

Napa County Juvenile Court's Protocol Regarding Juvenile Competency to Stand Trial

Assembly Bill 2212 was signed into law on September 30, 2010. It added §709 to the Welfare and Institutions Code¹ and sets forth the basic procedures to follow when minor's counsel or the court expresses a doubt as to a juvenile's competency to stand trial (JCST). Under section §709, a minor is incompetent to stand trial "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."

The following protocol implements §709 for the Napa County Juvenile Court. We will begin using this policy in the Napa County Juvenile Court on February 1, 2015. The court's justice partners and members of the bar will be notified of any subsequent modifications to the policy.

A. Informal Resolution

Pursuing formal JCST proceedings in low-level cases may be contrary to efforts to rehabilitate minors and protect public safety. Formal proceedings are also costly and time consuming. If a doubt is raised in these cases and there is substantial evidence that a minor is incompetent to stand trial, the court and counsel should first explore resolving the matter without initiating formal competency proceedings.²

If the court believes that the voluntary participation of a minor and family in community based programs will serve the needs of the minor and the public, then the court should consider dismissal under §782. The court should also consider supervising the case for a period of time to assure the minor's voluntary participation in community-based programs.

If the court believes that informal probation supervision would be helpful to keep a minor from re-offending, it may consider granting §654.2 supervision. This option should only be considered for minors who are eligible for §654.2 supervision and are capable of consenting to the terms of §654.2 supervision.

B. Formal JCST Proceedings

During the pendency of juvenile proceedings, minor's counsel or the court may express a doubt as to a minor's competency. If the court finds substantial evidence raises a doubt as to the minor's competency, the court shall suspend proceedings. If the court suspends proceedings, it shall appoint an expert from the court's juvenile competency alienist's list, who meets the requirements of section §709, to perform a JCST evaluation.

¹ All statutory references are to the California Welfare and Institutions Code unless otherwise noted.

² The minor may, for example, be a Regional Center client or have a documented history of mental illness.

When the court orders a JCST evaluation, minor's counsel shall immediately notify the alienist of the appointment. Minor's counsel and the district attorney shall send to the alienist any relevant information, including special education records and recent psychological testing reports, they believe will be of assistance in making a JCST determination.

If the minor is detained, the evaluation will take place at Napa County Juvenile Hall. For detained minors, the court shall set a JCST hearing within 15 calendar days from the suspension of proceedings.

If the minor is not detained, the alienist will schedule the appointment with the minor's parent or guardian. For non-detained minors, the court shall set a JCST hearing within 30 calendar days from the suspension of proceedings.

No statements, admissions, or confessions made by, or incriminating information obtained from, a minor in the course of a JCST evaluation shall be admitted into evidence or used against the minor in any juvenile, criminal, or civil proceeding.

The alienist will conduct the evaluation using tests and/or methods that are specifically designed for, or relevant to, the assessment of the functional competency of juveniles.³ The alienist may choose to interview minor's caretakers or other relevant persons. If the alienist determines that more extensive testing is required than that provided for in a standard JCST evaluation, then the report should state the reasons for the additional testing, whether the alienist is qualified to administer the additional tests and the cost for the proposed tests.

The alienist shall submit a report, and three copies to the court within 2 days prior to the date set for the JCST hearing. The JCST report shall include the alienist's opinion as to whether:

1. Minor has a mental disorder.
2. Minor has a developmental disability.
3. Minor lacks, due to a mental disorder, developmental disability, immaturity or other condition, sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding.
4. Minor lacks, due to a mental disorder, developmental disability, immaturity or other condition, a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.
5. There is a substantial probability that the minor will attain competency in the foreseeable future with appropriate mental health and education services.

³ It is the preference of the court that the Juvenile Adjudicative Competence Interview be used whenever feasible as this is a thorough juvenile CST guide that focuses on minor's functional competency.

C. The JCST Hearing

At the JCST hearing the court shall receive the alienist's report, and any other relevant evidence, to determine whether minor is competent. The district attorney or minor's counsel may request, with good cause, another JCST evaluation and a full evidentiary hearing.⁴ If such a request is made, the JCST hearing shall be continued for not longer than 15 calendar days for detained minors, or 30 calendar days for non-detained minors. The party raising the issue of competency shall have the burden of proving the minor is incompetent to stand trial by a preponderance of the evidence. If the court finds minor incompetent to stand trial, the court shall determine whether minor is likely to attain competency with appropriate mental health and education services.

1) Minor Found Competent to Stand Trial

If the court finds minor competent, it shall reinstate the delinquency proceedings and proceed with the case. If the court or counsel believe that minor would benefit from a referral to the Department of Mental Health or Regional Center, it shall order minor's counsel or Probation to request an assessment .

2) Minor Found Incompetent to Stand Trial

If the court finds minor IST, 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. If the minor is detained, the court shall set an IST Planning Hearing within 15 calendar or court? days. If the minor is released, the court shall set an Incompetency Planning Hearing within 30 calendar days.

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:

1. Motions to dismiss
2. Motions by the defense regarding a change in the placement of the minor
3. Detention hearings
4. Demurrers
5. Motions to join or subpoena governmental agencies that have an obligation to provide services to minor

The court shall order the County's Department of Mental Health and Probation to both evaluate minor and submit a joint Incompetency Planning Report to the court. The report should specify whether minor is a Regional Center client (or has been referred to Regional Center for an eligibility assessment), whether minor is receiving special education services and whether minor is receiving services from the Department of Mental Health. The joint report should further address what mental health and education

⁴ This protocol does not limit the district attorney or the minor's counsel's ability to obtain additional JCST evaluations without court funds.

services are available to help minor attain competency. The report should also address whether minor's needs can best be met safely in the home, community or an open residential placement. If the Department of Mental Health and Probation conclude that minor's needs can only be met safely in a locked facility, the report should also assess whether minor could receive services or placement through the Lanterman-Petris-Short Act (LPS Act).⁵

D. Incompetency Planning Hearing

At the Incompetency Planning Hearing, the court should first consider whether there is a substantial probability that the minor will attain competency in the foreseeable future.

1) If Minor is Likely to Attain Competency in the Foreseeable Future

If the court finds that there is a substantial probability that the minor will attain competency in the foreseeable future, the court shall order Probation and the Department of Mental Health to begin immediate coordination of mental health and/or education services to help minor attain competency. If the finding of incompetency was based upon minor having a developmental disability, the court shall also refer the minor to Regional Center for assessment and services.

Providing services to attain competency may include the coordination of services from DMH, Regional Center, education agencies and any other entity that has an obligation to provide services to the minor. At the recommendation of Probation and/or the request of counsel, the court should consider joining such entities in the court proceeding pursuant to §727(a) for adjudged wards. If the minor has not been adjudged a ward, the court may issue subpoenas for persons or agencies who have an obligation to provide services to the minor.

The case shall be set for an Attainment of Competency Hearing within sixty calendar days from the Incompetency Planning hearing.

Pending attainment of competency, minor shall be held in the least restrictive setting and may only be detained if it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another, or the minor is likely to flee to avoid the jurisdiction of the court. (§636) The court shall review the appropriateness of minor's detention at every hearing after a finding of incompetency to stand trial.

2) If Minor is Not Likely to Attain Competency in the Foreseeable Future

If the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future, the court shall consider dismissal of the petition. Prior to dismissal of a petition for a detained minor whose release from custody raises significant concerns for public safety, the court should explore the possible need for and

⁵ §5000, et seq. (specifically §5150, et seq. and 5350, et seq.)

propriety of a civil commitment, voluntary or otherwise. In that regard, the court may order a mental health evaluation pursuant to §705 for wards, or pursuant to §705 and Penal Code §4011.6 for non-wards. (See also California Rules of Court, Rule 5.645.)

If the Department of Mental Health determines that the minor would benefit from a conservatorship under the LPS Act, it shall file an Application for Mental Health Conservatorship Investigation with the Public Guardian's Office for the purpose of initiating LPS Act proceedings. If the court has retained jurisdiction pending LPS proceedings it shall order status review hearings no less than every 30 calendar days to monitor the provision of Regional Center and/or mental health services. The Regional Center and/or the Department of Mental Health shall submit an update at each status review hearing. Minor may receive mental health services while the LPS Act proceedings are pending.

E. Attainment of Competency Hearing

At the Attainment Hearing, the Department of Mental Health and Probation shall submit a joint report that documents the specific services provided to the minor, whether such services have been successful in helping minor to attain competency, and, if not, whether further efforts are likely to succeed. Minor's counsel or the district attorney may submit any additional evidence to help the court make a determination as to whether minor has attained competency or whether further efforts are likely to succeed. Minor's counsel or the district attorney may request a further JCST evaluation or a full evidentiary hearing as detailed in section B.

If the court believes that minor has attained competency, it shall reinstate juvenile proceedings. If the court finds that minor is not likely to attain competency in the foreseeable future, it shall dismiss the petition and, if appropriate, refer the matter for proceedings under the LPS Act. (§705) If the court finds that further efforts at attainment would be successful, it may order these services be provided for another period of sixty days with a further Attainment Hearing set at that time.

The minor may not be held in a juvenile hall to participate in attainment services for more than 180 days.