



Chambers of
JOANNE MOTOIKE
PRESIDING JUDGE OF JUVENILE COURT

Superior Court of California County of Orange

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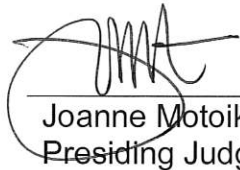
Administrative Order re: Competency Protocol (WIC §709)
Administrative Order No. 19/01
December 24, 2019

IT IS ORDERED:

1. The Competency Protocol, attached hereto, is revised and adopted by the Orange County Juvenile Court.
2. All parties, attorneys, agencies and organizations appearing before the Orange County Juvenile Court shall comply with the provisions of the Competency Protocol.
3. In the event the provisions of the Competency Protocol conflict with the Welfare and Institutions Code or California Rules of Court, the statutory or rule provisions shall control.

This Administrative Order is effective December 24, 2019. This Order shall continue unless modified or rescinded by a later Administrative Order. The Juvenile Presiding Judge will review substantive proposed revisions and determine if stakeholder comment is required. Non-substantial revisions to the protocol may be approved by the Juvenile Presiding Judge without seeking comment from stakeholders.

Date: 12.24.19



Joanne Motoike
Presiding Judge of Juvenile Court

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
JUVENILE COURT**

TITLE: COMPETENCY PROTOCOL (WIC § 709)

A. Introduction:

1. The following protocol applies when it appears that there is a doubt as to the competency of a youth to stand trial or participate in Juvenile proceedings in a juvenile justice case.
2. This protocol is intended to supplement the provisions of Welfare and Institutions Code, hereinafter referred to as ("WIC"), §709, and the California Rules of Court, hereinafter referred to as ("CRC"), Rule 5.645(d). In the event that a conflict arises between this order and the statute or rule, the statutory and rule provisions control.

B. Informal Resolution:

1. Pursuant to WIC §680, when it appears that there may be a doubt as to the competency of the youth, the parties are encouraged to seek an informal resolution of the matter by way of stipulation or agreement.

C. Formal Declaration of Doubt:

1. Pursuant to WIC §709, when youth's counsel formally declares a doubt as to the competency of the youth, the Court will determine whether substantial evidence raises a doubt as to the youth's competence. Upon the Court's finding of substantial evidence of a doubt as to the youth's competency proceedings as to the youth shall be suspended.
 - a) Pursuant to CRC Rule 5.645(d)(1), evidence is substantial if it raises a reasonable doubt about the child's competence to stand trial.
2. When the Court finds substantial evidence of a doubt as to the competency of the youth, the Court shall set the matter for a Competency Determination Hearing.
 - a) If the youth is in custody, the Competency Determination Hearing shall be set within fifteen (15) court days from the declaration of doubt.
 - b) If the youth is out of custody, the Competency Determination Hearing shall be set within thirty (30) calendar days from the declaration of doubt.
 - c) Upon a showing of good cause, the Court may extend the date for the setting of the Competency Determination Hearing or continue the hearing date.

3. When the Court finds substantial evidence of a doubt as to the competency of the youth, the Court shall appoint an expert psychologist or psychiatrist from the Court's panel, who meets the qualifications set forth in WIC § 709(b)(2) and CRC Rule 5.654(d), to assess the youth and express an opinion as to the youth's competence.
 - a) The Court shall execute the Order Appointing Juvenile Competency Expert (WIC §709), with an attached "Guidelines for Juvenile Competency Experts". (A copy of the Order Appointing is attached hereto and incorporated herein.)
 - b) The order appointing the expert shall order the expert to submit a report within five (5) court days prior to the Competency Determination Hearing. For good cause shown, the Court may extend the time for submission of the evaluation.
 - c) The district attorney or youth'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 opposing party within a reasonable time, but not later than five days, before the hearing. Failure to comply with time requirements set forth herein may result in sanctions set forth in WIC §709(b)(6).
 - d) A qualified expert retained or appointed by the district attorney may not perform a competency evaluation on a youth without an order from the Juvenile Court after petitioning the Court for such an order pursuant to the Civil Discovery Act of the Civil Code of Procedure §2016.010. (See WIC §709(b)(6)).
4. Unless good cause is shown, the Court shall not appoint an expert who has previously conducted a mental health evaluation of the youth, pursuant to Evidence Code §730.
5. Prior to the Court's execution of the Order Appointing Competency Expert, youth's counsel shall fill in, on the Order, the names and identifying information of those persons whom the expert may interview, if the information is reasonably available.
6. When the Court finds substantial evidence of a doubt as to the competency of a youth, youth's counsel, in cooperation with the Probation Court officer, shall immediately secure the signature of the youth's parent or authorized caretaker on release of information forms. If the youth's parent or authorized caretaker is not present, the youth's counsel, in cooperation with the probation officer, shall expend reasonable efforts to secure the signature on the release of information forms.
7. Pursuant to CRC 5.645(d)(2), the Court in its discretion may appoint or otherwise order the involvement of clinicians with other professional qualifications, including a Court certified language interpreter, relevant to the case.

D. Evaluation of the Youth:

1. Qualifications of the expert:

- a) Pursuant to WIC §709 (b)(4) and the CRC, the expert shall have the training and experience needed for him/her to be competent in forensic evaluations of juveniles. Pursuant to WIC§709 (b)(2), any expert appointed to evaluate the child 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 competency in the particular case.
- b) Pursuant to CRC 5.645(d), a psychiatrist appointed to evaluate the competency of a youth shall possess the following minimum qualifications:
 - 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 focused on children and adolescents and one year of child and adolescent fellowship training.
 - Possess demonstrable professional experience addressing child and adolescent development issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;
 - Have expertise in the cultural and social characteristics of children and adolescents;
 - Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;
 - Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;
 - Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents; and
 - 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.
- c) Pursuant to CRC 5.645(d), a psychologist appointed to evaluate the competency of a youth shall possess the following minimum qualifications:
 - 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.
 - Possess demonstrable professional experience addressing child and adolescent development issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

- Have expertise in the cultural and social characteristics of children and adolescents;
- Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;
- Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;
- Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents; and
- 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.

2. Issues to be determined by the expert: Pursuant to WIC §709(b), the order appointing the expert shall state the following issues upon which the expert shall be ordered to express an opinion:

- a) In the opinion of the expert, does the youth suffer from a mental disorder or illness, developmental disability, developmental immaturity or other condition affecting competency and, if so, whether the youth is incompetent as defined in section b) below. (WIC §709 (b)(1)).
 - If so, describe the disorder, disability, immaturity or condition.
- b) In the opinion of the expert, if the youth has a mental disorder or illness, developmental disability, developmental immaturity or other condition, does the condition or conditions impair the youth's competency to stand trial, meaning:
 - Does the youth have a rational and factual understanding of the nature of the charges or proceedings against him or her? or
 - Is the youth able to consult with counsel and assist his or her attorney in the preparation and conduct of his or her defense with a reasonable degree of rational understanding? (WIC §709(a)(2))
- c) In the opinion of the expert, if the youth is not competent to stand trial is the youth likely to benefit from attempts at attaining competency?
 - If so, in the opinion of the expert, what interventions, treatment, education, programs or trainings may assist the youth in attaining competency; and
 - In the opinion of the expert, how likely is it that such interventions will be effective in the foreseeable future. (WIC §709(b)(3))
- d) If any information is unavailable to the expert, the expert shall note in the report the information needed and the efforts to obtain that information.

3. Scheduling the evaluation and records to be provided to the expert: Youth's counsel shall be primarily responsible, working in cooperation with Probation, for scheduling the evaluation and gathering all records regarding the youth, relevant to the claim of incompetency, including school, medical, mental health and employment records.

- a) Pursuant to WIC §709(b)(3), the Court authorizes the agencies of record to release the applicable records 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 to Probation in order to facilitate distribution of information to the expert. The records regarding the youth, relevant to the claim of incompetency, may include, but are not limited to:
- Medical, education, special education, probation, child welfare, mental health, regional center, court records, and any other available relevant information. If any information is unavailable the expert shall note in the report the efforts to obtain said information. (WIC §709 (b)(3)).
 - Police report[s] – (Petitioner shall redact the names, addresses and any identifying information of the victim and witnesses, designating those persons as V-1 and W-1, etc., and shall provide the report[s] to Probation.)
 - CAST interviews – (Transcripts of any CAST interviews shall be provided, and not video or audio recording, without court order. Petitioner shall redact the names, only, of the victim and witnesses, designating those persons as V-1 and W-1, etc., and shall provide the transcript[s] to Probation.)
 - Video, audio recordings, transcripts or reports of interviews of the youth.
 - The identity and records of any mental health provider that evaluated or treated the youth.
 - The identity and records of any physical medicine provider that evaluated or treated the youth.
 - The records of any school attended by the youth.
 - Any employment records of the youth.
 - Records of the Probation Department.
 - Dependency Court files and records of the Social Services Agency regarding the youth. (The Court will make the Dependency Court file and SSA file available, at the Court, for inspection by petitioner and youth's counsel. Petitioner and youth's counsel shall jointly review the dependency case files, confer and agree as to the relevant records to be considered by the competency expert. In the event that counsel cannot agree as to certain records, the Court shall review the records in dispute and determine whether they should be provided to the expert.)
- b) Youth's counsel shall be primarily responsible for gathering the records regarding the youth, with the assistance and cooperation of Probation. Youth's counsel and Probation shall cooperate in obtaining any consents required for the release of records. Probation's cooperation with youth's counsel includes obtaining records under Probation's control. Youth's counsel may issue subpoena duces tecum for the records, if necessary. Youth's counsel may seek from the Court orders necessary for the production of relevant records, including orders pursuant to WIC § 827.

- c) Youth's counsel shall deliver the records to Probation. Youth's counsel shall not redact any information in the records provided to Probation. Before the delivery of the records to Probation, if petitioner or youth's counsel believe that information should be redacted from the records, Court authorization for redaction must be sought, by way of noticed request to the Court, and the Court may, in its discretion, conduct an in-camera inspection of such records, pursuant to Evidence Code §915, regarding the requested redaction.
 - d) Records within the probation file on the date the Court has found substantial evidence of a doubt as to the youth's competency shall be provided to the expert by the end of the following business day along with the Court's Order Appointing Juvenile Competency Expert (WIC §709), with attached "*Guidelines for Juvenile Competency Experts*" and any signed releases provided by the youth's counsel.
 - Probation shall provide any additional records received for the expert's consideration to the expert by the end of the following business day from the date of receipt.
 - Probation shall also maintain a list of all the records provided to the expert and make the list available upon request by counsel.
 - e) Probation shall also provide copies of the Court's Order Appointing Juvenile Expert (WIC §709), with attached "*Guidelines for Juvenile Competency Experts*" to counsel for the youth and the petitioner.
 - f) Probation shall be responsible for the delivery of the records to the expert. Probation and counsel shall expend their best efforts to expeditiously provide the reports to the expert and ensure the scheduling of the evaluation.
4. If in the professional judgment of the expert, he/she may contact and interview those persons identified on the Order Appointing Juvenile Competency Expert and/or other persons who the expert believes are necessary to a complete evaluation of the youth and to address the issues to be considered.
- a) Pursuant to WIC §709(b)(3), the expert shall personally interview the youth and review all available records provided. The expert shall consult with the youth's counsel and any other person who has provided information to the Court regarding the youth's lack of competency. The expert shall gather a developmental history of the youth. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the case render testing unnecessary or inappropriate. The expert shall be proficient in the language preferred by the youth, or, if that is not feasible, the expert shall employ the services of a certified interpreter. (709(b)(3)).
 - b) Statements made to the appointed expert during the competency evaluation as well as statements made by the youth to mental health professionals during the remediation proceedings and fruits of these statements, shall not be used in any other hearing against the youth in either juvenile or adult court. (WIC §709(b)(5))

5. Pursuant to *Tarantino vs. Superior Court* (1975) 48 Cal.App.3d 465, 469, the youth may not decline, nor may he/she be instructed not to answer, any questions by the expert during his examination.
6. The expert's report shall be submitted within five (5) court days prior to the date set for the Competency Determination Hearing. For good cause shown, the Court may modify the time for submission of the evaluation.
7. In order to further prepare for the hearing and for good cause shown, the Court may grant a continuance for a reasonable period of time.

E. Competency Determination Hearing:

The Court shall conduct an evidentiary hearing to determine whether the youth is competent, unless there is a stipulation or submission by the parties on the findings of the expert that the youth is incompetent. It shall be presumed that the youth is mentally competent, unless proven by a preponderance of the evidence that the youth is mentally incompetent. With respect to a youth under 14 years of age at the time of the commission of the alleged offense, the Court shall make a determination as to the youth's capacity pursuant to Penal Code §26 prior to deciding the issue of competency. (WIC §709(c)).

F. Competency Determined

Upon a finding of competence, the suspension of proceedings shall be ordered vacated and proceedings reinstated.

G. Incompetency Determined

1. In accordance with the Memorandum of Understanding entered into and executed by the Juvenile Court of Orange County and the agencies of the IJCAT, (hereinafter referred to as "MOU"), upon a finding of incompetence, the Court shall order the Probation Department to convene IJCAT and set the matter for a Service Plan Hearing.
 - a) The purpose of the IJCAT is to:
 - Express an opinion whether or not there are services and/or placement available that may provide a substantial probability the youth will attain competency in the foreseeable future.
 - Provide recommendations to the Court for services and/or placement that may assist the youth in attaining competency and/or for other therapeutic, placement, or rehabilitative services;
 - Coordinate services and resources for the youth
 - Monitor the programs and services ordered by the Court.
 - The IJCAT will meet monthly to discuss all active cases and provide updates and recommendations regarding the Competency Attainment Plan. IJCAT will then prepare report(s) for the Court and counsel to be considered at Remediation Service Review Hearings.

- b) It shall not be the purpose of the IJCAT to substitute the opinion, if any, of the appointed competency evaluator as to the interventions that may assist the youth in attaining competency. The purpose of the IJCAT is to utilize the combined knowledge and experience of the team members in ascertaining the availability of interventions, services and/or placement described by the evaluator. In this context, "availability" of services means: Whether such interventions exist in the county, state or country; the requirements and eligibility of the youth for such services; the funding mechanisms for providing such services to the youth; the logistical, administrative, financial and other barriers for providing such services and the time constraints for providing services.
 - c) Each agency member of the IJCAT shall designate the person or persons who will represent the agency and shall designate a person who Probation will contact for the purposes of scheduling the IJCAT meeting.
2. Upon a finding of incompetence, the Court shall also make the following orders:
- a) Order the Probation Department to immediately deliver the expert's report and copies of all records provided to the expert to each member of the IJCAT; and
 - b) Order the preparation of written recommendations to the Court for attaining competency and/or for other therapeutic, placement, or rehabilitative services for the youth.
 - c) In the event the youth is detained in-custody, set a Service Plan Hearing no later than ten (10) calendar days from the finding of incompetence.
 - d) In the event the youth is out of custody, the Service Plan Hearing shall be set no later than thirty (30) calendar days from the finding of incompetence.
 - e) Pursuant to the MOU and Orange County Superior Court Local Rule 903.1, all reports and information are to be shared by the Court, counsel and IJCAT members.

Upon a showing of good cause, the Court may extend the date for the setting of the Service Plan Hearing or continue the hearing date.

3. **Service Plan Hearing:** At the Service Plan Hearing, the Court shall review the service plan recommendations of the IJCAT with the parties, and thereafter adopt or reject the plan, in whole or in part, with any amendments deemed by the Court to be appropriate.
- a) At the Service Plan Hearing, the Court and counsel for the parties may consult with all or any member of the IJCAT regarding its recommendations.
 - b) In its discretion, the Court may conduct an evidentiary hearing regarding the recommendations and opinion of the IJCAT.
 - c) Upon adoption of a service plan, the Court shall order the Probation Department to implement the plan, and make all orders necessary for the plan's implementation, including orders notwithstanding the youth's parents' or guardians' refusal to grant consent for treatment and services.

- d) 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. (WIC §709 (g) (1)).
 - e) Set an Attainment of Competency Hearing at six (6) months from initial receipt of a recommendation by the expert or the Court-designated entity.
4. If the Court finds, by a preponderance of the evidence that the youth 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 youth will attain competency in the foreseeable future, or the Court no longer retains jurisdiction and the case must be dismissed. The Court may rule on motions that do not require the participation of the youth in the preparation of said motions. These motions include, but are not limited to, all of the following:
- a) Motions to dismiss
 - b) Motions regarding change of placement of youth
 - c) Detention hearings
 - d) Demurrers
- (WIC §709(e))
5. If the youth is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed. (WIC §709(f)).
6. **Remediation Services Review Hearings** shall be held at least every thirty (30) calendar days from the date of incompetency determination for youth in custody and every forty-five (45) calendar days for youth out of custody prior to the expiration of the total remediation period specified in WIC §709 (h) (3) and WIC §709 (g) (1). If the youth 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. Appropriate alternatives to juvenile hall confinement include, but are not limited to, the following:
- Developmental centers.
 - Placement through regional centers.
 - Short-term residential therapeutic programs.
 - Crisis residential programs.
 - Civil commitment.
 - Foster care, relative placement, or other non-secure placement.
 - Other residential treatment programs.
- (See WIC §709 (g) (1))

H. **Attainment of Competency Hearing**

1. Within six (6) months of the initial receipt of a remediation services recommendation by the expert or the Court-designated entity, the Court shall hold an evidentiary hearing on whether the youth is remediated, or is able to be remediated, unless the parties stipulate to or agree to the recommendation of the remediation program. If it is recommended that the youth has attained

competency, and the youth disputes that recommendation, the burden is on the youth to prove by a preponderance of evidence that he/she remains incompetent. If the recommendation is that the youth is unable to be remediated and the petitioner disputes that recommendation, the burden is on the petitioner to prove by a preponderance of evidence that the youth is remediable. If the petitioner contests an evaluation of continued incompetence, the youth shall be presumed incompetent and the petitioner shall have the burden to prove by a preponderance of evidence that the youth is competent. (WIC §709(h)(1)).

2. Prior to the Attainment of Competency Hearing, the Probation Department shall deliver a report to the Court and all parties concerning the youth's progress on the service plan, the treatment and programs completed by the youth, whether and what further services may benefit the youth in attaining competency, and any other information relevant to determining whether the youth is competent or continues to be incompetent.
 - a) The Probation Department shall deliver its report no later than the court day preceding the Attainment of Competency Hearing.
 - b) The Probation Department may convene or otherwise seek the assistance of the IJCAT for the preparation of its report
3. If the Court finds that the youth will not achieve competency within the next six (6) months of the Attainment of Competency Hearing, the Court shall dismiss the petition. All the various persons and agencies with information about the youth may be invited by the Court to the dismissal hearing to discuss any services that may be available to the youth after jurisdiction is terminated. If appropriate, the Court shall refer the youth for further evaluation pursuant to statutory law noted in WIC §709(h)(4).
4. In the event the Court finds the youth has been remediated, the Court shall reinstate the proceedings. (WIC §709(h)(2)).
5. Pursuant to WIC §709(h)(3), if the Court finds that the youth has not yet been remediated but is likely to be remediated within the next six (6) months, the Court shall order the youth to return to the remediation program. However, the total remediation period shall not exceed one (1) year from the finding of incompetency and secure confinement shall not exceed the limit specified in WIC §709(h)(5)(A). In cases where petition alleges a WIC §707(b) offense the total remediation period shall not exceed eighteen (18) months from the finding of incompetency. (WIC §709(h)(5)(C)).

I. Jurisdiction

At any time during the suspension of proceedings, pursuant to WIC §709, the Court may consider and make any orders for the disposition of the matter and for the youth, in the best interests of youth and the public, consistent with WIC §202.

J. Confinement of Youth

1. Secure confinement of the youth shall not extend beyond six (6) months from the finding of incompetence, except as permitted by the provisions of WIC §709 (h)(5)(A)-(C), pertaining to consideration of factors to promote the best interests of the youth.
2. In cases where the Petition involves an offense listed in WIC §707(b), the Court may consider whether it is necessary and in the best interests of the youth and the public's safety to order secure confinement of youth for up to an additional year, not to exceed eighteen (18) months from the finding of incompetence. (WIC §709(h)(5)(C)).
3. A finding of incompetency alone shall not be the basis for secure confinement.