.D. faces a series of charges across multiple cases. After receiving his initial charges, J.D. filed a motion challenging his competency to proceed, and the juvenile court ordered the Department to complete an in-custody competency evaluation. Following this evaluation, the court found that J.D. was incompetent but restorable and ordered outpatient restoration services. The following month, the People again charged J.D. with committing several delinquent acts. The court extended its finding of incompetency to all seven cases and ordered the Department to oversee and coordinate inpatient restoration services. The order further required the Department to periodically provide the court with status reports, including documentation of the restoration services provided, J.D.'s participation in those services, and his progress toward competency.

¶4 Six months later, at the Department's request, J.D. met with a Department evaluator to reassess his competency. After that evaluation, the Department concluded that J.D. had been restored to competency and reported its finding to the court. In response, J.D. moved to strike the Department's report, arguing that the Department lacked the authority to evaluate his competency without a court order under section 19-2.5-704(2)(c).

¶5 The juvenile court denied J.D.'s motion, finding that the Department had the authority to conduct a restoration evaluation on its own initiative under

subsection (2)(b) because "[a] restoration evaluation, by its very nature, is a service necessary to competency restoration." The court reasoned that although subsection (2)(c) *permits* the court to order a restoration evaluation, that subsection "in no way limits the ability of the Department to conduct an evaluation of its own volition if and when it deems such an evaluation to be appropriate during the course of restoration treatment." After holding a hearing, and considering the Department's report, the court found that J.D. had been restored to competency.

¶6 J.D. then petitioned this court for relief under C.A.R. 21, arguing that restoration evaluations are not services necessary to competency restoration; meaning, the Department lacked the authority to conduct such an evaluation of J.D. absent a court order under subsection (2)(c). We issued an order to show cause.

II. Original Jurisdiction

¶7 Original relief under C.A.R. 21 is an extraordinary remedy and appropriate only where no other adequate remedy is available. C.A.R. 21(a)(2). Under such circumstances, we will generally elect to exercise our original jurisdiction if the petition raises an issue of first impression that is of significant public importance. *Young v. Hodges*, 2014 CO 1, ¶ 7, 318 P.3d 458, 460.

¶8 The exercise of our original jurisdiction is warranted in this case because there is no other adequate remedy available to J.D. The normal appellate process

is inadequate because the harm resulting from an erroneous finding of competency necessarily occurs at the time of such finding, regardless of any ruling on appeal. *See, e.g.*, *In re People in Int. of A.T.C.*, 2023 CO 19, ¶ 10, 528 P.3d 168, 171 (invoking our original jurisdiction when there was a risk that the juvenile would be forced to proceed while incompetent); § 19-2.5-702(2), C.R.S. (2024) ("A juvenile must not be tried or sentenced if the juvenile is incompetent to proceed.").

¶9 Furthermore, this case presents an issue of first impression that is of significant public importance. We have not yet determined whether a "restoration evaluation" is included in "restoration services"[2]—a term undefined by Colorado statute—and thus within the discretion of the Department under section 19-2.5-704(2)(b). The issue raised has ramifications for juveniles throughout the state who are subjected to competency procedures. For these reasons, we elect to resolve this issue now.

III. Analysis

¶10 We begin by discussing the applicable standard of review and the rules of statutory construction. We then turn to the statutory framework for juvenile competency proceedings and, applying the plain language of the statute, we hold

[2] The parties use the term "restoration services" interchangeably with the phrases "services designed to restore the juvenile to competency," § 19-2.5-704(2)(a), and "services necessary to competency restoration," § 19-2.5-704(2)(b). Accordingly, for purposes of this opinion, we treat such language as equivalent.

that restoration evaluations are included in "services necessary to competency restoration," meaning that the Department may conduct such evaluations without a court order under section 19-2.5-704(2)(c). Accordingly, we conclude that the juvenile court properly accepted and considered the Department's evaluation in finding J.D. to be restored to competency. We therefore discharge the order to show cause.

A. Standard of Review and Rules of Statutory Construction

¶11 Whether the Department has discretion to conduct a restoration evaluation on its own initiative turns on our interpretation of section 19-2.5-704, which sets forth the procedures following an initial finding of competency or incompetency. Statutory interpretation is a question of law, which we review de novo. *People v. Iannicelli*, 2019 CO 80, ¶ 19, 449 P.3d 387, 391. In construing a statute, our principal purpose is to determine and give effect to the intent of the legislature. *Id.* We begin this inquiry by looking to the language of the statute, giving its words and phrases their plain and ordinary meanings. *Id.*

¶12 In doing so, we seek "to effectuate the purpose of the legislative scheme," considering the statute as a whole and "giving consistent, harmonious, and sensible effect to all of its parts." *Id.* at ¶ 20, 449 P.3d at 391. We avoid interpretations that would lead to illogical or absurd results. *Id.*

¶13 Where the statute is clear and unambiguous, we need look no further. *Carrera v. People*, 2019 CO 83, ¶ 18, 449 P.3d 725, 729. We apply the language of the statute as written, and our inquiry ends. *Martinez v. People*, 2020 CO 3, ¶ 9, 455 P.3d 752, 755.

B. Substance of the Juvenile Competency Statute

¶14 Colorado's juvenile competency statute establishes a juvenile-specific definition of incompetency to proceed that focuses on the juvenile's understanding of the legal process and ability to meaningfully consult with their attorney. § 19-2.5-701.5(5), C.R.S. (2024). Juveniles who are found incompetent to proceed may not be tried or sentenced. § 19-2.5-702(2). When the issue of competency is first raised, the court makes a preliminary finding of competence or incompetence. § 19-2.5-703(1), C.R.S. (2024).

¶15 If the court "feels that the information available to it is inadequate for making such a finding," *id.*, it must order a competency evaluation, which includes an opinion as to whether the juvenile is competent or incompetent to proceed, § 19-2.5-703(4)(c). If the juvenile is deemed incompetent, then the competency evaluation must include a recommendation as to whether there is a likelihood that the juvenile may be restored to competency. *Id.* The competency evaluation may also identify appropriate services to accomplish restoration. *Id.*

¶16 Section 19-2.5-704 establishes the procedures applicable after a juvenile's initial competency status has been determined. Section 19-2.5-704(2) applies if the court finds that the juvenile is incompetent but restorable. In that scenario, subsection (2)(a) directs the court to stay the proceedings, order restoration services, and hold regular progress review hearings. § 19-2.5-704(2)(a). Subsection (2)(b) then specifies that the Department is responsible for "the oversight of restoration education and coordination of services necessary to competency restoration." § 19-2.5-704(2)(b). Finally, subsection (2)(c) provides that the court or a party may raise the need for a restoration evaluation of a juvenile's competency. § 19-2.5-704(2)(c). Once the issue is raised, the court must order such evaluation when three factors are met:

> [(1)] there is credible information that the juvenile's circumstances have changed, [(2)] the court cannot fairly determine whether the juvenile has been restored to competency or will be able to be restored to competency in the reasonably foreseeable future, and [(3)] the cause for a restoration evaluation outweighs the negative impact of a restoration evaluation upon the juvenile and any delay that will be caused by a restoration evaluation.

Id.

¶17 The court may, when appropriate, order a hearing to determine whether a juvenile has been restored to competency, or it may make such determination during a routine review hearing. §§ 19-2.5-705 to -706(1), C.R.S. (2024). A

mandatory restoration hearing is triggered, however, when there has been a report filed by a qualified competency evaluator. § 19-2.5-705(1), C.R.S. (2024).

¶18 When the court finds that the juvenile has been restored to competency, it resumes or recommences proceedings. § 19-2.5-706(1), C.R.S. (2024).

C. The Plain Language of Section 19-2.5-704 Authorizes the Department to Perform Competency Evaluations

¶19 The key statute here is section 19-2.5-704, which governs when the court deems a juvenile incompetent but restorable. Specifically, the issue involves the interplay between subsections (2)(b) and (2)(c). Section 19-2.5-704(2)(b) provides that "the department is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration,"[3] while subsection (2)(c) sets forth the framework for court-ordered restoration evaluations.

¶20 The legislature did not define "services necessary to competency restoration" or "restoration services." J.D. argues that these services do not include restoration evaluations, meaning that section 19-2.5-704(2)(b) does not give the Department the authority to conduct such evaluations. Instead, he contends that the Department may only perform a restoration evaluation if a court

[3] Section 19-2.5-704(2)(b) references section 27-60-105, C.R.S. (2024), which similarly provides that the Department is responsible for "the provision of competency restoration education services and coordination of competency restoration services ordered by the court." § 27-60-105(2).

orders it to do so under section 19-2.5-704(2)(c), which requires the court to make several findings before ordering a restoration evaluation and provides for the possibility of a hearing on the subject.

¶21 In support of his contention, J.D. notes that the legislature elected not to define "restoration services," but it *did* define "restoration evaluation." *See* § 19-2.5-701.5(6). Moreover, while the definition of restoration evaluation refers to "court-ordered evaluations," it does not mention restoration services. *See id.* J.D. further notes that the definition of "restoration progress review hearing" *does* reference examples of "restoration to competency education and other applicable services," yet fails to list restoration evaluations. *See* § 19-2.5-701.5(7). He thus contends that the legislature purposefully distinguished between restoration services and restoration evaluations. Finally, J.D. relies on the general statutory scheme for support, positing that restoration services *result* from the findings of the initial court-ordered competency evaluation and do not include the competency evaluation itself.

¶22 J.D.'s argument hinges largely on his claim that nothing in the juvenile competency statute affirmatively provides for the Department to conduct a restoration evaluation beyond the procedure laid out in section 19-2.5-704(2)(c). Yet section 19-2.5-704(2)(b) expressly delegates to the Department "oversight" of restoration education and "coordination" of competency restoration services.

Integral to this mandate is continuous monitoring and adjustment so as to appropriately tailor restoration education and other treatment to the juvenile—in other words, *evaluating* their progress toward restoration. Indeed, we have previously acknowledged that competency evaluations have both diagnostic and treatment purposes. *Zapata v. People*, 2018 CO 82, ¶ 36, 428 P.3d 517, 525.

¶23 Contrary to J.D.'s position, the definition of "[r]estoration evaluation"—"an evaluation conducted by a competency evaluator to determine if the juvenile has become competent to proceed or will be able to be restored to competency in the reasonably foreseeable future," § 19-2.5-701.5(6)—bolsters our reading that restoration services include such evaluations. By J.D.'s own admission, a restoration evaluation is a means by which to assess a juvenile's progress toward competency and to acquire new insights as to the prognosis for restoration. For the Department to effectively coordinate services designed to restore the juvenile to competency—i.e., to provide restoration services—it must be able to monitor

the evolution of the juvenile's competency status. Restoration evaluations, by their very definition, provide a mechanism for doing so.[4]

¶24 In assigning the Department responsibility over restoration services, the legislature intended that the Department be able to independently and continuously evaluate juveniles receiving such services in its care. A juvenile's competency status is not static—as demonstrated in a finding of incompetent but restorable. In fact, the statute explicitly provides for additional evaluation and progress review throughout the course of restoration services. *See* § 19-2.5-704(2)(a) (requiring courts to periodically hold "restoration progress review hearing[s]" following an order for restoration services). For a court to meaningfully review a juvenile's progress toward restoration, it must be informed of the juvenile's current competency status. And for the Department to provide such information, it must be able to evaluate the juvenile's competency.

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[4] As previously discussed, J.D. points to language appearing after the substantive definition of "restoration evaluation" as precluding the Department from completing an evaluation without a court order, arguing that such language provides the only means by which a restoration evaluation can be completed: "'Restoration evaluation' *includes* both court-ordered evaluations by the department and second evaluations." § 19-2.5-701.5(6) (emphasis added). This argument conflates the meaning of "includes" with that of "exclusive." The word "include" is ordinarily used in statutes as a word of extension or enlargement. *Lyman v. Town of Bow Mar*, 533 P.2d 1129, 1133 (Colo. 1975); *Preston v. Dupont*, 35 P.3d 433, 438 (Colo. 2001). We thus disagree that this language limits restoration evaluations to these two circumstances.

¶25 Moreover, section 19-2.5-704(2)(a) requires that the provision of restoration services "occur in a timely manner." To require the Department to seek a court order every time it sought to evaluate a juvenile's progress toward restoration would frustrate this legislative directive.

¶26 Finally, section 19-2.5-705(1) requires the court to order a restoration to competency hearing when a competency evaluator "files a report certifying that the juvenile is competent to proceed." Common sense dictates that any such report would inform the court of the juvenile's current competency status—information gleaned through a restoration evaluation. Yet, the statute does not require a court order before filing such a report, suggesting that the Department may conduct evaluations absent a court order.[5]

¶27 Accordingly, we conclude that the Department's responsibility to provide restoration *services* under section 19-2.5-704(2)(b) necessarily includes the authority to perform restoration *evaluations*.

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[5] J.D. argues that this process would deny juveniles the procedural protections contained in the juvenile competency statute. To this end, we note that including competency evaluations within the meaning of restoration services does not infringe on J.D.'s ability to exercise his statutory rights. When the court receives a restoration evaluation from the Department, juveniles may request a hearing and a second evaluation just as they might when the court specifically orders the restoration evaluation. In fact, a second evaluation could not be requested until a prior evaluation had been completed.

IV. Application

¶28 Here, the Department conducted an evaluation reassessing J.D.'s competency and filed a report with the court opining that he was competent to proceed, which J.D. subsequently moved to strike from the record. The juvenile court found that the Department's statutory obligation to provide restoration services allowed it to reevaluate J.D.'s competency, and it thus denied the motion to strike. The juvenile court then held a hearing and, based on the Department's report, made a finding of competency.

¶29 Because we hold that restoration evaluations are included in "services necessary to competency restoration," section 19-2.5-704(2)(b) permits the Department to conduct such evaluations on its own initiative. Thus, the juvenile court properly denied the motion to strike and properly found that J.D. had been restored to competency.

V. Conclusion

¶30 For the foregoing reasons, we discharge the order to show cause.

JUSTICE BERKENKOTTER concurred in the judgment.

JUSTICE GABRIEL, joined by **JUSTICE HOOD**, dissented.

JUSTICE BERKENKOTTER, concurring in the judgment.

¶31 I agree with the dissent that the Colorado Department of Human Services ("the Department") lacks the authority to conduct a restoration evaluation absent a court order that explicitly allows it to do so. Specifically, I agree that the plain meaning of "restoration evaluation," a term that is defined by section 19-2.5-701.5(6), C.R.S. (2024), does not include "restoration services." Dis. op. ¶ 25. Instead, section 19-2.5-701.5(6) explicitly defines a "[r]estoration evaluation" as a "court-ordered evaluation[]."

¶32 Nonetheless, the majority concludes that the Department is authorized to conduct restoration evaluations because they are helpful in determining a juvenile's progress toward competency. I am not persuaded. The question presented here is one of legal authority, not helpfulness. And it is the court, subject to the important guardrails I describe below—not the Department—that the General Assembly entrusted with this authority.

¶33 I additionally agree with the dissent that the plain meaning of section 19-2.5-704(2)(c), C.R.S. (2024), comports with the overarching scheme of the juvenile competency statutes, which vests the juvenile court and the Department with very different responsibilities. Dis. op. ¶ 31. As we observed in *People in Interest of A.C.*, 2022 CO 49, ¶ 13, 517 P.3d 1228, 1234, these statutes require juvenile judges to actively manage juvenile competency matters. To that

end, as the dissent explains, Dis. op. ¶ 31, it is the court that is authorized to order competency evaluations, § 19-2.5-703(1), C.R.S. (2024); to decide how competency evaluations are to be conducted, § 19-2.5-703(4)(a); to explain what specific restoration services are to be provided, § 19-2.5-704(2)(a); to order restoration evaluations, § 19-2.5-704(2)(c); and to hold restoration to competency hearings, § 19-2.5-705(1), C.R.S. (2024).

¶34 The General Assembly also charged juvenile courts with ensuring the restoration process proceeds apace by holding restoration progress review hearings every thirty-five days if the juvenile is in custody and every ninety days if they are not. § 19-2.5-704(2)(a). Additionally, the court is charged with considering whether the restoration services are being provided in the least restrictive environment possible. *Id.* And, of course, it is the court that ultimately decides if a juvenile has been restored to competency.

¶35 The Department's role when it comes to juvenile competency restoration, while extremely important, is far more limited. As noted, it is tasked with overseeing the restoration education ordered by the court and coordinating the services necessary for competency restoration. § 19-2.5-704(2)(b). Additionally, the Department may be required to file regular reports regarding the provision of those services with the court. These reports are essential to the court's ability to

exercise its oversight responsibilities with respect to juveniles whom the court has determined can be restored to competency.

¶36 When the legislature amended the juvenile competency statute in 2023 to add section 19-2.5-704(2)(c), it made explicit the juvenile court's authority to order restoration evaluations. The legislature did this in response to this court's decision in *People in Interest of B.B.A.M.*, 2019 CO 103, 453 P.3d 1161, and Chief Justice Boatright's concurrence, joined by Justice Hart, in *A.C.*[1] The concurrence urged the legislature to clarify the juvenile competency statutes by making the juvenile court's authority to order restoration evaluations and second evaluations explicit. *A.C.*, ¶¶ 37–38, 517 P.3d at 1238 (Boatright, C.J., specially concurring). Importantly, however, the legislature imposed significant guardrails on that

[1] The legislative history confirms that the General Assembly amended this part of the statute in response to the concurrences in *A.C.* Hearing on H.B. 1012 before the H. Judiciary Comm., 74th Gen. Assemb., 1st Sess. (Jan. 24, 2023). Chief Justice Boatright, joined by Justice Hart, concurred in the majority opinion in *A.C.* but wrote separately to encourage the General Assembly to clarify the statute to "empower trial courts to make fully informed decisions about rehabilitation and, in turn, serve juveniles' best interests." ¶ 38, 517 P.3d at 1238 (Boatright, C.J., specially concurring). Justice Samour concurred in the opinion as well but wrote separately to alert the legislature to his concern that the Department continued to prioritize its own policies over its duties under the juvenile competency statute, particularly given its ongoing insistence, notwithstanding the court's decision in *B.B.A.M.*, ¶ 30, 453 P.3d at 1167–68, that the Department's psychiatrists and psychologists were the only people qualified to opine on whether a juvenile had been restored to competency. *A.C.*, ¶¶ 40–43, 517 P.3d at 1238–39 (Samour, J., specially concurring).

authority: It adopted a balancing test that expressly requires the court to consider the negative impact of any restoration evaluation requested before authorizing the Department to conduct the evaluation. To that end, the court shall order a restoration evaluation only if it is satisfied that

> there is credible information that the juvenile's circumstances have changed, the court cannot fairly determine whether the juvenile has been restored to competency or will be able to be restored to competency in the reasonably foreseeable future, and *the cause for a restoration evaluation outweighs the negative impact of a restoration evaluation upon the juvenile* and any delay that will be caused by a restoration evaluation.

§ 19-2.5-704(2)(c) (emphasis added).

¶37 One problem with the majority opinion is that it fails to account for the General Assembly's explicit direction that the juvenile court consider the potential negative impact of each and every restoration evaluation on each and every juvenile involved in the restoration process. In the Department's and the majority's telling, restoration evaluations are nothing more than a harmless tool to assess a juvenile's progress toward restoration. This view is at odds with the General Assembly's direction. Even more problematic, by emphasizing these evaluations as a tool to assess progress, the Department and the majority suggest that it would be proper for juveniles to be routinely subjected to repeated evaluations without any consideration of their potential negative impact or oversight by the court.

¶38 The majority's view aligns with the Department's sweeping and ill-founded assertion in its amicus brief that "the negative impact of a restoration evaluation is minimal." Brief for the Colorado Department of Human Services as Amicus Curiae Supporting Respondent, at 8, *In Re People in Int. of J.D.*, No. 24SA193 (2024). This statement reflects an alarming disregard, in my view, of the General Assembly's unambiguous direction: The negative impact, if any, of a restoration evaluation must be considered in every instance on a case-by-case basis. The Department's suggestion that the negative impact of a restoration evaluation is always minimal calls into question whether it fully understands the purpose of section 19-2.5-704(2)(c) and illuminates the wisdom of the General Assembly's approach.

¶39 Let me be clear, I have no doubt that restoration evaluations are a helpful tool in many situations, especially in those cases involving juveniles who require medication, rather than a basic civics education, to be restored. *A.C.*, ¶¶ 18–20, 517 P.3d at 1235. And I acknowledge that in the face of an objection, it will take time to allow the parties and the Department to weigh in based on the section 19-2.5-704(2)(c) balancing test. But concerns about efficiency in a vacuum miss the mark: When it comes to restoration evaluations, a court must apply the balancing test, which considers, among other things, the impact of the evaluation *on the juvenile*—not the Department's convenience.

¶40 I do not know how to square the majority's expansive view of the Department's authority, which seems to have no limits, with the very specific limits the General Assembly imposed in section 19-2.5-704(2)(c). It is utterly illogical, in my view, to conclude that the General Assembly charged juvenile courts with applying this balancing test but placed absolutely no guardrails on the Department to protect juveniles from the potential negative impact of repeated evaluations by the Department. Put more simply, I do not read these statutes to suggest that the legislature intended the Department to be the only check on the Department.

¶41 We need not, in my view, consider the legislative history of section 19-2.5-704(2)(c) as its meaning is obvious. A review of that history is, nonetheless, illuminating, given the testimony describing the balancing test in section 19-2.5-704(2)(c) as establishing guardrails for when restoration evaluations may occur. Hearing on H.B. 1012 before the H. Judiciary Comm., 74th Gen. Assemb., 1st Sess. (Jan. 24, 2023) (Mr. James Karbach, legislative liaison for the Office of the State Public Defender, testified that "this law brings clarity in defining [restoration evaluations], explains what they are much better, . . . has a balancing test for when they should be reordered, and allows a party to weigh whether or not harm will come to the child and whether or not enough has changed to really warrant use of that resource.") (Ms. Katie Hecker, an attorney from the Office of

the Child's Representative and a member of the advisory task force that drafted H.B. 1012, testified that first among the bill's benefits was that "as written, it establishes guardrails around when invasive reevaluations can occur.").

¶42 But what about section 19-2.5-704(2)(b), the provision the majority leans on to conclude that the Department has the authority to conduct restoration evaluations without a court order? Notably, it has remained substantively unchanged since 2017. *See* § 19-2-1303(2), C.R.S. (2017) (This statute was relocated in 2021 to section 19-2.5-704(2)(b). *See* Ch. 136, sec. 2, § 19-2.5-704(2)(b), 2021 Colo. Sess. Laws 557, 613.). And while the Department now takes the position in its amicus brief that a restoration evaluation is a restoration service, this is a significant pivot from its position in 2022 in *A.C.* The litigation in *A.C.* arose after the Department asserted that it could not opine about restoration to competency or progress toward such restoration *unless the court ordered* an evaluation to determine if the juvenile, A.C., had been restored to competency. ¶ 4, 517 P.3d at 1232. If section 19-2.5-704(2)(b) allows the Department to conduct restoration evaluations as part of its provision of restoration services, why did it ask the court for an order allowing it to do so? The Department's argument in this case conflicts with the interpretation of section 19-2.5-704(2)(b) that it advanced as recently as 2022.

¶43 This is all to say that I agree with the dissent that the juvenile court erred and that the Department lacks the authority to conduct a restoration evaluation absent a court order that explicitly allows it to do so.

¶44 I write separately to concur in the judgment because I do not believe the appropriate remedy when the Department conducts a restoration evaluation without first obtaining a court order is to automatically strike the restoration evaluation. I share the dissent's concern in the sense that an unauthorized restoration evaluation is a bell that cannot be unrung. Having said that, the balancing test set out in section 19-2.5-704(2)(c) is a benefit conferred by statute; it is not a constitutional right. And to my mind, if a restoration evaluation is mistakenly conducted, and the juvenile objects and asks the court to strike the evaluation, the best recourse is to have the juvenile court apply the balancing test after the fact.

¶45 If the court determines, after hearing from the parties and the Department, that it would—on balance—have allowed the evaluation, the court should deny the motion to strike the evaluation. If the court determines, after hearing from the parties and the Department, that it would not—on balance—have allowed the evaluation, then it should grant the motion to strike. This approach most closely honors the concerns expressed by the General Assembly, tailors the consequences of a mistaken evaluation to the facts of the case, and recognizes that the juvenile

court is in the best position to make this determination. It also allows the juvenile court to consider if the challenged restoration evaluation was a mistake or part of a larger pattern of conduct that requires a different kind of remedy.[2]

¶46 It is true here that J.D. did not have the benefit of the court contemporaneously applying the balancing test set out in section 19-2.5-704(2)(c). And even though, to my way of thinking, the juvenile court erred in its analysis, the evaluation's automatic exclusion would serve no deterrent purpose in this particular case. Thus, I would remand the case to the juvenile court to apply the balancing test in the manner described above. Of course, all this seems fairly

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[2] It is difficult to know what to make of the Department's decision to conduct the restoration evaluation in this case in March 2024. As reflected in the dissent's detailed recitation of events, its decision seemed to flow more from a Comedy of Errors than an intentional flouting of the court's authority. Having said that, some of the Department's testimony before the House Judiciary Committee and Senate Judiciary Committee in connection with H.B. 1012 suggests that the Department still may be thinking far too narrowly about who is qualified to testify regarding a juvenile's restoration to competency.

The Department employee responsible for overseeing juvenile competency evaluations, for instance, testified that "the court sometimes expects our restoration educators to opine on competency, however, our educators are not qualified, nor do they have the credentials to do this." Hearing on H.B. 1012 before the H. Judiciary Comm., 74th Gen. Assemb., 1st Sess. (Jan. 24, 2023). While this may be true in complicated cases and in cases in which medication must be prescribed, this court has made it abundantly clear that a juvenile court may find that a juvenile has been restored to competency based only on evidence from the restoration process, such as a juvenile's scores on tests of their knowledge of the legal system. *A.C.*, ¶ 18, 517 P.3d at 1235. Moreover, it is the juvenile court, not the Department, that ultimately decides who is qualified to testify about whether a juvenile attended classes and can now pass a test.

academic since the restoration evaluation at issue here was completed more than a year ago, and thus, even if it is not stricken, it is decidedly stale.

¶47 For these reasons, even though I agree with the dissent that the Department does not have the authority to conduct restoration evaluations absent a court order, I respectfully concur in the judgment.

JUSTICE GABRIEL, joined by JUSTICE HOOD, dissenting.

¶48 The majority concludes that section 19-2.5-704(2)(c), C.R.S. (2024), which governs the restoration of juvenile defendants to competency, authorizes the Colorado Department of Human Services ("the Department") to perform restoration evaluations of juveniles without first obtaining leave of the court. Maj. op. ¶¶ 2, 10, 29.

¶49 Because I believe that the statute plainly requires a court order before the Department may perform such evaluations, I would conclude that the restoration evaluation that the Department conducted here was unauthorized and should be stricken.

¶50 I would therefore make our rule to show cause absolute. Accordingly, I respectfully dissent.

I. Facts and Procedural History

¶51 The facts that are relevant to my analysis are undisputed.

¶52 The People charged J.D. with a number of counts across several docketed cases. In May 2023, defense counsel filed a motion requesting a competency evaluation, and the court ordered the Department to perform that evaluation.

¶53 Dr. John Edwards subsequently performed the evaluation on behalf of the Department, and his evaluation was filed with the court in July 2023. In this evaluation, Dr. Edwards opined that J.D. was incompetent to proceed but that "it

[was] conceivable that he will be restored to competence within the foreseeable future." The court so found and ordered that the Department (1) oversee and coordinate restoration services for J.D.; and (2) provide to the court, at regular intervals, documentation of the restoration services provided and of J.D.'s participation in those services.

¶54 The People subsequently charged J.D. in two new cases, and in September 2023, the court granted a defense motion to extend to those cases the court's prior finding that J.D. was incompetent to proceed but restorable to competence. At about the same time, the court ordered that (1) J.D. receive inpatient restoration services; (2) the Department continue to oversee and coordinate such services; and (3) the Department provide treatment summaries before each review hearing, which would occur every thirty-five days thereafter as required by section 19-2.5-704(2)(a). The court also appointed a court liaison to assist the court in completing the process relating to J.D.'s competency evaluation and restoration to competency.

¶55 Between December 2023 and February 2024, the court held two review hearings and received three reports from the Department. The Department did not recommend at either of these hearings or in any of its reports that J.D. receive a restoration evaluation, nor did it inform the court that it planned to conduct a restoration evaluation, and the court never ordered one.

¶56 On March 15, 2024, without notice to the court or, apparently, to J.D.'s parents and representatives, Dr. Sean Kelly, on behalf of the Department, performed a restoration evaluation of J.D. and concluded that J.D. had been restored to competency. When the Department filed this evaluation with the court, it inaccurately described the evaluation as "court ordered."

¶57 Dr. Kelly subsequently informed defense counsel that he had been advised to perform the restoration evaluation and that the court's September 2023 order authorized him to do so. After examining that order, however, Dr. Kelly acknowledged to defense counsel that the order, in fact, did *not* authorize him to perform the evaluation, that he had erroneously performed it, *and that his findings should be stricken*.

¶58 Notwithstanding the foregoing, Dr. Kelly later advised defense counsel that he had spoken with leadership at the state hospital at which J.D. was receiving restoration services and that "internal policy" authorized him to conduct an evaluation without obtaining permission from the court, apparently whenever the hospital determined that such an evaluation was necessary. Similarly, the Department's Court Services Unit informed Dr. Kelly that the hospital had determined on its own that a restoration evaluation was warranted under section 19-2.5-704(2)(c) and that the cause for such an evaluation outweighed the negative impact that the evaluation would have had on J.D. and any delay that would be

caused by the evaluation. And Dr. Kelly stated that he had been advised that the Department had provided notice to the court on February 6, 2024 that the Department would perform the evaluation if no party objected.

¶59 In fact, the court liaison had filed the February 6, 2024 report with the court, and that report did not give the court notice of any forthcoming evaluation. To the contrary, the report stated, "If the court desires an evaluation to be completed, an updated order with the evaluation request will need to be submitted to [the Department's Court Services Unit]."

¶60 Shortly after Dr. Kelly filed his restoration evaluation, J.D. filed a motion to strike it. In support of this motion, J.D. argued that under section 19-2.5-704(2)(c), the Department may complete a restoration evaluation only upon receiving a lawful order from the court.

¶61 The court ultimately denied J.D.'s motion, concluding that the Department had the authority to conduct a restoration evaluation without a court order because it was responsible for coordinating restoration services and a restoration evaluation constitutes a service necessary to competency restoration. The court further determined that although section 19-2.5-704(2)(c) provides the court and the parties a means for requiring the Department to conduct a restoration evaluation under certain conditions, that provision does not limit the Department's ability to conduct a restoration evaluation on its own if, during the

course of restoration, it deems such an evaluation to be appropriate. Finally, the court concluded that it would be "unproductive" to strike the competency evaluation conducted by the Department only to order the Department to perform the same evaluation again. In the court's view, doing so would subject J.D. to another evaluation and further delay the case, both of which were contrary to J.D.'s best interests. Thus, the court found that J.D. had been restored to competency and was competent to proceed.

¶62 J.D. then petitioned this court for immediate relief, and we granted a rule to show cause.

II. Analysis

¶63 I begin by addressing the applicable principles of statutory construction and the statutory scheme. I conclude, contrary to the majority, that a restoration evaluation is not a restoration service under the plain meaning of that term and that the Department cannot perform a restoration evaluation without a court order. Having thus perceived error, I proceed to address the remedy, and I conclude that the proper remedy is to strike the unauthorized restoration evaluation.

A. Statutory Construction and the Statutory Scheme

¶64 We review questions of statutory interpretation de novo. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389. Our primary purpose in statutory

interpretation is to ascertain and give effect to the legislature's intent. *Id.* To do so, we first look to the statute's language, giving its words and phrases their plain and ordinary meanings. *Id.* In addition, we read words and phrases in context and construe them in accordance with the rules of grammar and common usage. *Id.*

¶65 We also seek to effectuate the purpose of the legislative scheme. *Id.* at ¶ 38, 442 P.3d at 389. In doing this, we read the statutory scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts. *Id.* We further avoid constructions that would render any statutory words or phrases superfluous or lead to illogical or absurd results. *Id.* If the statute is unambiguous, then we need not look further. *Id.*

¶66 The Colorado Children's Code provides that a juvenile must not be tried or sentenced if the juvenile is incompetent to proceed. § 19-2.5-702(2), C.R.S. (2024). A juvenile is incompetent to proceed when, based on the juvenile's intellectual or developmental disability, mental health disorder, or lack of mental capacity, the juvenile "does not have sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist the attorney in the juvenile's defense or that the juvenile does not have a rational as well as a factual understanding of the proceedings." § 19-2.5-701.5(5), C.R.S. (2024).

¶67 When the issue of a juvenile's competency is raised, the court must make a preliminary finding as to the juvenile's competency, and if the court lacks sufficient information to make this finding, it must order a competency evaluation. § 19-2.5-703(1), C.R.S. (2024). A competency evaluation is "an evaluation conducted by a competency evaluator that meets the requirements described in section 19-2.5-703(4)." § 19-2.5-701.5(1). Section 19-2.5-703(4)(c), in turn, requires that the evaluation include, at a minimum, an opinion regarding whether the juvenile is competent to proceed and, if not, a recommendation as to whether there is a likelihood that the juvenile may be restored to competency in the reasonably foreseeable future. The evaluation must also identify appropriate services necessary to restore the juvenile to competency. *Id.*

¶68 If the court finds that the juvenile is incompetent but restorable to competency, then the court must 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." § 19-2.5-704(2)(a). Upon entry of such an order, the Department is tasked with "oversight of restoration education and coordination of services necessary to competency restoration." § 19-2.5-704(2)(b). In addition, the court

must hold restoration progress review hearings at regular intervals to review the juvenile's progress with those services. § 19-2.5-704(2)(a).

¶69 Most pertinent to the matters before us, section 19-2.5-704(2)(c) provides for the possibility of a restoration evaluation. A restoration evaluation is "an evaluation conducted by a competency evaluator to determine if the juvenile has become competent to proceed or will be able to be restored to competency in the reasonably foreseeable future." § 19-2.5-701.5(6). A restoration evaluation "includes both court-ordered evaluations by the department and second evaluations." *Id.* A "[s]econd evaluation" is an "evaluation in response to a court-ordered competency evaluation or court-ordered restoration evaluation requested by the juvenile that is performed by a competency evaluator and that is not performed by, under the direction of, or paid for by the department." § 19-2.5-701.5(9).

¶70 Section 19-2.5-704(2)(c) delineates the circumstances under which the court may order a restoration evaluation:

> The court or a party may raise, at any time, the need for a restoration evaluation of a juvenile's competency. If raised, *the court shall order* a restoration evaluation only when there is credible information that the juvenile's circumstances have changed, the court cannot fairly determine whether the juvenile has been restored to competency or will be able to be restored to competency in the reasonably foreseeable future, and the cause for a restoration evaluation outweighs the negative impact of a restoration evaluation upon the juvenile and any delay that will be caused by a restoration evaluation.

(Emphasis added.)

¶71 Here, the majority concludes that a restoration evaluation is included within the restoration services provided by the Department and, therefore, the Department properly conducted the evaluation without court approval in this case. Maj. op. ¶¶ 2, 10, 23–29. I respectfully disagree with both points.

¶72 First, in my view, the plain meaning of "restoration services" does not encompass restoration evaluations. Although the term "restoration services" is not expressly defined in the Children's Code, section 19-2.5-704(2)(a) describes such services as "services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation." Consistent with this understanding, the Department recommended that J.D. receive "1:1 sessions that target a basic understanding of the various aspects of the judicial system." Similarly, the Department has cited as additional examples of appropriate restoration services "psychoeducation, psychiatric treatment, medication referral, behavioral therapy, educational assessment, or services to meet [the juvenile's] developmental needs." Each of these is a treatment mechanism provided for the juvenile. None is an evaluation to be provided to the court.

¶73 In contrast, the Children's Code defines both "restoration evaluation" and "competency evaluation" as diagnostic tools. *See* § 19-2.5-701.5(1) ("'Competency evaluation' means an evaluation conducted by a competency evaluator that meets

the requirements described in section 19-2.5-703(4). 'Competency evaluation' includes both court-ordered evaluations performed by the department and second evaluations."); § 19-2.5-701.5(6) ("'Restoration evaluation' means an evaluation conducted by a competency evaluator to determine if the juvenile has become competent to proceed or will be able to be restored to competency in the reasonably foreseeable future. 'Restoration evaluation' includes both court-ordered evaluations by the department and second evaluations.").

¶74 As the foregoing makes clear, a restoration evaluation is different in kind from restoration services. Restoration services are forms of education and treatment that are provided to the juvenile and designed to restore the juvenile to competency. A restoration evaluation, in contrast, is a tool to provide information to the court in connection with the court's determination of competency or incompetency, and if the latter, to identify the services that would best fit the juvenile's needs to restore competency.

¶75 Thus, in my view, a restoration evaluation is not a restoration service under the Children's Code.

¶76 Second, the statutory scheme plainly provides that before the Department conducts a restoration evaluation, it must seek and obtain leave of the court.

¶77 Specifically, section 19-2.5-701.5(6) provides that restoration evaluations include both court-ordered evaluations performed by the Department and second

evaluations that are not performed by, under the direction of, or at the expense of the Department. *See also* § 19-2.5-707, C.R.S. (2024) (referring to the restoration evaluation performed by the Department as "court-ordered"). Nothing in this provision contemplates a restoration evaluation by the Department that is not court ordered.

¶78 The other components of the statutory scheme are in accord and confirm that the legislature vested in the court the authority to direct the competency evaluation and restoration processes, with the Department being involved in these processes only at the court's direction. Thus, the Children's Code authorizes the court to order (1) competency evaluations under section 19-2.5-703(1); (2) how the evaluations are to be conducted under section 19-2.5-703(4)(a); (3) specific restoration services under section 19-2.5-704(2)(a); (4) restoration evaluations under section 19-2.5-704(2)(c); and (5) restoration to competency hearings under section 19-2.5-705(1). In contrast, the Department's duties in this area consist of "the provision of competency restoration education services and coordination of competency restoration services *ordered by the court*." § 27-60-105(2), C.R.S. (2024) (emphasis added).

¶79 Similarly, section 19-2.5-704(2)(a) provides that when a court finds that a juvenile is incompetent but may be restored to competency in the reasonably foreseeable future, "*the court* shall . . . order that the juvenile receive services

designed to restore the juvenile to competency." (Emphasis added.) Furthermore, these services must be "based upon recommendations in the competency evaluation, unless *the court* makes specific findings that the recommended services in the competency evaluation are not justified." *Id.* (emphasis added). In short, the statutory scheme contemplates that *the court* will enumerate the specific services that the Department is to provide; the statute does not delegate authority to the Department to provide those services that it deems appropriate whenever it deems them appropriate.

¶80 Finally, and consistent with all of the foregoing provisions, section 19-2.5-704(2)(c) explicitly provides the circumstances under which the court may order a restoration evaluation. These limitations reveal a clear legislative intent to limit the court's discretion in deciding whether and when to order a restoration evaluation, and I perceive no basis in the statutory text that would allow me to conclude that although the legislature intended to limit the court's discretion, it gave unlimited discretion to the Department to conduct restoration evaluations whenever it sees fit. In my view, had the legislature intended to confer such broad authority, it would have said so directly.

¶81 The Department's own contemporaneous statements in this case fully confirm my view. Thus, when the Department filed Dr. Kelly's evaluation with the court, it described that evaluation, albeit erroneously, as "court ordered." And

when Dr. Kelly realized that the court had not, in fact, ordered his evaluation, he candidly acknowledged that his evaluation was unauthorized and that his findings should be stricken. These statements show that the Department fully understood that a restoration evaluation required court approval.

¶82 I am not persuaded otherwise by the respective contentions of the majority, Maj. op. ¶¶ 24–27, the Department, and the district court that the Department must have the authority to conduct restoration evaluations whenever it deems appropriate in order to fulfill its statutory obligations to coordinate restoration services and report to the court on a juvenile's progress. As both the Children's Code and our case law indicate, the Department has many other tools, short of conducting a restoration evaluation, to carry out its statutory responsibilities.

¶83 For example, the statutory definition of "[r]estoration progress review hearing" contemplates that the court may review "restoration education" and "treatment records" in addition to "any prior competency evaluation reports." § 19-2.5-701.5(7). Indeed, the Department itself describes how a juvenile may "appear to have been restored to competency," a circumstance that suggests that the Department may ascertain a juvenile's progress without conducting a formal restoration evaluation.

¶84 Consistent with the foregoing, section 19-2.5-703(1) provides that a court may make an initial competency determination without ordering a competency

evaluation, and nothing in the Children's Code suggests that a court may not similarly make a restoration determination without a formal evaluation.

¶85 And our decision in *People in Interest of A.C.*, 2022 CO 49, ¶ 18, 517 P.3d 1228, 1235, likewise recognized that in many cases, a court may find that a juvenile has been restored to competency based only on evidence from the restoration process, such as a juvenile's scores on tests of their knowledge of the legal system.

¶86 Each of these authorities belies any assertion that the Department must necessarily have the ability to conduct restoration evaluations whenever it deems such evaluations necessary.

¶87 Nor is a restoration evaluation necessary to allow the Department to report on the juvenile's progress at the statutorily required restoration progress review hearings, as the district court appears to suggest. If a restoration evaluation were the only way that the Department could report on a juvenile's progress at these review hearings, then, in the case of juveniles who are in custody, the Department would need to conduct new restoration evaluations every thirty-five days. The legislature assuredly did not intend to require such frequent restoration evaluations, particularly in light of the limitations that it placed in section 19-2.5-704(2)(c) on the court's discretion to order such evaluations.

¶88 For these reasons, I would conclude that the Department had no authority to conduct the restoration evaluation that it performed in this case. The question thus becomes what the appropriate remedy is. I turn to that question next.

B. The Remedy

¶89 For the reasons set forth above, I believe that J.D. had the right to be free from a restoration evaluation unless the court ordered one after making the specific findings required under section 19-2.5-704(2)(c). The unauthorized evaluation that the Department conducted in this case violated that right, and J.D. suffered harm because he was forced to undergo the evaluation without notice to his family or attorney and without the opportunity to have a caregiver present or to consult with his attorney.

¶90 In my view, because J.D.'s substantive rights were violated, he is entitled to a remedy, and striking the improperly conducted restoration evaluation would afford an appropriate remedy for the statutory violation that occurred here. *See United States v. Warrior*, No. CR. 16-50132-JLV, 2018 WL 5045771, at *4 (D.S.D. Oct. 17, 2018) (concluding that excluding any evidence derived from an improperly performed competency evaluation constituted an appropriate remedy for the violation).

¶91 In so concluding, I am unpersuaded by the district court's view that imposing such a remedy here would be unproductive and against J.D.'s interests

because it would force him to endure a second evaluation. I disagree for three reasons.

¶92 First, striking the restoration evaluation would not inevitably lead to another evaluation at this point in time. As noted above, before ordering another restoration evaluation, the court will need to find that all three requirements in section 19-2.5-704(2)(c) have been satisfied, and I am not prepared to presuppose that result.

¶93 Second, even were the court to find that the circumstances warrant another restoration evaluation, J.D. would have the benefit of the procedural safeguards that were denied him when the Department performed its unauthorized evaluation. On this point, although the Department describes the procedural protections that it contends minimize harm to juveniles during a restoration evaluation, the Department ignores the fact that because of its conduct, J.D. was denied those protections in this case. For example, the Department describes how juveniles have the rights to have their caregiver present with them during the evaluation and to decline to participate in the interview. Because J.D.'s family and attorney did not receive notice that the Department was going to perform a restoration evaluation here, however, J.D. was not able to have a caregiver present. Nor could he consult with his attorney about matters related to that evaluation,

including whether to decline to participate in it. Were the court to order another evaluation, J.D. would be afforded these protections.

¶94 Finally, although the district court concluded that another evaluation would be against J.D.'s best interests, I note that J.D. requested that the unauthorized evaluation be stricken, thus subjecting himself to the possibility of another evaluation. I would not presume to know J.D.'s interests better than he, his caregivers, and his attorneys do.

¶95 For these reasons, I would strike what I believe to be the Department's unauthorized restoration evaluation and place the parties in the positions that they were in before the Department's statutory violation.

III. Conclusion

¶96 Because I believe that (1) the Department may not perform a restoration evaluation of a juvenile absent a valid court order and (2) striking the unauthorized restoration evaluation of J.D. would appropriately remedy the violation of his substantive rights in this case, I would make our rule to show cause absolute.

¶97 Accordingly, I respectfully dissent.