

SUPERIOR COURT OF CALIFORNIA COUNTY OF KINGS



JUVENILE COMPETENCY PROTOCOL

(Effective July 1, 2021)

*This protocol implements Welfare & Institutions Code § 709 as amended by AB 1214 for the Kings County Superior Court, Juvenile Division.

I. Introduction

- A. This protocol shall apply when it appears that there is a doubt as to the competency of a minor to stand trial or to participate in juvenile proceedings in a delinquency case. The protocol is designed to provide an overview of the following: procedures for determining a minor's competency; the evaluation process; the competency hearing process; and the remediation process.
- B. This protocol is intended to supplement the provisions of Welfare & Institutions Code § 709 (see Appendix 1), California Rule of Court 5.645 (see Appendix 2), Kings County Superior Court Local Rule 622 (see Appendix 3), as well as relevant case law. If a conflict arises between this protocol and the statutory or case law, the law controls.

II. Legal Standard for Juvenile Competence

- A. A minor is incompetent to participate in juvenile proceedings if he or she: “lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding; *or* lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.”¹
- B. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.²

III. Consideration of Informal Resolution

- A. Formal competency proceedings in some cases may be contrary either to the goals of protecting public safety or rehabilitating the minor. Where substantial evidence exists that a minor may be incompetent to stand trial, the court may consider resolving the matter without initiating formal competency proceedings.
- B. In determining whether informal resolution is appropriate the court may:
 - 1. Consider the dismissal of the action pursuant to Welf. & Inst. Code § 782.
 - 2. Refer the minor for evaluation under Welf. & Inst. Code § 705 and Penal Code § 4011.6, or, if the minor is not detained, the parents/guardians may seek evaluation under the Lanterman-Petris-Short Act.

¹ Welf. & Inst. Code § 709(a)(2); *Dusky v. United States* (1960) 362 U.S. 304.

² Welf. & Inst. Code § 709(a)(2).

3. Enlist the assistance of probation, defense counsel, or others to:
 - a. Assist the minor or his family to enroll in Medi-Cal and/or SSI.
 - b. Obtain services through the local regional center.
 - c. Obtain services through the Individuals with Disabilities Education Act.
 - d. Obtain services through the Mental Health Services Act, or Title IV-E foster care funding.
 - e. If the minor’s parents are not available to authorize treatment, order that needed medical and mental care be provided pursuant to Welf. and Inst. Code § 739.
 - f. Use the joinder provisions of Welf. and Inst. Code § 727(b)(1), to join as a party an agency that has failed to meet a legal obligation to the child, provided that the juvenile court may not impose duties on the agency beyond those mandated by law.
 - g. Work with the parties to establish a voluntary service plan.
 - h. Make such orders or create such procedures as necessary to protect the rights of the minor and enable the court to function.
4. Resolution of the Case. The court may, with the consent of the parties, conduct progress review hearings and continue the case until the court is satisfied that the situation that brought the minor to the attention of the juvenile court has been addressed, or that the matter cannot be addressed by juvenile court intervention.

At that time, the court shall dismiss the petition under Welf. and Inst. Code § 782 on the grounds that “the interests of justice and the welfare of the minor require such dismissal,” or “the minor is not in need of treatment and rehabilitation.”

IV. Initiation of Formal Competency Proceedings

- A. During the pendency of any juvenile proceeding, counsel for the minor or the court may express a doubt as to the minor’s competency.³
- B. Prior to commencing competency proceedings, the court must first find “substantial evidence” that “raises a doubt as to the minor’s competency.”⁴ The court should conduct an initial inquiry to determine if substantial evidence exists to suspend the underlying juvenile proceedings. The court may receive information from any source. Evidence is substantial if it raises a reasonable doubt concerning the minor’s ability to understand the nature of the juvenile proceedings against him or her, or to assist in his or her defense.⁵

³ Welf. & Inst. Code § 709(a)(3).

⁴ Welf. & Inst. Code § 709(a)(3).

⁵ *People v. Rogers* (2006) 39 Cal.4th 826, 847; *People v. Hayes* (1999) 21 Cal. 4th 1211, 1281-1282.)

- C. The court may allow defense counsel to present his or her opinion regarding the minor's competence *in camera* if the court finds there is reason to believe that the attorney-client privileged information would be inappropriately revealed in open court.⁶
- D. A retroactive determination is not required as the court must only determine the minor's current competency.⁷
- E. If the court finds substantial evidence raises a doubt as to the minor's competency, proceedings shall be suspended.⁸
- F. Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a condition affecting competency, and if so, whether the minor is incompetent as defined by § 709.⁹

V. Appointment of Expert Psychologist/Psychiatrist

- A. Qualifications of Expert. The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, shall be familiar with the competency standards and accepted criteria used in evaluating juvenile competency, shall have received training in conducting juvenile competency evaluations, and shall be familiar with competency remediation for the condition or conditions affecting competence in the case. He or she must also meet the criteria set forth in California Rules of Court, rule 5.645, subdivision (d).¹⁰
- B. Retention of Expert by Parties. The prosecuting attorney or the minor may retain an expert witness to testify at a competency hearing. Said experts must meet the requirements of California Rules of Court, rule 5.645. Any costs incurred because of contracting with expert witnesses in this manner shall be borne by the requesting party or agency. The court does not pay for separately retained defense or prosecution experts. Experts must be disclosed at least five (5) court days prior to the hearing.

A qualified expert retained or appointed by the District Attorney may not perform a competency evaluation on a minor without an order from the juvenile court after petitioning the court for an order pursuant to Code of Civil Procedure § 2016.010 et seq.¹¹

⁶ Cal. Rule of Court 4.130(b)(2) (Adult rule).

⁷ Welf. & Inst. Code § 709(a).

⁸ Welf. & Inst. Code § 709(a)(3).

⁹ Welf. & Inst. Code § 709(b)(1).

¹⁰Welf. & Inst. Code § 709(b)(2) and California Rules of Court, rule 5.645(d)(1)(B).

¹¹Welf. & Inst. Code § 709(b)(6).

C. Evaluation by Court Appointed Expert Psychologist/Psychiatrist.

1. The expert must perform all tasks required by Welf. and Inst. Code § 709(b)(3) and Cal. Rule of Court 5.645.
2. The expert must review all material and conduct all interviews and testing as set forth in the Checklist for Juvenile Competency Evaluations attached hereto as Appendix 3.
3. The expert must be proficient in the language preferred by the minor, or, if that is not feasible, the expert shall employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor. The order appointing the expert should specify whether the minor and/or his or her parents require the services of a language interpreter and if so, what language.

VI. Expert Report

- A. The expert must submit a written report to the court, minor's counsel, the probation department, and the prosecution in compliance with Cal. Rule of Court 5.645. In the written report, the expert shall opine whether the minor has the understanding and whether he or she has a rational and factual basis understanding of the proceedings against him or her. The expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, the expert shall give his or her opinion on whether the minor is likely to attain competence in the foreseeable future, and, if so, make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency.¹²
- B. Setting Date for Receipt of Competency Report. The expert should be afforded at least fifteen (15) court days to complete the evaluation. The 15-day time frame balances the need for speedy resolution of the competency issues, and adequate time to complete an evaluation. In the court's discretion the expert may be given additional time to complete the evaluation. The evaluation must be submitted to the court at least two (2) court days before the hearing.

VII. Receipt of Competence Evaluation Report and Hearing

- A. On the date of receipt of the competency evaluation report, three things can happen:
 1. The parties can stipulate to the findings of the competency evaluation report. If the parties stipulate that the minor is competent and the court accepts this

¹² Welf. & Inst. Code § 709(b)(4).

stipulation, then criminal proceedings are reinstated. If the parties stipulate that the minor is incompetent and the court accepts this stipulation, then criminal proceedings remain suspended. The court need not accept the stipulation. If the court does not accept the stipulation of the parties, the court should set a competency hearing. At the hearing, the parties could still stipulate to the competency evaluation report and the court would make whatever findings the court deems appropriate at the hearing; or

2. The parties can submit the matter for a court determination based on the competency evaluation report. The parties would not take a position and leave it up to the court to decide. If the court finds that the minor is competent, then criminal proceedings are reinstated. If the court finds that the minor is incompetent, then criminal proceedings remain suspended; or
3. The parties can contest the opinion and set the matter for a competency hearing.

B. If the court appointed expert opines that the minor is developmentally disabled, the court shall order the probation department to refer the minor to the Director of the Central Valley Regional Center to further evaluate the minor for eligibility of services.

VIII. Competency Hearing

- A. Timing of Competency Hearing. If the minor is in custody, a competency hearing should be set within fifteen (15) court days from the receipt of competency evaluation report, unless there is good cause to extend the time for a short period to accommodate the availability of expert witnesses or to allow for completion of additional evaluations. If the minor is out of custody, a competency hearing shall be set within forty-five (45) days from the receipt of competency evaluation report date. De facto good cause will exist for a reasonable continuance if an attorney needs further time to prepare for trial, or to secure his or her own expert to render a second opinion.
- B. Trial Judge. There is no requirement that the competency hearing be held before the same judge who declared a doubt about the minor's competence to stand trial.¹³
- C. Presumption of Competence. There is a rebuttable presumption, by a preponderance of the evidence, that the minor is mentally competent.¹⁴ The party asserting the minor's incompetency bears the burden of proof.¹⁵ However, for minors under the age of 14 at the time of the commission of the alleged offense, the court shall first make a determination as

¹³ *People v. Hill* (1967) 62 Cal. 2d 105, 113, fn. 2; *People v. Lawley* (2002) 27 Cal.4th 102, 133-134 (Adult cases).

¹⁴ Welf. & Inst. Code § 709(c).

¹⁵ Welf. & Inst. Code § 709; *In re R.V.* (2015) 691 Cal.4th 181; *Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385.)

to the minor's capacity pursuant to Penal Code § 26.¹⁶ The petitioner bears the burden of rebutting the presumption that a minor under the age of 14 is presumed to be incapable of committing a crime by clear and convincing evidence.¹⁷ At the hearing when proceedings are suspended, the court will inquire whether the parties stipulate to the minor's capacity. If there is no stipulation, a hearing to determine the minor's capacity pursuant to Pen. Code § 26 shall be scheduled pursuant to the statutory timelines for a jurisdictional hearing.

D. Competency Hearing Procedure:

1. Either counsel may offer an opening statement.
2. Defense counsel presents evidence of the minor's incompetence.
3. Petitioner presents evidence of the minor's competence.
4. Each party may offer rebuttal testimony.
5. Defense counsel makes final argument, followed by petitioner.

E. Minor's Statements in Subsequent Proceedings. Neither statements made by a minor to any evaluator, nor any evidence derived from these statements may be used by the petitioner to prove its case-in-chief as to the minor's guilt.¹⁸

F. Express Finding After Competency Hearing. The court must expressly state on the record, either orally or in writing, its determination whether the minor is competent or incompetent to stand trial, as well as the evidence considered and the reasons in support of its finding.¹⁹

IX. Procedure Following Finding of Competency/Incompetency at Competency Hearing

A. If the court finds the minor to be competent, the court shall reinstate the proceedings.

B. If the court finds the minor to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.²⁰

C. If the court finds the minor to be incompetent and the petition contains felony offenses:

1. All offenses shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction, and the case must be dismissed.

¹⁶ Welf. & Inst. Code § 709(c).

¹⁷ *In re Joseph H.* (2015) 237 Cal.App.4th 517, 538.

¹⁸ California Rules of Court 4.130(d)(3); *People v. Jablonski* (2006) 37 Cal.App.4th 774, 802-804; *People v. Arcega* (1982) 32 Cal.3d 504, 520. Statements made during competency examinations may not be used to impeach the minor if he or she testifies at a regular trial. *People v. Pokovich* (2006) 39 Cal.4th 1240, 1246-1253.

¹⁹ California Rules of Court 4.130(e)(4)(B).

²⁰ Welf. & Inst. Code § 709(f).

2. The court may make orders that it deems appropriate for services and rule on motions that do not require the participation of the minor.²¹
3. The court shall refer the minor to services to help attain competency in accordance with Welf. and Inst. Code § 709 (g)(1). Services shall be provided in the least restrictive environment consistent with public safety. The goal should be to assist the improvement of the overall functioning of the minor in addition to answering the narrow issue of competency.

X. Competency Attainment Program Referral

A. Where incompetency has been found and services ordered, the probation officer will collect and provide the local agency with the following information:

1. Competency evaluation.
2. All psychiatric and psychological evaluations.
3. All behavioral health records.
4. Relevant education records, including individualized education plans, if applicable.
5. Available health and medical information (including medications).
6. All delinquency or dependency petitions or notices.
7. All list of all previous referrals to Probation, Human Services Agency and/or Child Protective Services, and reports generated.
8. Name, telephone number and email of probation officer, minor's attorney, and Office of the District Attorney.
9. Location, telephone number, and address of the minor.
10. Names, telephone numbers, addresses, and emails of the parents/guardians for the minor.

B. Initiating Competency Attainment Service. The court may make orders that it deems appropriate for services to "assist the minor in attaining competency" based on the expert report or other relevant testimony. The court shall order a probation officer to initiate services for the attainment of competence by referring the matter to Central Valley Regional Center (if the competency assessment indicates it is related to a development delay) or to Kings County Behavioral Health Services (if competency assessment indicates it is related to another issue). The court may order the responsible person or entity to do specific things, including but not limited to seeking evaluation for eligibility for programs or services, or arranging for those services to be provided.

C. Placement of the Minor. Many minors can successfully participate in restoration services while they are living in their homes, attending their regular schools, and participating in

²¹ Welf. & Inst. Code § 709(e).

their normal activities. Community-based services may assist in the minor's progress in attaining competency. The minor may be placed at home or in a Welf. and Inst. Code § 709 placement with home detention orders.

D. If the Minor has a Developmental Disability.

1. If the minor is developmentally disabled, he or she shall be referred the Central Valley Regional Center for services. For a minor to qualify for these services, the Central Valley Regional Center must examine and accept the minor.
2. If the minor is already a Central Valley Regional Center patient, the assigned probation officer will submit a plan to work collaboratively with the Central Valley Regional Center staff to obtain appropriate community support and services.
3. If the minor is not already a Central Valley Regional Center patient, the assigned probation officer will work with the minor's family to facilitate the completion of a Central Valley Regional Center evaluation within 120 days. If the minor's parent or guardian is unable or unwilling to participate in this process, the court will order the evaluation but designate the minor's attorney or the assigned probation officer to facilitate the arrangements.
4. The assigned probation officer will request that the Central Valley Regional Center provide progress reports at each court hearing for the minor.

XI. Remediation Services Review Hearings

- A. The court shall review remediation services at least every thirty (30) days for minors in custody and every forty-five (45) days for minors out of custody during the remediation period.²²
- B. For minors in custody Kings County Behavioral Health Services shall provide the court with suitable alternatives for the continued delivery of remediation services as part of the court's review of remediation services. The court shall consider appropriate alternatives to juvenile hall confinement and make orders necessary to assist with the delivery of remediation services in an alternate setting.²³
- C. Within six months of the initial finding of incompetency, the court shall hold an evidentiary hearing on whether the minor remediated or is able to be remediated (absent stipulation to the recommendation of the remediation program).²⁴

²² Welf. & Inst. Code § 709(g)(1).

²³ Welf. & Inst. Code § 709(g)(1) (A-G) and § 709(g)(2).

²⁴ See Welf. & Inst. Code § 709(h)(1) for burdens of proof and presumptions.

- D. The court shall consider the factors outlined in Welf. & Inst. Code § 709(h)(5)(A)(B)(C) whenever confinement over six months is being considered.
- E. If the court finds the minor has been remediated, the court shall reinstate the proceedings.²⁵
- F. If the court finds the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor returned to the remediation program. The total remediation period shall not exceed one year.²⁶
- G. If the court finds the minor will not achieve competency within six months, the court shall dismiss the petition. The court shall invite persons and agencies to the dismissal hearing (or other agreed upon forum) concerning the following issues and to discuss any services that may be available to the minor:
1. Possible danger the minor presents to himself/herself or the community.
 2. A short time to bridge the minor's return to the community/home and make sure appropriate mental health services are in place.
 3. Conservatorship, with an assessment that needs to be completed before dismissal.
 4. Civil Commitment, with an assessment that needs to be completed before dismissal.
 5. Educational needs before dismissal.
 6. Referral to other agencies.

XII. Appendices Incorporated

Appendix 1: Cal. Welf. & Inst. Code § 709 (eff. 7/31/2019)

Appendix 2: Cal. Rule of Court 5.645

Appendix 3: Kings County Superior Court Local Rule 622 - Competency

Appendix 4: Checklist for Juvenile Competency Evaluations

²⁵ Welf. & Inst. Code § 709(h)(2).

²⁶ Welf. & Inst. Code § 709(h)(3).

Appendix 1: California Welfare and Institutions Code § 709

[Effective 7/31/2019]

(a) (1) If the court has a doubt that a minor who is subject to any juvenile proceedings is competent, the court shall suspend all proceedings and proceed pursuant to this section.

(2) A minor is incompetent for purposes of this section if the minor lacks sufficient present ability to consult with counsel and assist in preparing the minor's defense with a reasonable degree of rational understanding or lacks a rational as well as factual understanding of the nature of the charges or proceedings against them. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

(3) Notwithstanding paragraph (1), during the pendency of any juvenile proceeding, the court may receive information from any source regarding the minor's ability to understand the proceedings. The minor's counsel or the court may express a doubt as to the minor's competency. If the court finds substantial evidence that raises a doubt as to the minor's competency, the proceedings shall be suspended.

(b) (1) Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the minor is incompetent as defined in paragraph (2) of subdivision (a).

(2) The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, shall be familiar with competency standards and accepted criteria used in evaluating juvenile competency, shall have received training in conducting juvenile competency evaluations, and shall be familiar with competency remediation for the condition or conditions affecting competence in the particular case.

(3) The expert shall personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available. The expert shall consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency. The expert shall gather a developmental history of the minor. If any information is unavailable to the expert, the expert shall note in the report the efforts to obtain that information. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. The expert shall be proficient in the language preferred by the minor, or, if that is not feasible, the expert shall employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with the minor's counsel with a reasonable degree of rational understanding and whether

the minor has a rational and factual understanding of the proceedings against them. The expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, the expert shall give their opinion on whether the minor is likely to attain competency in the foreseeable future, and, if so, make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency.

(4) The Judicial Council, in conjunction with groups or individuals representing judges, defense counsel, district attorneys, chief probation officers, counties, advocates for people with developmental and mental disabilities, experts in special education testing, psychologists and psychiatrists specializing in adolescents, professional associations and accredited bodies for psychologists and psychiatrists, and other interested stakeholders, shall adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles. The Judicial Council shall develop and adopt rules for the implementation of the other requirements in this subdivision.

(5) Statements made to the appointed expert during the minor's competency evaluation and statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of these statements, shall not be used in any other hearing against the minor in either juvenile or adult court.

(6) The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The expert's report and qualifications shall be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing. If disclosure is not made in accordance with this paragraph, the court may make any order necessary to enforce the provisions of this paragraph, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the expert's report upon a showing of good cause, or any other lawful order. If, after disclosure of the report, the opposing party requests a continuance in order to further prepare for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time. This paragraph does not allow a qualified expert retained or appointed by the district attorney to perform a competency evaluation on a minor without an order from the juvenile court after petitioning the court for an order pursuant to the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure).

(7) If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5, or the director's designee, to evaluate the minor. The director of the regional center, or the director's designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency.

(8) An expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(9) This section does not authorize or require determinations regarding the competency of a minor by the director of the regional center or the director's designee.

(c) The question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert that the minor is incompetent. It shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. With respect to a minor under 14 years of age at the time of the commission of the alleged offense, the court shall make a determination as to the minor's capacity pursuant to Section 26 of the Penal Code prior to deciding the issue of competency.

(d) If the court finds the minor to be competent, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction.

(e) If the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed. Prior to a dismissal, the court may make orders that it deems appropriate for services. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, all of the following:

- (1) Motions to dismiss.
- (2) Motions regarding a change in the placement of the minor.
- (3) Detention hearings.
- (4) Demurrers.

(f) If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

(g) (1) Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor attain competency, unless the court finds that competency cannot be achieved within the foreseeable future. The court may also refer the minor to treatment services to assist in remediation that may include, but are not limited to, mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent. Service providers and evaluators shall adhere to the standards stated in this section and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety, as determined by the court. A finding of incompetency alone shall not be the basis for secure confinement. The minor shall be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody prior to the expiration of the total remediation period specified in paragraph (3) of subdivision (h). If the minor is in custody, the county mental health department shall provide the court with suitable alternatives for the continued delivery of remediation services upon release from custody as part of the court's review of remediation services. The court shall consider appropriate alternatives to juvenile hall confinement, including, but not limited to, all of the following:

- (A) Placement through regional centers.
- (B) Short-term residential therapeutic programs.
- (C) Crisis residential programs.
- (D) Civil commitment.
- (E) Foster care, relative placement, or other nonsecure placement.
- (F) Other residential treatment programs.

(2) The court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.

(h) (1) Within six months of the initial receipt of a recommendation by the designated person or entity, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program. If the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent. If the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the minor is competent. The provisions of subdivision (c) shall apply at this stage of the proceedings.

(2) If the court finds that the minor has been remediated, the court shall reinstate the proceedings.

(3) If the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed the limit specified in subparagraph (A) of paragraph (5).

(4) If the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The court may invite persons and agencies with information about the minor, including, but not limited to, the minor and the minor's attorney, the probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. If appropriate, the court shall refer the minor for evaluation pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3 (commencing with Section 6550) of Chapter 2 of Part 2 of Division 6.

(5) (A) Secure confinement shall not extend beyond six months from the finding of incompetence, except as provided in this section. In making that determination, the court shall consider all of the following:

- (i) Where the minor will have the best chance of obtaining competence.

(ii) Whether the placement is the least restrictive setting appropriate for the minor.

(iii) Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate.

(iv) Whether the placement is necessary for the safety of the minor or others.

(B) If the court determines, upon consideration of these factors, that it is in the best interests of the minor and the public's safety for the minor to remain in secure confinement, the court shall state the reasons on the record.

(C) Only in cases where the petition involves an offense listed in subdivision (b) of Section 707 may the court consider whether it is necessary and in the best interests of the minor and the public's safety to order secure confinement of a minor for up to an additional year, not to exceed 18 months from the finding of incompetence.

(i) The presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and any other entity that provides representation for minors, the district attorney, the regional center, if appropriate, and any other participants that the presiding judge shall designate, shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

Appendix 2: California Rule of Court 5.645

Rule 5.645. Mental health or condition of child; competency evaluations

(a) Doubt as to child's competency (§§ 601, 602, 709)

(1) If the court finds that there is substantial evidence regarding a child who is the subject of a petition filed under section 601 or 602 that raises a doubt as to the child's competency as defined in section 709, the court must suspend the proceedings and conduct a hearing regarding the child's competency.

(2) Unless the parties have stipulated to a finding of incompetency the court must appoint an expert to evaluate the child and determine whether the child suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the child is incompetent as defined in section 709(a)(2).

(3) Following the hearing on competency, the court must proceed as directed in section 709.

(b) Expert qualifications

(1) To be appointed as an expert, an individual must be a:

(A) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

(B) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist.

(2) The expert, whether a licensed psychiatrist or psychologist, must:

(A) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(B) Have expertise in the cultural and social characteristics of children and adolescents;

(C) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children and adolescents;

(D) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(E) Be familiar with effective interventions, as well as treatment, training, and programs for the attainment of competency available to children and adolescents;

(F) Be proficient in the language preferred by the child, or if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the child.; and

(G) Be familiar with juvenile competency remediation services available to the child.

(3) Nothing in this rule precludes involvement of clinicians with other professional qualifications from participation as consultants or witnesses or in other capacities relevant to the case.

(c) Interview of child

The expert must attempt to interview the child face-to-face. If an in-person interview is not possible because the child refuses an interview, the expert must try to observe and make direct contact with the child to attempt to gain clinical observations that may inform the expert's opinion regarding the child's competency.

(d) Review of records

(1) The expert must review all the records provided as required by section 709.

(2) The written protocol required under section 709(i) must include a description of the process for obtaining and providing the records to the expert to review, including who will obtain and provide the records to the expert.

(e) Consult with the child's counsel

(1) The expert must consult with the child's counsel as required by section 709. This consultation must include, but is not limited to, asking the child's counsel the following:

(A) If the child's counsel raised the question of competency, why the child's counsel doubts that the child is competent;

(B) What has the child's counsel observed regarding the child's behavior; and

(C) A description of how the child interacts with the child's counsel.

(2) No waiver of the attorney-client privilege will be deemed to have occurred from the child's counsel report of the child's statements to the expert, and all such statements are subject to the protections in (g)(2) of this rule.

(f) Developmental history

The expert must gather a developmental history of the child as required by section 709. This history must be documented in the report and must include the following:

(1) Whether there were complications or drug use during pregnancy that could have caused medical issues for the child;

(2) When the child achieved developmental milestones such as talking, walking, and reading;

(3) Psychosocial factors such as abuse, neglect, or drug exposure;

(4) Adverse childhood experiences, including early disruption in the parent-child relationship;

(5) Mental health services received during childhood and adolescence;

(6) School performance, including an Individualized Education Plan, testing, achievement scores, and retention;

(7) Acculturation issues;

- (8) Biological and neurological factors such as neurological deficits and head trauma; and
- (9) Medical history including significant diagnoses, hospitalizations, or head trauma.
- (g) Written report
 - (1) Any court-appointed expert must examine the child and advise the court on the child's competency to stand trial. The expert's report must be submitted to the court, to the counsel for the child, to the probation department, and to the prosecution. The report must include the following:
 - (A) A statement identifying the court referring the case, the purpose of the evaluation, and the definition of competency in the state of California.
 - (B) A brief statement of the expert's training and previous experience as it relates to evaluating the competence of a child to stand trial.
 - (C) A statement of the procedure used by the expert, including:
 - (i) A list of all sources of information considered by the expert including those required by section 709(b)(3);
 - (ii) A list of all sources of information the expert tried or wanted to obtain but, for reasons described in the report, could not be obtained;
 - (iii) A detailed summary of the attempts made to meet the child face-to-face and a detailed account of any accommodations made to make direct contact with the child; and
 - (iv) All diagnostic and psychological tests administered, if any.
 - (D) A summary of the developmental history of the child as required by this rule.
 - (E) A summary of the evaluation conducted by the expert on the child, including the current diagnosis or diagnoses that meet criteria under the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, when applicable, and a summary of the child's mental or developmental status.
 - (F) A detailed analysis of the competence of the child to stand trial under section 709, including the child's ability or inability to understand the nature of the proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental or developmental impairment.
 - (G) An analysis of whether and how the child's mental or developmental status is related to any deficits in abilities related to competency.
 - (H) If the child has significant deficits in abilities related to competency, an opinion with explanation as to whether treatment is needed to restore or attain competency, the nature of that treatment, its availability, and whether restoration is likely to be accomplished within the statutory time limit.
 - (I) A recommendation, as appropriate, for a placement or type of placement, services, and treatment that would be most appropriate for the child to attain or restore competence. The recommendation must be guided by the principle of section 709 that services must be provided in the least restrictive environment consistent with public safety.

(J) If the expert is of the opinion that a referral to a psychiatrist is appropriate, the expert must inform the court of this opinion and recommend that a psychiatrist examine the child.

(2) Statements made to the appointed expert during the child's competency evaluation and statements made by the child to mental health professionals during the remediation proceedings, and any fruits of these statements, must not be used in any other hearing against the child in either juvenile or adult court.

(Rule 5.645 adopted effective January 1, 2020.)

Appendix 3: Kings County Superior Court Local Rule 622 – Competency

RULE 622 – Competency Protocol

The Juvenile Court will follow the Juvenile Competency Protocol effective July 1, 2021. This protocol is consistent with and supplements the requirements of Welfare and Institutions Code section 709 and California Rules of Court, rule 5.645. In the event of modifications to Welfare and Institutions Code section 709 and California Rules of Court, rule 5.645, the Statute and Rule of Court shall control.

Appendix 4: Checklist for Juvenile Competency Evaluations

The Kings County Juvenile Court requests that the following checklist be used in evaluating a minor for competence and for uniformity in Juvenile Competency Evaluations.

- Minor's Identifying Information: A description of the youth's age, gender identification, grade, living arrangement, and any other relevant information.
- Interview the minor.
- Review all available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, court records, and any other available relevant information.²⁷
- Consult with minor's counsel.
- Consult with probation officer.
- Consult with others who provided information to the court regarding the minor's competence or lack thereof.
- Gather a developmental history of the minor.
- Administer age-appropriate testing specific to the issue of competence unless facts of the case render such testing inappropriate or unnecessary.
- Assess the minor for level of cooperation with the assessment. If the evaluator finds that cooperation is inadequate or significantly uncertain, the evaluator should consider halting the evaluation and forwarding this information to the parties. Issues such as marked discrepancy between previous academic or intellectual testing and present effort, lack of effort, or refusal may be indicators of inadequate cooperation.
- Answer the following questions "yes" or "no" where possible and provide the rationale for the opinion:
 - a. Does the minor have a mental illness?
 - b. Does the minor have a mental disorder?
 - c. Does the minor have a developmental disability?
 - d. Is the minor developmentally immature?
 - e. Is the minor able to assist his/her attorney in the conduct of a defense in a rational manner?
 - f. Does the minor have a rational as well as factual understanding of the nature of the charges or proceedings against him or her?
 - g. Is the minor competent to stand trial?

²⁷ If any information is unavailable to the juvenile competency evaluator, the evaluator shall note in the reports what efforts were made to obtain the information.

- Summary: A concise summary of competency findings should be provided.

If the minor is deemed “not competent,” please also include the following information.

- Is the minor likely to attain competence in the foreseeable future if provided remediation services. Explain the basis for your opinion.
- If the minor is likely to obtain competence, what remediation services will be effective given the minor’s current functioning?
- What specific aspects of the minor’s functioning can realistically be remediated?
- Provide a specific, detailed plan for remediation, including:
 - a. Available resources
 - b. Strategies
 - c. Interventions
 - d. Timelines
 - e. Estimation of likelihood of success