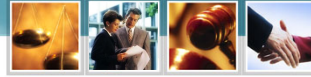


Competency in Juvenile Court



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December 18, 2019

New WIC § 709(a)—Expression of a Doubt



- If the court has a doubt that a minor who is **subject to any juvenile proceeding** is competent, it shall suspend all proceedings and proceed to competency evaluation.
- **During the pendency of any juvenile proceeding**, the court may receive information from any source regarding the minor's ability to understand the proceedings
- 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.

New WIC § 709(b)—Experts



Qualifications and duties of the COURT-appointed expert:

- Evaluate the minor to determine whether the minor suffers from: [WIC § 709(b)(1)]
 - Mental illness
 - Mental disorder
 - Developmental disability
 - Developmental immaturity
 - Or other condition affecting competence
- IF the above is found, determine if the minor is incompetent based on the *Dusky* standard. (See WIC § 709(a)(2).)

New WIC § 709(b)—Experts



- Must be qualified: [WIC § 709(b)(2)]
 - Expertise in child and adolescent development.
 - Expertise in forensic evaluation of juveniles for purposes of adjudicating competency.
 - Be familiar with competency standards and accepted criteria used in evaluating juvenile competency.
 - Have received training in conducting juvenile competency evaluations.
 - Be familiar with competency remediation for the condition or conditions affecting competence in the particular case.

New WIC § 709(b)—Experts



- Must be qualified: [WIC § 709(b)(4)]
 - Judicial Council to partner with
 - Judges
 - Defense counsel
 - District attorneys
 - Probation chiefs
 - 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
 - Other interested stakeholders
- to adopt a rule of court...

New WIC § 709(b)—Experts



- Must be qualified: [WIC § 709(b)(4)]
 - Judicial Council to partner with [interested stakeholders] to **adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles.**
 - Judicial Council shall **also develop and adopt rules for the implementation of the other requirements of appointment and duties of COURT-appointed experts.**

New WIC § 709(b)—Experts



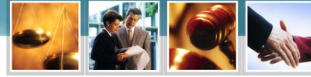
- **Duties of COURT-appointed experts: [WIC § 709(b)(3)]**
 - Shall personally interview the minor (not oversee a student or intern!)
 - Review all available records provided...including but not limited to:
 - Medical
 - Education
 - Special education (IEP, 504 Plan, etc.)
 - Probation
 - Child welfare
 - Mental health
 - Regional Center
 - Court records
 - Any other relevant information that is available

New WIC § 709(b)—Experts



- Consult with minor's counsel.
- Consult with any other person who has provided information to the court REGARDING THE MINOR'S LACK OF COMPETENCY.
- Gather a developmental history of the minor.
- If information is unavailable to the expert, s/he shall note in the report the effort to obtain the information.
- Administer age-appropriate testing specific to the issue of competency, unless the facts of the particular case render testing unnecessary or inappropriate.
- Must be proficient in the language preferred by the minor or employ a certified interpreter.
- Use assessment tools that are linguistically and/or culturally appropriate for the minor.

New WIC § 709(b)—Experts



- Write a report
 - Opine whether the minor is competent.
 - Expert must commit one way or the other
 - State the basis for his/her conclusions.
 - If minor is determined not competent, must opine 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.

New WIC § 709(b)—Experts



Statements made to the court-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. (WIC § 709(b)(5).)

New WIC § 709(b)(6) Discovery Issues



- Minor's counsel and the prosecutor can retain or seek appointment of additional QUALIFIED experts.
- These qualified experts may testify during the competency hearing.
- Expert's qualifications and report shall be disclosed to opposing party within a reasonable time before the hearing . . . but
 - No later than 5 court days before the hearing

New WIC § 709(b)(6) Discovery Issues



- Discovery violation can be sanctioned by the court, including but not limited to:
 - Immediate disclosure
 - Contempt proceedings
 - Delaying or prohibiting testimony of the expert or consideration of the expert's report upon a showing of good cause.
 - Any other lawful order
- Opposing party may seek a continuance of the competency hearing to prepare after receipt of the opposing party's report upon a showing of good cause.

Penal Code § 1054.3(b)



- (1) Unless otherwise specifically addressed by an existing provision of law, whenever . . . a minor juvenile in a juvenile proceeding . . . Places in issue his or her mental state at any phase of the . . . juvenile proceeding through the proposed testimony of any mental health expert, upon timely request by the prosecution, the court may order that the . . . juvenile submit to examination by a prosecution-retained mental health expert.

New WIC § 709 Discovery Issues



Baqleh v. Superior Court (San Francisco) (2002) 100 Cal.App.4th 478

At defendant's arraignment on a murder charge, counsel informed the trial court that, based on an oral report from a psychiatrist, he had a doubt as to whether defendant was competent to be arraigned. The court suspended the proceedings and ordered that defendant be evaluated by a clinical psychologist. **After a clinical examination and reviews of reports by defendant's experts, who concluded defendant was incompetent to stand trial, the court-appointed expert found that defendant was competent to stand trial.** Thereafter, the trial court ordered defendant be examined by director of the Regional Center for the developmentally disabled, and also **granted the prosecution's petition to have defendant examined by the expert of its choosing.**

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to set aside its order granting the motion to direct defendant to submit to a mental examination and to entertain a new motion. **The court held that the trial court had authority to order defendant to be examined by the People's expert, but that the trial court's order did not comply with the Civil Discovery Act of 1986.** (CCP § 2016, et seq.).

New WIC § 709 Discovery Issues



Baqleh v. Superior Court (cont'd.)

The Court of Appeal held that the civil nature of a trial on the issue of competency vests the trial court with authority to utilize appropriate rules set forth in the Code of Civil Procedure, even though the underlying issue relates to the commission of a criminal offense.

The Court also held that an accused person cannot, on the basis of the Fifth Amendment to the U.S. Constitution, refuse to submit to a mental examination by a prosecution expert when properly ordered to do so in connection with a Penal Code section 1368 hearing, to determine mental competency to stand trial. The Fifth Amendment does not come into play in this situation because a judicially declared rule of immunity provides the necessary safeguards.

The Court of Appeal further held that the judicially declared rule of immunity that protects a defendant's Fifth Amendment right against self-incrimination concomitantly protects the interest that might otherwise entitle him to a Sixth Amendment right to counsel, at a court-ordered mental examination on the question of competence to stand trial.

New WIC § 709 Discovery Issues



- WIC § 709(b)(6) **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). (Codifying *Baqleh v. Superior Court*)

Post Competency Evaluation Procedures



- If the court finds the **minor to be competent**, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction. (WIC § 709(d).)
- If the court finds that the **minor is incompetent by a preponderance of evidence**, 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. (WIC § 709(e).)

Post Competency Evaluation Procedures



Minor Found Incompetent [WIC § 709(e)]:

- Prior to dismissal, the court may make orders that it deems appropriate for services.
- Court may rule on motions that do not require the participation of the minor in the preparation of the motions; including but not limited to:
 - Motions to dismiss
 - Motions regarding a change in placement
 - Detention hearings
 - Demurrers

Post Competency Evaluation Procedures



- If the minor is found to be **incompetent** and the petition contains only **misdemeanor offenses**, the **PETITION SHALL BE DISMISSED**. (WIC § 709(f).)

Post Competency Evaluation Procedures



Upon a finding of incompetency [WIC § 709(g)(1)]:

- Refer the minor to services designed to help the minor to attain competency, unless the court finds that competency cannot be achieved within the foreseeable future.
- Refer the minor to treatment services to assist in remediation, consistent with any laws requiring consent, that may include, but not limited to:
 - Mental health services
 - Treatment for trauma
 - Medically supervised medication
 - Behavioral counseling
 - Curriculum-based legal education
 - Training in socialization skills

Post Competency Evaluation Procedures



- Services shall be provided in the least restrictive environment consistent with public safety.
- A finding of incompetency alone shall not be the basis for secure confinement. (Codifies *In re Patrick H.*)
- 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
 - At least every 45 calendar days for minors out of custody
 - Not to exceed one year of total remediation (see WIC § 709(h)(3).)

Post Competency Evaluation Procedures



- 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.

Post Competency Evaluation Procedures



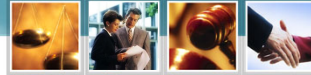
- The court shall consider appropriate alternatives to juvenile hall confinement, including, but not limited to:
 - Development centers
 - Placement through regional centers
 - Short-term residential therapeutic programs
 - Crisis residential programs
 - Civil commitment
 - Foster care, relative placement, or other nonsecure placement
 - Other residential treatment programs
- The court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.

Post Competency Evaluation Procedures— Remediation WIC § 709(h)



- **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 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.**

Post Competency Evaluation Procedures— Remediation WIC § 709(h)



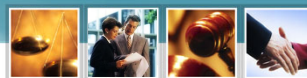
- If the prosecution contests the **evaluation of continued incompetence**, the minor **shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the minor is competent.**
- If the **recommendation** by the designated person or entity is **that the minor has been restored to competency**, the provisions of section 709(c) shall apply, i.e., **minor is presumed competent, burden is on the minor to prove by a preponderance of the evidence that s/he is incompetent** at an evidentiary hearing.

Post Competency Evaluation Procedures— Remediation WIC § 709(h)



- If the court finds that the minor has been remediated, the court shall reinstate the proceedings.
- If the court finds the minor has not yet been 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.

Post Competency Evaluation Procedures— Remediation WIC § 709(h)



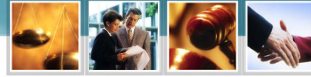
- **If the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition.**
 - The court may invite the following (but not limited to) persons and agencies with information about the minor to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated.
 - Minor’s counsel
 - Probation department
 - Parents
 - Guardians
 - Relative caregivers
 - Mental health treatment professionals
 - Public guardian
 - Educational rights holders
 - Education providers
 - Social services agencies

Post Competency Evaluation Procedures— Remediation WIC § 709(h)



- If appropriate, the court shall refer the minor for evaluation commencing with WIC § 6550 (civil commitment)

Post Competency Evaluation Procedures— Remediation WIC § 709(5)(A)



- Secure confinement shall not extend beyond six months from the finding of incompetence, except as provided.
- In making that determination, the court shall consider the following:
 - Where the minor will have the best chance of obtaining competence.
 - Whether the placement is the least restrictive setting appropriate for the minor.
 - Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate.
 - Whether the placement is necessary for the safety of the minor or others.
- The court shall state the reasons for confinement on the record. It must consider the above factors and conclude that confinement is in the best interest of the minor and public safety.

Post Competency Evaluation Procedures— Remediation WIC § 709(5)(C)



- Only in cases where the petition alleges an offense listed in WIC § 707(b) 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.

Local Protocols—WIC § 709(i)



- Each county shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services. The following shall participate in the development of the written protocol:
 - Presiding judge of the juvenile court
 - Probation department
 - County mental health department
 - Public defender
 - Any other entity that provides representation for minors
 - District attorney
 - Regional Center
 - If appropriate, any other participants that the presiding judge shall designate

Local Protocols—WIC § 709(i)



However, with respect to protocols...see *In re Albert C.* (2017) 3 Cal.5th 483, in which the court held:

As a matter of first impression, the rule that no person charged with a criminal offense and committed on account of incapacity to proceed to trial may be so confined more than a reasonable period of time necessary to determine whether there is substantial likelihood that he will recover that capacity in the foreseeable future (*Jackson v. Indiana*) applies to the detention of minors found incompetent to stand trial. **However, violation of a local court protocol limiting detention of incompetent minors to 120 days absent evidence of progress toward attaining competency did not, by itself, constitute grounds for relief. The local protocol limiting detention of incompetent minors to 120 days absent evidence toward attaining competency did not establish a constitutional rule of decision or define due process.**

- Nevertheless, this should be remedied with the inclusion of statutory timelines enumerated in WIC § 709

California Rules of Court Rule 5.645(d)—January 1, 2012



- Welfare & Institutions Code section 709 (Assembly Bill 2212 [Fuentes]; Stats. 2010, ch 671) requires the Judicial Council to develop and adopt rules for the qualification and appointment of experts who evaluate children when the court or minor's counsel raises the issue of competency to stand trial in any juvenile proceeding.
- New WIC § 709 reiterates the above with some modifications and additions. **(WIC § 709(b)(2) & (4).)**

California Rules of Court 5.645 amended and (a)-(c) renumbered as 5.643, eff. 1/1/2020



- AB 1214 (2017-2018)
- Reiterates WIC § 709 competency standard
- **Must appoint** an expert to determine if child's "condition" affects competency WIC 5.643 §(a)(2).
- **Expert qualifications WIC 5.643§ (b):**
 - (1)(A) Licensed psychiatrist with 4 years of medical school **AND EITHER**
 - 4 years of general psychiatry residency, including 1 year of internship **and** 2 years of child and adolescent fellowship training, **OR**
 - 3 years of general psychiatry residency, including 1 year of internship **and** one year of residency focused on children and adolescents **and** one year of child and adolescent fellowship training.

California Rules of Court 5.645 amended, (a)-(c)
renumbered as rule 5.643, effective
January 1, 2020 (Cont.)



- Expert must be one of the following (cont'd):

(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.

California Rules of Court
Rule 5.643 (Cont.)



- (b)(2)The expert (psychiatrist or psychologist) must:

- (A) Have experience in addressing child and adolescent developmental issues, including emotional, behavioral, and cognitive impairments of children and adolescents;
- (B) Have experience in cultural and social characteristics of children and adolescents;
- (C) Possess a CV 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;

California Rules of Court Rule 5.643 (Cont.)



- The expert (psychiatrist or psychologist) must:
 - (2)(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 CV reflecting training and experience in the forensic evaluation of children and adolescents;
 - (D) Be familiar with juvenile competency standards and accepted criteria uses in evaluating juvenile competence;

California Rules of Court Rule 5.643 (Cont.)



- (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

California Rules of Court Rule 5.643 (Cont.)



(F) 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.

California Rules of Court Rule 5.643 (Cont.)



(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.

Competency in Juvenile Court



E. Gath, MD, et al., *Correlates of Competency to Stand Trial Among Youth Admitted to Juvenile Mental Health Court*, J. Am. Acad. Psychiatry Law 43:329-39, 2015

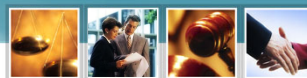
- Many juveniles possess significant cognitive and psychiatric impairments that may render them incompetent to stand trial.
- Estimates of the prevalence of psychiatric illness in the juvenile justice population range from 66 to 75 percent, and estimates of the number of system-involved youth who meet the criteria for a developmental disability or intellectual impairment range from 30 to 70 percent.
- Conservative estimates of the rate of serious mental illness among juvenile offenders range from 15 to 20 percent.
- The amount of competency litigation has increased in some counties due to an increase in awareness of legal standards and an increase in children with cognitive damage.
- Not a big population in terms of numbers, but it is a very challenging and resource intensive one.

Competency in Juvenile Court



- **Adjudicative Competency**
 - A legal construction based on psychological, psychiatric or medical findings.
- **U.S. Constitutional Standard for Competence — *Dusky v. United States* (1960) 362 U.S. 402**
 - Whether the defendant/minor “has sufficient present ability to consult with his[/her] lawyer with a reasonable degree of rational understanding—and whether he[/she] has a rational as well as factual understanding of the proceedings against him[/her].”
- ***In re Gault* (1967) 387 U.S. 1**
 - Landmark case establishing that juveniles are entitled to due process in delinquency proceedings.

Competency in Juvenile Court



Timothy J. and Dante H. v. Superior Court (Sacramento) (2007) 150 Cal.App.4th 847, 859-860

“The question [of incompetency] is cognitive, whether the defendant’s **mental condition** is such that he lacks that degree of rationality required by law [citation] so as to have ‘the mental acuity to see, hear and digest the evidence, and the ability to communicate with counsel in helping prepare an effective defense.’ [Citation.] (Emphasis added.)

* * *

The dictionary defines the word ‘**condition**’ variously to mean ‘4: a mode or state of being...state with reference to mental or moral nature, temperament, character, or disposition’ or ‘5: quality, attribute, trait.’ (Webster’s 3rd New Internat. Dict. (1971) p. 473.) Under these definitions, although the term ‘mental condition’ certainly includes mental disorder or mental retardation, which as noted is a developmental disability [citation], we see no difference between a **condition** that results from a developmental disability and one that results from developmental immaturity.”

Competency in Juvenile Court



Tyrone B. v. Superior Court (Sacramento) (2008) 164 Cal.App.4th 227, 231

“Although [California Rules of Court] rule 5.645(d) provides that the court “may” appoint an expert to evaluate the child, where...the child’s counsel has expressed a doubt as to his client’s competency, it would be an abuse of discretion for the court to refuse to appoint an expert.

* * *

Counsel’s recitation of petitioner’s inability to understand the proceedings, as well as his later motion to reconsider based upon new information that petitioner was schizophrenic and bipolar, provides ample justification for the appointment of an expert to examine petitioner **before any further proceedings begin requiring his cooperation with counsel.**” (Emphasis added.)

In re Ricky S. (Sacramento) (2008) 166 Cal.App.4th 232, 236

The court concluded that “the question [of competency] is not can the minor become competent in the future with assistance; rather the question is whether he is presently competent.”

Competency in Juvenile Court



In re Mary T. (1985) 176 Cal.App.3d 38

The court held that a juvenile court may initiate proceedings to determine present competence, and where necessary, suspend proceedings and make a referral under Penal Code section 4011.6, **without a threshold showing** of probable cause to believe the offense alleged in the petition has been committed, or **that the presumption of incapacity to commit a criminal act (PC § 26) can be overcome.** (Overruled by *In re R.V.* (2015) 61 Cal.4th 181 and new WIC § 709.)

In re Michael E. (1975) 15 Cal.3d. 183

The juvenile court may not commit a minor to a state hospital; commitment may be accomplished only in compliance with the Lanterman-Petris-Short (LPS) Act.

Competency in Juvenile Court



In re Patrick H. (1997) 54 Cal.App.4th 1346

Court of Appeal set aside that part of the juvenile court's order continuing minor's commitment under PC § 1370 and held that the lower court erred in committing minor to a mental health facility for a 90-day evaluation under PC § 1370, which applies to adults found incompetent to stand trial. Once the juvenile court found that minor could not cooperate with counsel, it should have turned to WIC § 705, and proceeded under either WIC § 6550, or PC § 4011.6, whichever was appropriate. **A finding of incompetence in a juvenile proceeding should not result in a confinement order or its equivalent; a juvenile is not committed as incompetent to proceed with WIC § 602, proceedings, but on a wholly independent basis and after wholly independent procedures.** (Codified in new WIC § 709.)

Competency in Juvenile Court



In re Alejandro G. (2012) 205 Cal.App.4th 475

“The fact that both doctors opined Alejandro was not competent does not prove a lack of substantial evidence to support the court’s finding. **The court is not under any obligation to adopt the doctors’ opinions. Such a requirement would undermine the court’s role in determining a minor’s competency. (See *James H., supra*, 77 Cal.App.3d 172 [‘[T]he juvenile court has the inherent power to determine a minor’s mental competence to understand the nature of the proceedings pending . . . and to assist counsel in a rational [manner] . . .’].)”** (Emphasis added.)

Competency in Juvenile Court



In re Matthew N. (2013) 216 Cal.App.4th 1412

After minor admitted allegations that he came within juvenile court jurisdiction, his case was transferred to San Joaquin. Out of home placement ordered and minor appealed.

The minor challenged the juvenile court's denial of his motion to withdraw his admission of jurisdiction. The court found that the combination of the minor's unusual immaturity for his age (as his mother and both psychologists attested) and his inability to comprehend the legal concepts involved in the trial process following the transfer of the case (as both trial counsel and the competency report attested) until after he underwent several weeks of instruction meant there was no reasonable basis to conclude that he somehow possessed the ability to comprehend the earlier delinquency proceedings such that he could consult with his attorney regarding his defense with a reasonable degree of rational understanding. The juvenile court's failure to give any express consideration to that argument did not indicate an informed exercise of discretion. The problem was latent, and **the written and verbal advisements and the form attestations of court and counsel did not establish affirmatively that the minor actually had an understanding of what had happened, or any potential defenses he might have been able to raise.**

Court of appeal vacated the orders of lower court and directed to consider renewed motion to withdraw admission.

Competency in Juvenile Court



- *In re R.V.* (2013) 61 Cal.4th 181
 - Minors are presumed competent and bear the burden of proof in juvenile competency proceedings.
 - The court must establish capacity pursuant to PC § 26 first if a minor is under 14 years old before presuming a minor is competent to proceed in juvenile court proceedings.
 - The standard of proof is a preponderance of the evidence.

Highlights From Original WIC Section 709



1. Codifies *Dusky/Drope* standard – having sufficient present ability to consult with counsel and assist in preparing the defense; and having rational as well as factual understanding of the nature of the charges or proceedings. Inability to meet either prong results in incompetence. **(WIC § 709(a)(2).)** [Broader than PC § 1367, subd.(a)]
2. Requires suspension of proceedings if the court finds that substantial evidence raises a doubt as to competence. **(WIC § 709(a)(1) & (3).)** [Same standard as in adult court, e.g., *People v. Stankewitz* (1982) 32 Cal.3d 80, 92]

Highlights From Original WIC Section 709



3. Provides that upon suspension of the proceedings, court must order determination of competence at a hearing and appoint an expert. **(WIC § 709(b)(1).)** [Codifies *Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227, 231.]
4. Requires evaluation whether minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. **(WIC § 709(b)(1).)** [Codifies *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847.]

Highlights From Original WIC Section 709



5. Requires expert to have expertise in child/adolescent development, training in forensic evaluation of juveniles, be familiar with competency standards/accepted criteria used in evaluating competence. **(WIC § 709(b)(2-4).)** **Requires the Judicial Council, in corroboration with other stakeholders, to develop and adopt rules.**
6. Establishes preponderance of the evidence as the standard of proof at a competency hearing and that a child 14 years or older is presumed competent. However, before presuming a child 13 years or younger is competent, the court must first establish capacity. **(WIC § 709(c).)** [Codifies *In re R.V.* (2015) 61 Cal.4th 181]

Highlights From Original WIC Section 709



7. Provides that if there is not a substantial probability that the minor will attain competency in the foreseeable future, the court must dismiss the case. **(WIC § 709(h)(4); also see WIC § 709(f) re: misdemeanors.)** [Codifies *Jackson v. Indiana* (1972) 406 U.S. 715, 738.]
8. Gives the court the power to make orders that may assist the minor in attaining competency. **(WIC § 709(g)(1), (h)(3).)** [Codifying *James. H. v. Superior Court* (1978) 77 Cal.App.3d 169, 175-177, recognizing courts' inherent power to create procedures.]
9. Allows the court to rule on motions that do not require the participation of the minor, including, but not limited to, motions to dismiss, motions by the defense regarding a change in the placement of the minor, detention hearings, and demurrers. **(WIC § 709(e).)**
10. Provides that if the minor is found competent, the proceedings shall go forward. Clarifies that the law applies to both 601s and 602s. **(WIC § 709(d), (h)(2).)**

2011 Amendments to WIC § 709



11. 2011 Amendments:
 - If the minor is developmentally disabled, the court shall appoint Regional Center (or his/her designee) to evaluate the minor for service eligibility (per WIC § 4500 et seq.). However, this referral shall not delay the court's proceedings for determining competency. **(WIC § 709(b)(7).)**
 - An expert's determination that the minor is developmentally disabled does not supersede an independent determination by the Regional Center for qualification for services. **(WIC § 709(b)(8).)**
 - Section 709 does not give the court the authority to place an incompetent minor in a developmental center or community facility operated by the State Dept. of Developmental Services without Regional Center approval. **(WIC § 709(b)(9)(A).)**
 - Section 709 does not give the court the authority to appoint the Regional Center to conduct competency evaluations. **(WIC § 709(b)(9)(B).)**