

YOLO COUNTY JUVENILE COURT
JUVENILE COMPETENCY PROTOCOL
Effective February 24, 2021

I. GENERAL PROVISIONS

A. Introduction

This document is the written protocol for the Yolo County Juvenile Court describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.¹ This protocol shall apply when it appears there is a doubt as to the competency of a minor in juvenile delinquency proceedings.

B. Construction

This protocol shall be construed and applied in a manner consistent with section 709, California Rules of Court, rule 5.643, and relevant case law, which explain the legal procedures the juvenile court must follow after minor's counsel or the juvenile court has expressed a doubt as to a minor's competency. In the event any part of this protocol conflicts with applicable law, the law shall control.

This protocol shall also be construed and applied in a manner consistent with section 202, subdivision (b), which requires, in conformity with the interests of public safety and protection, that a minor receive care, treatment, and guidance consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.

¹ See Welf. & Inst. Code, § 709, subd. (i) [all further statutory references are to the Welfare and Institutions Code unless otherwise specified].

C. Incompetent to Proceed

In a section 602 proceeding, a minor is incompetent to proceed² 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.³

D. Informal Resolution

When it appears the minor is incompetent to proceed, the juvenile court and the parties should consider an informal resolution of the case that avoids formal competency proceedings.

II. BEFORE THE COMPETENCY HEARING

A. Expression of a Doubt

To initiate competency proceedings, minor's counsel or the juvenile court may express a doubt as to the minor's competency.⁴

B. Evidence of a Doubt

The juvenile court may receive information from any source regarding the minor's ability to understand the proceedings.⁵ The juvenile court may appoint a mental health expert to help determine whether to order a competency hearing.⁶

² This protocol uses the term "incompetent to proceed" rather than "incompetent to stand trial" because it more properly reflects the requirement that a minor must be competent to participate throughout the juvenile court process.

³ § 709, subd. (a)(2).

⁴ § 709, subd. (a)(3).

⁵ Ibid.

⁶ Evid. Code, § 730.

C. Presentation of Evidence of a Doubt

If minor's counsel expresses a doubt as to the minor's competency, the juvenile court must decide whether there is substantial evidence of incompetency. Evidence is substantial if it raises a reasonable doubt about the minor's competency.⁷ Minor's counsel should present the juvenile court with specific reasons supporting their opinion. The juvenile court may allow minor's counsel to present his or her opinion regarding the minor's mental competency *in camera* if the juvenile court finds there is reason to believe that attorney-client privileged information will be inappropriately revealed if the hearing is conducted in open court.

If the juvenile court expresses a doubt as to the minor's competency, the court must decide whether there is substantial evidence of incompetency. The juvenile court may ask whether minor's counsel believes the minor is incompetent. Minor's counsel is not required to respond to the juvenile court's inquiry.

D. Suspension of Proceedings

If the juvenile court finds substantial evidence that raises a doubt as the minor's competency, the proceedings shall be suspended.⁸

E. Appointment of Expert

If the juvenile court suspends proceedings, the court shall appoint an expert from the court's expert panel to evaluate the minor 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.⁹

⁷ Cal. Rules of Court, rule 5.643(d)(1).

⁸ § 709, subd. (a)(3).

⁹ § 709, subd. (b)(1).

F. Time for Expert's Report

If the minor is detained in secure confinement, the juvenile court shall receive the expert's report at a hearing within 30 calendar days after ordering the proceedings suspended. If the minor is not detained or on home supervision, the juvenile court shall receive the expert's report at a hearing within 45 calendar days after ordering the proceedings suspended. Upon a showing of good cause, the juvenile court may continue the hearing to receive the expert's report only for the time shown to be necessary.

The expert shall submit their written report to the juvenile court and the probation department at least 3 judicial days before the hearing to receive the expert's report. The probation department shall immediately upon receipt of the report send a copy of the report to minor's counsel, the district attorney, county counsel, county mental health department, and a regional center if applicable.

At the hearing to receive the expert's report, the juvenile court shall set a competency hearing unless there is a stipulation or submission by the parties on the findings of the expert that the minor is incompetent.¹⁰

G. Expert's Report

In order to write a report, the expert shall:

- Personally interview the minor;
- Review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available;
- Consult with the minor's counsel and any other person who has provided information to the juvenile court regarding the minor's lack of competency;
- Gather a developmental history of the minor;

¹⁰ § 709, subd. (c).

- Note in the report the efforts to obtain any information unavailable to the expert; and
- Administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate.¹¹

In a written report, the expert shall determine:

- Whether the minor has a mental illness;
- Whether the minor has a mental disorder;
- Whether the minor has a developmental disability;
- Whether the minor has developmental immaturity; or
- Whether the minor has any other condition affecting competency; and if so,
- Whether the minor is incompetent to proceed.¹²

In addition, minor's counsel, the district attorney, or the juvenile court may submit written questions for the expert to consider in the report. The expert shall state the basis for their conclusions.¹³

If the expert concludes that the minor is incompetent to proceed, the expert shall:

- Give his or her 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. The recommendations should include available resources, strategies, interventions, timeframes, and the likelihood of success.¹⁴

¹¹ § 709, subd. (b)(3).

¹² § 709, subd. (b)(1).

¹³ § 709, subd. (b)(3).

¹⁴ Ibid.

H. Expert's Qualifications

The expert shall:

- Have expertise in child and adolescent development and 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; and
- Be familiar with competency remediation for the condition or conditions affecting competence in the particular case.¹⁵

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.¹⁶ The order appointing the expert should specify whether the minor or the minor's parent(s) or legal guardian(s) require the services of a language interpreter and, if so, which language.

To be appointed as an expert, an individual must be a:

- Licensed psychiatrist who 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 and, 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
- 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.¹⁷

¹⁵ § 709, subd. (b)(2).

¹⁶ Ibid.

¹⁷ Cal. Rules of Court, rule 5.643(d)(1)(C).

The expert, whether a licensed psychiatrist or psychologist, must:

- Possess demonstrable professional experience addressing child and adolescent developmental 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; and
- Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents.¹⁸

I. Records to the Expert

Minor's counsel should, to the best of their ability, gather and provide all available, non-privileged records to the expert. The district attorney and the probation department may obtain any relevant records, as appropriate, and provide the records to the expert.

J. Developmental Disability

If the expert believes the minor is developmentally disabled, the juvenile 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.¹⁹

¹⁸ Cal. Rules of Court, rule 5.643(d)(1)(C).

¹⁹ § 709, subs. (b)(7), (8) & (9).

K. Minor's Statements to Expert

Statements made to the appointed expert during the minor's competency evaluation and statements made by the minor to mental health professionals during remediation proceedings, and any fruits of those statements, shall not be used in any further hearing against the minor in either juvenile or adult court.²⁰

L. Additional Qualified Experts

The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify during an evidentiary hearing. An expert retained by the district attorney may not perform a competency evaluation on a minor without an order from the juvenile court after providing notice to minor's counsel and petitioning the court for an order pursuant to Code of Civil Procedure section 2016.010 et seq. The report and qualifications of an expert retained by either party shall be disclosed to the opposing party at least 5 judicial days before the competency hearing. If a party fails to timely disclose the expert's report and qualifications, the juvenile court may make any order necessary to enforce disclosure as required, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the expert's testimony, continuance of the hearing, or any other lawful order.²¹

M. Expert Panel

The Yolo County Juvenile Court shall develop and maintain a panel of qualified experts in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency. The juvenile court shall establish a procedure for selecting an expert for appointment. A copy of a panel expert's qualifications shall be provided to a party upon request.

²⁰ § 709, subd. (b)(5).

²¹ § 709, subd. (b)(6).

III. COMPETENCY HEARING

A. Nature of the Competency Hearing

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 incompetent to proceed. With respect to a minor under 14 years of age at the time of the commission of the alleged offense, the juvenile court shall make a determination as to the minor's capacity pursuant to Penal Code section 26 prior to deciding the issue of competency.²²

The party asserting that the minor is incompetent to proceed has the burden of proof by a preponderance of the evidence. The district attorney has the burden of proof by clear and convincing evidence a minor under 14 years of age at the time of the commission of the alleged offense had the capacity to commit a crime pursuant to Penal Code section 26.²³

B. Time for Competency Hearing

The juvenile court shall set a competency hearing within 15 judicial days from the hearing to receive the expert's report if the minor is detained in secure confinement and within 30 calendar days if the minor is not detained or on home supervision. Upon a showing of good cause, the juvenile court may continue the competency hearing only for the time shown to be necessary.

C. Competent to Proceed

If the juvenile court finds the minor competent to proceed, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction.²⁴

²² § 709, subd. (c)

²³ *In re Joseph H.* (2015) 237 Cal.App.4th 517, 538.

²⁴ § 709, subd. (d).

D. Incompetent to Proceed

If the juvenile court finds the minor is incompetent to proceed, but is likely to be remediated, 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 juvenile court no longer retains jurisdiction and the case must be dismissed.²⁵

If the juvenile court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The juvenile court may invite 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.²⁶

If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.²⁷ Prior to a dismissal, the juvenile court may make orders that it deems appropriate for services.²⁸

E. Motions

During the suspension of proceedings, the juvenile 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;²⁹ and
5. Motions to join agencies.³⁰

²⁵ § 709, subd. (e).

²⁶ § 709, subd. (h)(4).

²⁷ § 709, subd. (f).

²⁸ § 709, subd. (e).

²⁹ Ibid.

³⁰ § 727, subd. (b)(1).

IV. AFTER THE COMPETENCY HEARING

A. Remediation Services

Upon a finding of incompetency, the juvenile 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 juvenile 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. Services providers and evaluators shall adhere to the standards stated in section 709 and the California Rules of Court.³¹

B. Remediation Program

The services provided to the minor shall be in accordance with a remediation program. The probation department is responsible for preparing and submitting a written remediation program. The remediation program shall describe with particularity which remediation services the minor will receive to help the minor attain competency and for how long. If the minor qualifies for services from a regional center, the remediation program shall include services provided by a regional center.

If the minor is detained in secure confinement, the remediation program shall identify which remediation services the minor would receive if placed at home or at an alternative setting to secure confinement.

The juvenile court may adopt the remediation program in full or as modified.

³¹ § 709, subd. (g)(1).

C. Multidisciplinary Team

The juvenile court shall order a multidisciplinary team that may include, but is not limited to, minor's parent(s) or legal guardian(s), minor's counsel, county counsel, the probation department, county mental health department, and, if appropriate, a regional center, to develop the remediation program.

D. Time for Remediation Program

The juvenile court shall receive the remediation program at a hearing within 30 calendar days after the court finds the minor incompetent to proceed. The probation department shall file the remediation program with the juvenile court and serve the district attorney at least 3 judicial days before the hearing.

E. Periodic Review of Remediation Program

The minor shall be returned to juvenile court at the earliest possible date. The juvenile court shall review remediation program 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 section 709, subdivision (h)(3). If the minor is in custody, the county mental health department shall provide the juvenile court with suitable alternatives for the continued delivery of remediation services upon release from custody as part of the court's review of the remediation program. The juvenile court shall consider appropriate alternatives to juvenile hall confinement, including, but not limited to, all of the following:

1. Placement through regional centers;
2. Short-term residential therapeutic programs;
3. Crisis residential programs;
4. Civil commitment;
5. Foster care, relative placement, or other non-secure placement;

6. Other residential treatment programs.³²

At the periodic review, the probation department shall provide the juvenile court with an update on the minor's progress toward remediation. The juvenile court may change or modify the remediation program on its own motion or on the motion of any party when it appears that the best interests of the child may be promoted by the proposed change or modification. If the minor is detained, the minor's detention shall be reviewed.

V. REMEDIATION HEARING

A. Nature of a Remediation Hearing

The question of the minor's remediation shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on recommendation of the remediation program.

At least 10 judicial days prior to a remediation hearing, the probation department in consultation with the multidisciplinary team shall submit a written report describing the remediation services provided by the remediation program, the minor's participation, and a recommendation as to whether the minor has attained competency.

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 the minor remains incompetent and the juvenile court may appoint an expert to evaluate the minor in the manner described in this protocol.

If the recommendation is that the minor has not yet been remediated but is likely to be remediated within six months and if the district attorney disputes that recommendation, the minor shall be presumed incompetent and the prosecution shall have the burden to

³² § 709, subds. (g)(1)(A)-(F).

prove by a preponderance of evidence that the minor is competent and the juvenile court may appoint an expert to evaluate the minor in the manner described in this protocol.

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 and the juvenile court may appoint an expert to evaluate the minor in the manner described in this protocol.

The provisions of section 709, subdivision (c), shall apply at this stage of the proceedings.³³

B. Time for Remediation Hearing

1. Six months

Within six months from the receipt of the expert's report, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless there is a stipulation or submission by the parties on recommendation of the remediation program.³⁴

2. One year

The total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed the limit specified in section 709, subdivision (h)(5)(A).

C. Competent to Proceed

If the juvenile court finds that the minor has been remediated and is competent to proceed, the court shall reinstate the proceedings.³⁵

³³ § 709, subd. (h)(1).

³⁴ Ibid.

³⁵ § 709, subd. (h)(2).

D. Incompetent to Proceed

If juvenile 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.³⁶

If the juvenile court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The juvenile court may invite 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.³⁷

VI. SECURE CONFINEMENT

A. Least Restrictive Environment

Services shall be provided in the least restrictive environment consistent with public safety, as determined by the juvenile court. A finding of incompetency alone shall not be the basis for secure confinement.³⁸ The juvenile court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.³⁹

B. During Remediation

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

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; and

³⁶ § 709, subd. (h)(3).

³⁷ § 709, subd. (h)(4).

³⁸ § 709, subd. (g)(1).

³⁹ § 709, subd. (g)(2).

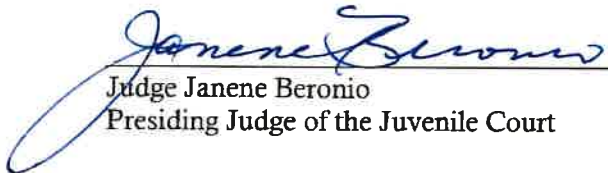
4. Whether the placement is necessary for the safety of the minor or others.⁴⁰

If the juvenile 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.⁴¹

C. Additional Secure Confinement

Only in cases where the petition involves an offense listed in section 707, subdivision (b), may the juvenile 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 incompetency.⁴²

Approved by:


Judge Janene Beronio
Presiding Judge of the Juvenile Court


Judge Daniel P. Maguire
Judge of the Juvenile Court

⁴⁰ § 709, subds. (h)(5)(A)(i)-(iv).

⁴¹ § 709, subd. (h)(5)(B).

⁴² § 709, subd. (h)(5)(C).

Addendum to Yolo County Juvenile Court Juvenile Competency Protocol

Effective March 16, 2021

Once a minor is found incompetent, the Multidisciplinary Team referenced in Section IV.C. will meet to prepare a remediation program for the minor. This program will be based upon a review of the expert's recommendations and of the minor's records. The Multidisciplinary Team will identify services that may be useful toward helping a minor attain competency. (See Section IV.A.)

The following identifies possible services that may be recommended for the minor, along with the agency tasked with providing these services to the minor, taking into account the minor's custodial status and eligibility for services from the Alta Regional Center. The list is not exhaustive, and can be amended as needed upon approval of the multidisciplinary team.

Service	In Custody	Out of Custody
Mental Health Services	HHSA	HHSA unless minor has private insurance and/or Alta California Regional Center
Treatment for Trauma	HHSA	HHSA unless minor has private insurance and/or Alta California Regional Center
Medically Supervised Medication	Juvenile Hall medical provider	HHSA unless minor has private insurance and/or Alta California Regional Center
Behavioral Counseling	HHSA	HHSA unless minor has private insurance and/or Alta California Regional Center
Trial Education Training	Probation	Probation for minor not eligible for regional center services Alta California Regional Center for minor eligible for regional center services
Socialization Skills Training	HHSA	HHSA unless minor has private insurance and/or Alta California Regional Center

Addendum #2: Clarification to Section IV and V

(effective as of May 3, 2021)

After the Court finds the minor incompetent, a Multidisciplinary Team meeting will be convened as described in IV.C. A written Proposed Remediation Program Report shall then be authored by Probation in conformity with section IV.B. However, if the minor is a client of the regional center, the regional center shall author this report.

Once a Remediation Program Plan has been adopted by the Court, Periodic Review of Remediation Program Reports will be authored by probation, or if the minor is a client of the regional center, by the regional center, as described in section IV.E.

Prior to the Remediation Hearing, the Probation department, in consultation with the Multidisciplinary Team shall author a report describing the remediation services, as described in section V.A. However, if the minor is a client of the regional center, the regional center shall author this report.