



San Francisco Juvenile Court Competency Protocol Pursuant to Welf. & Inst. Code § 709 (rev. March 2020)

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 ability to participate in juvenile delinquency proceedings; evaluation of the minor; the competency hearing process; the attempt to attain or restore competency; and judicial review.

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), San Francisco Superior Court Local Rule 13.3 (See Appendix 3), as well as relevant case law. If a conflict arises between this protocol and the statute or rule, the statutory and rule provisions control.

C. This protocol is also intended to support Welf. & Inst. Code § 202 and to enable a collaborative approach toward issues of competency. The Court should always consider the rehabilitative needs and best interests of the minor as well as the interests of public safety and protection of the community.

II. Philosophy and Inquiry: 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. The Court may consider dismissal of the action pursuant to Welf. and Inst. Code § 782, in cases where the Court believes the voluntary participation of the minor and family in Community Based Organizations serves the needs of the minor and the public, and where the Court believes the minor to be unlikely to attain competence in the foreseeable future.

III. 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." Welf. and Inst. Code §709(a)(2); *Dusky v. United States* (1960) 362 U.S. 402.

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. Welf. & Inst. Code § 709(a)(2).

IV. Initiation of Competency Proceedings

A. Expression of Doubt Concerning Competence and Initial Process

During the pendency of any juvenile proceeding, counsel for the minor or the Court may express a doubt as to the minor's competency. Welf. and Inst. Code § 709(a)(3).

Prior to commencing competency proceedings, the Court must first find "substantial evidence" that "raises a doubt as to the minor's competency." Welf. and Inst. Code §709(a)(3). 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/her, or to assist in his/her defense. (*People v. Rogers* (2006) 39 Cal.4th 826, 847; *People v. Hayes* (1999) 21 Cal. 4th 1211, 1281-1282).

The Court may allow defense counsel to present his/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. Cal. Rule of Court 4.130(b)(2) (Adult rule).

A retroactive determination is not required as the Court must only determine the minor's current competency. Welf. and Inst. Code § 709(a).

B. Suspension of the Proceedings

If the Court finds substantial evidence raises a doubt as to the minor's competency, proceedings shall be suspended. Welf. & Inst. Code § 709(a)(3).

C. Procedure Upon Suspension of the Proceedings

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 Section 709. Welf. & Inst. Code § 709(b)(1).

D. Appointment of Expert Psychologist

1. Recruitment of Expert Psychologist for Court Alienist Panel

The procedures regarding the recruitment and assignment of Alienist Panel Members, including experts for competency evaluations is described separately in Policies developed by the Court. The Policies are consistent with Welf. and Inst. Code §709(b). Specifically, Alienist Panel members doing competency evaluations for the juvenile Court will have expertise in child and adolescent development, forensic evaluation of juveniles, and be familiar with competency standards and accepted evaluation criteria.

2. Assignment of Psychologist from Court Alienist Panel

The Court shall appoint a psychologist from the Court alienist panel to evaluate the minor. The Court Alienist Panel psychologists are on a rotating schedule and neither Petitioner nor Defense Counsel may choose which Court psychologist is assigned to the minor. The Court psychologist assigned will evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether that condition supports a finding that the minor is either competent or not competent. The psychologist shall have qualifications as required by Welf. & Inst. Code § 709 (Appendix 1) and Cal. Rule of Court 5.645 (Appendix 2). The psychologist is expected to follow this protocol as described below.

3. Scope of Work

The expert must perform all tasks required by Section 709(b)(3) (Appendix 1) and Cal. Rule of Court 5.645 (Appendix 2), including personally interviewing the minor and reviewing all available records provided.

4. Language Proficiency

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, which language.

If the services of a certified or provisionally qualified interpreter are needed, the expert may send an email to interpreterrequests@sftc.org or call the Interpreter's Unit at (415) 551-0654. The Court is responsible for the expenses of the interpreter assisting the court-appointed expert.

E. Separately Retained Experts

Defense Counsel or the District Attorney may retain or seek appointment of their own qualified expert(s) to evaluate the minor and testify at the competency trial. Welf. & Inst. Code § 709(b)(6). Such retained experts should meet the requirements of qualified experts set forth in this protocol.

The Court does not pay for separately retained defense or prosecution experts.

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. Welf. & Inst. Code § 709(b)(6).

If the minor desires to present testimony of a psychiatrist or psychologist of his or her own choosing, the Court may not place conditions on the admission of the testimony, such as the minor's cooperation with the court-appointed psychologist. (*People v. Mayes* (1988) 202 Cal. App. 3d 908.)

The expert's reports and qualifications must 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 as required, the court may make any order necessary, 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.

If, after disclosure of the report, the opposing party requests a continuance, the court shall grant a continuance for a reasonable period of time.

V. Method of Evaluation

A. Standards of Practice and Ethical Issues

As with all evaluations done for the Court, competency evaluations should be consistent with best clinical and ethical practices. Such practices should include the Ethics Code of the American Psychological Association, as well as Alfred Allen & Thomas Grisso's article, Ethical Principles and the Communication of Forensic Mental Health Assessments (24 J. Ethics & Behavior Journal 467 (2014)), describing the guiding principles of fidelity and responsibility, integrity, respecting rights and dignity of persons, justice and fairness.

B. Independent Experts

The psychologists on the Alienist Panel are appointed by the judges as "at will" independent experts. The policies discussed here describe the contents and processes involved in generating evaluations only. The opinion rendered in each evaluation is at the discretion of the individual psychologist.

C. Criteria for Psychological Evaluations

The content and standards described in the policy, "Checklist for Psychological Evaluations" (see Appendix 4) should be followed in Competency Evaluations. The policy defines the qualities of an adequate evaluation, including competency evaluations.

D. Additional Criteria for Competency Evaluations

Competency evaluations, require an additional knowledge of child developmental and learning disabilities, therefore, the following elements must also be considered:

1. **Grisso's Model and the Juvenile Adjudicative Competence Interview (JACI):** The psychologist must follow and include Grisso's Model and JACI which are described in Ivan Kruh & Thomas Grisso, *Evaluation of Juveniles' Competence to Stand Trial* (Oxford University Press 2009). The forms and methods are described in Thomas Grisso, *Evaluating Juveniles' Adjudicative Competence* (Professional Resource Press 2005). This includes the Juvenile Adjudicative Competence Interview. Administering the JACI includes didactic elements to evaluate if minor can learn relevant aspects of the legal processes. Some minors can readily be "taught" the relevant legal information.
2. **Cognitive and Academic Testing:** The psychologist must review all records of previous academic and cognitive testing to assess whether further testing is required. Recent cognitive and academic testing performed within the last year may be adequate. If cognitive and academic testing within the past year is not available, or additional testing is required in the psychologist's judgment, then a complete intellectual and academic achievement battery should be administered as part of the competency evaluation.
3. **Adaptive Functioning Measure:** The psychologist must use a measure of adaptive functioning such as the Vineland II or equivalent.
4. **School and Other Relevant Records:** The psychologist must obtain all accessible school records, including any Individual Education Plans (IEP), school related psychological evaluations, 504 plans, and elementary, middle school, and high school records. The Case-carrying Probation Officer will be responsible for procuring these school records and forwarding them to the court-appointed expert. The court-appointed expert must follow the Checklist in Appendix 4 to gather other relevant records.
5. **Reasonable Assessment Efforts:** The psychologist must make reasonable efforts to complete the assessment. He/she should document parts of the evaluation that were not done and the reasons. Collaborating with Special Programs for Youth clinicians or the public defender may be useful in obtaining cooperation by the minor.
6. **Validity Assessment:** The psychologist must assess the minor for level of cooperation with the assessment. If the psychologist finds significant evidence that cooperation is inadequate or significantly uncertain, the psychologist should consider not proceeding with the evaluation, and forwarding this information to the parties. Issues such as a

marked discrepancy between previous academic or intellectual testing and present effort, lack of effort, or refusal might be indicators of inadequate cooperation.

7. Specific Questions: The psychologist is specifically asked to answer the following questions "yes" or "no" where at all possible, and provide the rationale for the opinion.

- a) Does the minor have a mental disorder?
- b) Does the minor have a developmental disability?
- c) Does the minor have developmental immaturity?
- d) Is the minor able to assist his/her attorney in the conduct of a defense in a rational manner?
- e) Does the minor have a rational as well as factual understanding of the nature of the charges or proceedings against him or her?
- f) Is the minor competent to stand trial?

8. Expert Opinions: The court-appointed 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. Welf. & Inst. Code § 709(b)(4).

E. Inclusion of Remediation Plan

For minors where there is a finding of "not competent," a Remediation Plan is required. The plan should address what specific aspects of the minor's functioning can realistically be remediated, or not, in what time frame, and a specific, detailed plan for remediation. The plan should include available resources, strategies, interventions, and time frames, and an estimation of the likelihood of success. Consultation with AIIM (Assess, Identify Needs, Integrate Information, and Match to Services) Higher about what treatment and referral options are available is required, which includes use of the Competency Attainment Program (CAP).

AIIM Higher should consult with the Alienist Panel Coordinator regarding any clarifications or modifications of remediation plans. A Supplemental Report or letter from the psychologists and/or the Alienist Panel Coordinator may be required to clarify any issues.

F. Recommendations

The Competency Evaluation should include evidence-based recommendations, and not be limited solely to competency issues. The goal should be to assist the improvement of the overall functioning of the minor in addition to answering the narrow issue of competency. The evaluation should include recommendations regarding community/victim safety, and promoting

the minor's prosocial development. Recommendations should be made if appropriate, even when the minor is found “competent.”

VI. Receipt of Competence Evaluation Report and Hearing

A psychologist should be afforded at least 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 psychologist may be given additional time to complete the evaluation. The evaluation must be submitted to the Court at least two court days before the hearing. A Hearing for Receipt of the Competency Evaluation Report will be scheduled at least 17 court days from the appointment of the expert. The Court will review the evaluation prior to the Hearing.

At the Hearing for Receipt of the Competency Evaluation Report:

- 1) The parties can stipulate to the findings of the Competency Evaluation Report. If Petitioner and Defense Counsel stipulate that the minor is competent and the Court accepts this stipulation, then criminal proceedings are reinstated. If Petitioner and Defense Counsel 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 Trial. At the trial, 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 Trial.

| Hearing Type | Schedule |
|------------------------------------|---|
| Receipt of Report | 17 court days from appointment of expert |
| PC 26 for youth under 14 years old | Before the Competency Trial |
| Competency Trial | 15 court days from Receipt of Report Hearing (in-custody); or 45 calendar days from Receipt of Report Hearing (out-of-custody) |

VII. Competency Trial

A. Resolution by Stipulation or Submission: The question of the minor's competence 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.

B. Timing of Trial:

If the minor is in custody, a Competency Trial should be set within 15 court days from the Hearing for 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 Trial shall be set within 45 days from the Hearing for Receipt of Competency Evaluation Report.

De facto good cause would exist for a reasonable continuance if an attorney needs further time to prepare for trial, or to secure his/her own expert to render a second opinion.

C. There is no requirement that the Competency Trial be held before the same judge who declared a doubt about the minor's competence to stand trial. (*People v. Hill* (1967) 62 Cal. 2d 105, 113, fn. 2; *People v. Lawley* (2002) 27 Cal.4th 102, 133-134 [Adult cases].)

D. There is a rebuttable presumption, by a preponderance of the evidence, that the minor is mentally competent. Welf. & Inst. Code § 709(c). The party asserting the Minor's incompetency bears the burden of proof. (Welfare and Institutions Code §709; *In Re R.V.* (2015) 61 Cal. 4th 181; *Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385.)

E. 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 Pen. Code § 26 before deciding the issue of competency. Welf. & Inst. Code § 709(c). 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. *In re Joseph H.* (2015) 237 Cal. App. 4th 517, 538. 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.

F. Trial Procedures

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.

G. If the Minor is found to be Competent

Following a competency trial, where a judge finds a minor to be competent, the Court should place its finding on the record and return the case to the regular juvenile proceedings. “If the court finds the minor to be competent, the court shall reinstate proceedings and proceed commensurate with the court’s jurisdiction.” Welf. and Inst. Code §709(d).

H. If the Minor is found to be Incompetent

If the minor is found to be incompetent by a preponderance of the evidence, the Court should place its finding on the record and 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. Welf. and Inst. Code §709(e).

“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.” Welf. and Inst. Code § 709(g)(1).

After a finding that the minor is incompetent, if competency can be achieved within the foreseeable future, the Court shall set a Six Month Remediation Hearing from the date of receipt of the initial recommendation in addition to regular review hearings.

I. Incompetency and Misdemeanor Petitions

If the minor is found to be incompetent and the petition only contains misdemeanor offenses, the petition shall be dismissed. Welf. & Inst. Code § 709(f).

J. Situations Requiring Second Hearing

When a competency hearing has been held and the minor has been found to be either competent or not competent to stand trial, the Court is not required to hold a second competency hearing unless it is presented with a substantial change of circumstances or with new evidence casting a serious doubt on the validity of the competency finding. (*People v. Lawley* (2002) 27 Cal.4th 102,136; *People v. Kaplan* (2007) 149 Cal.App.4th 372,383-387.) The Court may take its personal observations of the minor into account in the determining whether there has been significant change in the minor’s mental state. (*People v. Jones* (1991) 53 Cal. 3d 1115, 1153.)

VIII. Developmentally Disabled Minors

If the Court appointed expert opines that the minor is developmentally disabled, regardless of whether the minor is found to be competent or not, the Court shall appoint the Director of the Regional Center, or his or her designee, to evaluate the minor. The director or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code §4500 *et. seq.*) and shall provide the Court with a written report informing the Court of his or her determination. This evaluation shall not delay the Court's proceedings for determination of competency. (Welfare and Institutions Code §709(b)(7)).

The attorney for the minor shall prepare the Court Order. The case-carrying Probation Officer shall personally serve the Court Order forthwith on Regional Center and file a proof of service with the Court Clerk.

For purposes of a Regional Center referral, "Developmental Disability" shall be defined based on the description contained in Welfare and Institutions Code Section 4512(a) (See Appendix 5).

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 Lanterman Developmental Disabilities Services Act. In order for a minor to qualify for these services, the Regional Center must examine and accept the client.

Regional Center process:

If the minor is already a Regional Center client, the Case Carrying Probation Officer will submit a plan to work collaboratively with Regional Center staff in order to obtain appropriate community supports and services.

If the minor is not already a Regional Center client, the Case Carrying Probation Officer will work with the minor's family to facilitate the completion of a Regional Center evaluation consistent with the Court Order and within the 120 days allowed through the application process. 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 Case Carrying Probation Officer to facilitate the arrangements.

The Case Carrying Probation Officer will request that the Regional Center provide progress reports at each court hearing for the minor.

IX. Orders affecting the welfare of the minor during suspended proceedings under Welf. and Inst. Code § 709

During this period when proceedings are suspended 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, the following (Welf. and Inst. Code §709(e)):

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

X. Secure Confinement of Youth Found to Lack Competency

Services must be provided in the least restrictive environment consistent with public safety. A finding of incompetency alone shall not be a basis for secure confinement. 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. Welf. & Inst. Code § 709(g)(1).

If the minor is in custody, “the court shall consider appropriate alternatives to juvenile hall confinement including, but not limited to, all of the following: (A) Developmental Centers; (B) Placement through regional centers; (C) Short-term residential therapeutic programs; (D) Crisis residential programs; (E) Civil commitment; (F) Foster care, relative placement, or other nonsecure placement; (G) Other residential treatment programs.” Welf. & Inst. Code § 709(g)(1).

A. Secure confinement is time-limited (Welf. & Inst. Code § 709(h)(5)):

1. Non-707(b) Offenses: Secure confinement shall not extend beyond six months from the finding of incompetence.
2. 707(b) Offenses: Secure confinement shall not exceed eighteen months from the finding of incompetence.

B. Required findings: In ordering the minor detained in secure confinement, the Court must consider all of the following and determine that it is in the best interests of the minor and the public’s safety for the minor to remain in secure confinement:

1. Where the minor will have the best chance of obtaining competence;
2. Whether the placement is the least restrictive setting appropriate for the minor;
3. Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate;
4. Whether the placement is necessary for the safety of the minor or others

“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.” Welf. & Inst. Code § 709(h)(5)(B).

XI. Remediation Period

Although proceedings remain suspended, the attorneys, judge and case carrying juvenile probation officer will continue monitoring the case and providing services to the minor during the remediation period. The Court will order the minor to participate in the Competency Attainment Program or any other program necessary to assist the minor in attaining competency.

A. Time Limit

The total remediation period shall not exceed one year from the finding of incompetency. Welf. & Inst. Code § 709(h)(3). If the minor's whereabouts become unknown and a warrant is issued, the remediation period shall be suspended and time is tolled until the minor returns to court.

B. Remediation Services

“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.” Welf. and Inst. Code §709(g)(1).

Services must be provided in the least restrictive environment consistent with public safety. A finding of incompetency alone shall not be a basis for secure confinement. Welf. & Inst. Code § 709(g)(1).

C. Competency Attainment Program (CAP)

CAP is a 12 week competency attainment program for legal remediation only which is administered by San Francisco's Children for Youth and Families System of Care. Once participation in CAP is ordered, the case-carrying probation officer will contact the Clinical Director of AIIM Higher who will in turn, assign a Competency Attainment Counselor to the minor. AIIM Higher, shall be responsible for providing the attainment services as well as linking and coordinating the necessary behavioral health services. If the minor is incompetent and not appropriate for participation in attainment of competence services, refer below to Section XI.

D. San Francisco County Competency Attainment Program Process

The AIIM Higher Clinical Director will supervise the Competency Attainment Counselor and manage the program. The Competency Attainment Program Counselor will work directly with the minor in an attempt to attain competency and report back to the Court at every review hearing.

Subject to the Probation Supervisor, the Case-Carrying Probation Officer will be responsible for coordinating treatment services and submitting reports to the Court.

E. Competency Attainment Program Referral

The Case-Carrying Probation Officer will collect and provide AIIM Higher with the following information:

1. Competency Evaluation;
2. All psychiatric and psychological evaluations;
3. All behavioral health records;
4. Relevant educational records, including Individualized Education Plans, if applicable;
5. Available health and medical information (including medication);
6. All Delinquency and Dependency petitions or notices;
7. A list of all previous referrals to Probation, Human Services Agency and/or Child Protective Services, and reports generated;
8. Name, phone number and email of the Probation Officer, Defense Attorney and Assistant District Attorney;
9. Location, phone number and address of the minor; and
10. Names, phone numbers, addresses and emails for the parents or guardians for the minor.

F. Initiating the Competency Attainment Program (CAP)

The AIIM Higher Clinical Director shall assign the minor's competency attainment to a Competency Attainment Counselor. The Clinical Director shall provide all of the above materials received from the Probation Officer to the Competency Attainment Counselor and shall monitor the case.

If the youth is placed outside of the County of San Francisco, the Clinical Director or Competency Attainment Counselor shall inform the Court whether Competency Attainment Program (CAP) services can be provided to the youth in-person. If CAP services are not available, the Clinical Director or Competency Attainment Counselor must identify case-specific alternatives for remediation services, including whether services are available through another agency, and provide a report to the Court.

G. Implementing the Competency Attainment Program

Typically, the Competency Attainment Counselor will meet the minor one time a week for a total of 60 minutes. If necessary, the Competency Attainment Counselor may meet with the minor multiple times a week to make up a 60-minute session.

The Counselor will travel to wherever the minor is located as resources allow. Preferably, the services will be administered in the minor's home but may also take place at school or elsewhere in the community.

The Competency Attainment Counselor will provide inter-active, multimedia presentations that include specifically tailored one-on-one verbal interaction, and printed material when appropriate to accommodate the skill-set of the minor. The Counselor will test the minor periodically to

determine whether the minor has attained competency. The Competency Attainment Counselor should report immediately to the Clinical Director if the minor consistently:

1. Has a rational as well as a factual understanding of the proceedings against the minor:
and
2. Has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding; or
3. Is unable to attain competency in the reasonable future.

H. Qualifications of Competency Attainment Counselors

Competency Attainment Counselors must adhere to the standards contained in Welf. & Inst. Code § 709(g)(1). In addition, Competency Attainment Counselors qualified under these guidelines may provide restoration services only under the supervision of a licensed psychiatrist, psychologist, social worker, professional counselor, or marriage and family therapist.

Competency Attainment Counselors must have a minimum of two years of post-baccalaureate experience providing mental health-related services to children and/or adolescents under the supervision of a licensed mental health services provider.

Competency Attainment Counselors must demonstrate the capacity to independently teach juveniles who may have emotional disorders, intellectual disabilities, and/or developmental disabilities.

I. 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 their normal activities. Community-based wraparound services may assist in the minor's progress in attaining competency. The minor may be placed at home or in a 709 placement with Home Detention Orders. The minor may also be placed, if eligible and appropriate, by other agencies such as the school district, mental health department, or Human Services Agency.

The Court has the discretion to place a minor in an out of home placement or in custody. The Court should take into consideration the following factors:

- Where will the minor have the best chance of obtaining competence?
- What are the needs of the minor?
- How serious is the underlying offense(s)?
- Is there a need to protect the community?
- How has the minor done while released on home detention orders?
- Is the minor actively engaging in CAP while on home detention?

The restoration program may be administered at the minor's home, the Juvenile Justice Center, in the community or a community placement. Restoration services may be provided to a minor in a psychiatric hospital only if the minor meets civil commitment criteria, or if the minor was already in a psychiatric hospital at the time competency restoration services were ordered. If the minor is in a psychiatric hospital, consideration should be given to civil commitment.

XII. Court Hearings After a Finding of Incompetence

| Hearing Type | Schedule |
|----------------------------------|---|
| Remediation Review Hearing | Every 30 calendar days (in custody), or Every 45 calendar days (out-of-custody) |
| Six Month Remediation Hearing | Six months from initial receipt of recommendation |
| Twelve Month Remediation Hearing | Following the expiration of the one year remediation period (calculated from the finding of incompetency) |

A. Remediation Review Hearings

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. Welf. & Inst. Code § 709(g). As a general rule, the minor should attend all review hearings.

Remediation Review Hearings shall be heard in the Court where the minor was found to be incompetent, unless the minor is referred and accepted into the Wellness Court. Both the Case Carrying Probation Officer and Competency Attainment Counselor shall submit written reports for the hearing.

The Case Carrying Probation Officer is responsible for gathering collateral information (such as school, mental health treatment and home detention updates), writing and distributing reports in advance of each Progress Report Hearing. If the minor is in custody in juvenile hall, the Probation Officer's report shall include information about the minor's behavior and well-being in custody, and the effect of detention upon the minor.

The Competency Attainment Counselor is responsible for providing a report as it relates to participation and progress in the Competency Attainment Program and providing the report to the Court for each Progress Report Hearing. The Case Carrying Probation Officer shall notify the Competency Attainment Counselor of the next Court date. The report will indicate the degree of progress (no progress, some progress, or ready to be re-evaluated) before each Court date. The report will be provided three court days prior to each Progress Report Hearing.

The county mental health department must provide the Court with suitable alternatives for the continued delivery of remediation services upon release from custody if the petition is not dismissed. The Court must consider appropriate alternatives to juvenile hall confinement, including but not limited to developmental centers, placement through regional centers, short-term residential therapeutic programs, crisis residential programs, civil commitment, foster care, relative placement, other nonsecure placement, or other residential treatment programs. Welf. & Inst. Code § 709(g)(1).

The Case Carrying Probation Officer and the Competency Attainment Counselor may recommend changing any aspect of the competency attainment services being offered to the minor. This may include the following:

- Facilitating coordination and cooperation among government agencies (Welfare and Institutions Code §727(a));
- Joining parties to ensure prompt evaluations and placements (Welfare and Institutions Code §727).

At any time during the Competency Attainment Program, when the Competency Attainment Counselor believes the minor's competence has been obtained or restored, the Competency Attainment Counselor will note this in the Progress Report. The Probation Officer will recommend a re-evaluation to determine competency.

If the Court finds that the minor has attained competence, the juvenile delinquency proceedings shall be reinstated and the case shall be resumed at the stage at which they were suspended.

Multi-system and agency coordination is encouraged. If it appears that a youth may not be restored to competency, the Case Carrying Probation Officer shall refer the case to M.A.S.T. for a case review prior to the Six Month Remediation Hearing. After the case review, the Case Carrying Probation Officer shall submit a written report with any recommendations or plan by M.A.S.T. at the next Remediation Review Hearing.

B. Six Month Remediation Hearing

Within six months of the initial receipt of the recommendation, 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. Welf. & Inst. Code § 709(h)(1).

If the minor disputes the recommendation that the minor has attained competency, the minor has the burden by a preponderance of the evidence to prove that he or she remains incompetent.

If the District Attorney disputes the recommendation that the minor is unable to be remediated, the District Attorney has the burden by a preponderance of the evidence to prove that the minor is remediable.

At the Six Month Remediation Hearing, the Court must find one of the following:

1. If the Court finds that the minor has been remediated, the Court shall reinstate the proceedings.
2. 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. Remediation Review Hearings will continue as described and the Court will set a Twelve Month Remediation Hearing one year from the finding of incompetence.
3. If the Court finds that the minor will not achieve competency within six months, the Court shall dismiss the petition.

C. Twelve Month Remediation Hearing

If the Court continued the remediation period at the Six Month Remediation Hearing, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed the limits described in Section 709. Welf. & Inst. Code § 709(h)(3).

The Twelve Month Remediation Hearing shall be conducted in the same way as the Six Month Remediation Hearing. However, if the Court finds that the minor has not been remediated, the Court shall dismiss the petition.

XIII: Minor's Statements in Subsequent Proceedings

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. Welf. & Inst. Code § 709(b)(5)

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. (Cal. Rule 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.)

XIV. New Offenses

Where the minor is alleged to have committed a new offense, suspension of criminal proceedings shall not serve as a bar to any further filings involving new offenses or home detention violations.

XV. Appendices Incorporated

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

Appendix 2: Cal. Rule of Court 5.645

Appendix 3: San Francisco Superior Court Local Rule 13.3 - Competency

Appendix 4: Checklist for Psychological Evaluations (rev. 5/31/17)

Appendix 5: California Welfare and Institutions Code § 4512(a)

//END OF PROTOCOL//

Appendix 1: California Welfare and Institutions Code § 709 (2020)

[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 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 (2020)

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: San Francisco Superior Court Rule 13.3 - Competency

[pending amendment]

Appendix 4: Checklist for Psychological Evaluations (rev. 5/31/17)

Outline of reports: The Court has requested that the following checklist be used as an outline for reports, so that the structure of evaluations is uniform.

- Reason for evaluation: A statement regarding the reason for the evaluation, including referring to the original judge's order.
- Identifying Information: A description of the youth's age, gender identification, grade, living arrangement, and any other relevant information.
- Review of records: From probation, social services, public defender, district attorney, police, schools, and other sources with annotation of important information. If records are not present, or provide inadequate information, the psychologist should contact the probation officer for additional information. Examples where additional information might be requested of the probation officers might be a youth who has an IEP, but no copies of the IEP, or prior testing, including elementary school records, are available.
- Interview with probation officer and/or 300 social worker: regarding information and relevant records.
- Interview with defense attorney: regarding information and relevant records.
- Interview with parents: regarding referral issues, family relations, peer and delinquent influences, school adjustment, substance abuse, violence trauma, mental health history, aggression problems, prosocial activities, DSM-5 symptoms, criminogenic factors, developmental history, pre-birth history, marital issues, pregnancy history, family medical history, maternal and paternal substance abuse history, perinatal history and birth weight, early growth, developmental milestones, school behavioral and learning history, special education history, functioning at home, and any other relevant information about the minor.
- Interview with youth: regarding referral issues, family relations, peer and delinquent influences, school, substance abuse, violence, trauma, aggression problems, mental health history, prosocial activities, DSM-5 symptoms, criminogenic factors.
- Mental Status Examination: and behavioral observations.
- Use of cognitive and academic achievement batteries for all assessments so that youth with cognitive challenges and learning disabilities can be identified. Routinely this would be deferred if both complete academic and cognitive testing have been done within the past year, and are deemed sufficient by the psychologist.
- Use of objective assessment instruments to assess personality and temperamental characteristics, and/or DSM-5 type psychiatric symptoms.

- DSM 5 diagnosis: with description of rationale for diagnoses, based on history, records, collateral sources, interview with youth, mental status exam, and test results. Put limitations, rule outs, and cautions.
- Summary: A concise summary of evaluation findings should be provided.
- Recommendations should be linked to assessment findings and based on research regarding effective treatments for specific problems identified for the youth. Consideration should be given whether resources for recommendations are reasonably available.
- Time limits and qualifications of findings: for example, this assessment should not be used for more than a year. Also, qualifications or uncertainty in assessing certain diagnostic issues or risk factors, malingering, risk of assault, and other concerns, should be noted.
- Competency criteria: For competency evaluations only, the additional criteria will be specified in the document "Policy for Competency Evaluations."
- Billing: This should not be included in the report itself. A schedule is used for determining billing. There is a flat fee for certain types of evaluations. Evaluations that require less than the usual amount of time, should be prorated and the invoice should reflect less than the full charge. This may be the case in the youth who is reevaluated and does not require academic or cognitive testing. As independent experts, psychologists need to make their own decisions in this regard. Likewise, if there are extraordinary circumstances, such as a thousand pages of records to review, then a request for increasing the charge based on the additional work with the detailed rationale for the increase should be submitted to the relevant judge by email for approval, but the approval should be obtained before additional work is initiated.

Appendix 5: California Welfare and Institutions Code §4512(a) (2020)

As used in this division:

(a) “Developmental disability” means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.