



# JUDICIAL COUNCIL OF CALIFORNIA

MENTAL HEALTH ISSUES  
IMPLEMENTATION TASK FORCE

[www.courts.ca.gov/mhiitf.htm](http://www.courts.ca.gov/mhiitf.htm)  
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## MENTAL HEALTH ISSUES IMPLEMENTATION TASK FORCE

### MINUTES OF OPEN MEETING WITH CLOSED SESSION

September 10, 2014

12:15 p.m.-1:30 p.m.

Teleconference

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<b>Advisory Body Members Present:</b>	Hon. Richard J. Loftus, Jr. , Chair; Hon. Hilary A. Chittick, Hon. Susan M. Gill, Mr. Michael D. Planet, Hon. Clifford L. Klein, Hon. Stephen V. Manley, Hon. Heather D. Morse, Hon. Jaime. R. Román, Mr. Michael M. Roddy, Hon. Garrett L. Wong
<b>Advisory Body Members Absent:</b>	Hon. Rogelio R. Flores, Hon. Suzanne N. Kingsbury, Hon. Marie E. Stratton, Hon. Michael Anthony Tynan
<b>Others Present:</b>	Ms. Nancy Taylor and Ms. Karen Moen, lead staff; Ms. Jenie Chang, Ms. Danielle McCurry, Ms. Charina Zalzos Ms. Carrie Zoller, Mr. Daniel Pone and Ms. Sharon Reilly(OGA)

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#### OPEN MEETING

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 12:15 p.m., and took roll call.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the June 12, 2014, Mental Health Issues Implementation Task Force meeting.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

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##### **Item 1**

##### **Task Force Work Plan September-December 2014**

##### **Description of Item Discussed**

A discussion of projects to be completed by December 2014 including development of sample local mental health court protocols, judicial ethics course(s), collaborative efforts with criminal justice partners, and training requirements for mental health hearing officers.

##### **Action:**

The following items were identified to be completed by December 2014: 1) develop sample protocols for mental health case protocols (per Rule of Court 10.951); 2) consult with CJER about the incorporation of ethical issues related to mental health and other collaborative courts into existing Qualifying Ethics

courses and provide support as needed/requested; 3) meet with justice system partners with priority given to meetings with the Department of State Hospitals, the California Sheriffs' Association and the Chief Probation Officers of California; and 4) continue to provide input on draft juvenile competency legislative proposal.

## **Item 2**

### **Planning for Continuation of Work January 2015 and Forward**

#### **Description of Item Discussed**

A discussion/exploration of ways to continue work related to court users with mental illness into the future following the sunset of the task force in December 2014.

#### **Action:**

The chair will continue to consult with Judicial Council staff and advisory committee chairs about options for incorporating mental health related work into the annual agendas of other advisory bodies including the Criminal Law Advisory Committee, Probate and Mental Health Advisory Committee, the Collaborative Justice Courts Advisory Committee, and the CJER Governing Committee.

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## **A D J O U R N M E N T**

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There being no further open meeting business, the meeting was adjourned at 1:10.

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## **C L O S E D S E S S I O N**

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## **Item 1**

### **Rule of Court 10.75 (d) (10) allows this agenda item to be considered in closed session.**

(10) Topics that judicial officers may not discuss in public without risking a violation of the California Code of Judicial Ethics, necessitating recusal, or encouraging disqualification motions or peremptory challenges against them, including proposed legislation, rules, forms, standards of judicial administration, or jury instructions.

### **Discussion of legal opinion concerning Community Corrections Partnership meetings.**

Adjourned closed session at 1:30 p.m.

Approved by the advisory body on TBD.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
October 1, 2014	For your information
To	Deadline
Members of the Mental Health Issues Implementation Task Force	N/A
From	Contact
Daniel Pone, Senior Attorney Governmental Affairs	Daniel Pone Governmental Affairs 916-323-3121 phone 916-323-4347 fax daniel.pone@jud.ca.gov
Sharon Reilly, Senior Attorney Governmental Affairs	
Subject	
2014 Mental Health-Related Legislation	

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The following select mental health-related bills were introduced in the second year of the 2013-14 Legislative session. The descriptions of the bills and status information are as of September 30, 2014. Hyperlinks to the bill text for each of the measures are included for your reference.

*BUDGET:*

**AB 1468 (Committee on Budget) -- Public Safety**  
[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1451-1500/ab\\_1468\\_bill\\_20140620\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1451-1500/ab_1468_bill_20140620_chaptered.pdf)

Among other things, contains the following provisions regarding the Department of State Hospitals (DSH) and mentally disordered offenders: (1) requires a court, when ordering that a defendant be committed to the Department of State Hospitals or other treatment facility to provide, prior to the defendant's admission to the place of commitment, any medical records of the defendant in addition to other documents already required by law; (2) deletes the requirement

that, when a court directs that a defendant be confined to a state hospital, the court select the state hospital in accordance with the policies established by the Department of State Hospitals; (3) clarifies that when a court orders a mentally incompetent defender to a state hospital, placement will be directed by the Department of State Hospitals; and (4) expands the facilities to which a court may place a defendant who is mentally incompetent to stand trial to include a community-based residential treatment system established in the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility (see W&I Code, 5670 et seq.).

*Status:* Signed into law by Governor (Stats. 2014, ch. 26)

*FORENSIC BILLS:*

**AB 1340 (Achadjian) – Enhanced treatment programs**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1301-1350/ab\\_1340\\_bill\\_20140928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1301-1350/ab_1340_bill_20140928_chaptered.pdf)

Permits DSH to establish and administer a pilot enhanced treatment program (ETP) at each state hospital, for the duration of five calendar years, for testing the effectiveness of treatment for patients who are at high risk of the most dangerous behavior. Authorizes ETPs to be licensed under the same requirements as acute psychiatric hospital licensing requirements, and makes significant changes to current requirements and procedures related to the admission of patients and the administration of care.

*Status:* Signed into law by Governor (Stats. 2014, ch. 718)

**AB 1591 (Achadjian) – Firearms: prohibited persons: notification**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1551-1600/ab\\_1591\\_bill\\_20140718\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1551-1600/ab_1591_bill_20140718_chaptered.pdf)

Requires that courts notify the Department of Justice (within one court day of the finding in an electronic format, in a manner prescribed by the DOJ) about individuals who have been adjudged by a court to be incompetent to stand trial, not guilty by reason of insanity, a danger to others as a result of a mental disorder or mental illness, or a mentally disordered sex offender.

*Status:* Signed into law by Governor (Stats. 2014, ch. 141)

**AB 1607 (Fox) – Sexually violent predators**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1601-1650/ab\\_1607\\_bill\\_20140930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1607_bill_20140930_chaptered.pdf)

Requires the person petitioning for conditional release, the director of the Department of State Hospitals, and the designated attorney of the county of commitment to notify the court within 30 court days of receipt of this notice if it appears that a county other than the county of commitment may be the county of domicile. Provides that the court's determination of the county of domicile is final and applies to further hearings pertaining to conditional release.

Requires that the court, after determining the county of domicile, set a date for the conditional release hearing and provide notice, as specified. Authorizes the county of domicile to elect to represent the state at the conditional release hearing. Provides that if the committed person has been conditionally released in a county other than the county of commitment, the jurisdiction of the person would, upon request of the designated counsel of the county of placement, be transferred to the court of the county of placement. Preserves notice requirements placed on courts under existing law.

*Status:* Signed into law by Governor (Stats. 2014, ch. 877)

**AB 2186 (Lowenthal) – Defendants: competency**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2151-2200/ab\\_2186\\_bill\\_20140928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2151-2200/ab_2186_bill_20140928_chaptered.pdf)

Requires the court, when determining if a defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, to consider the opinion of the psychiatrist or psychologist appointed by the court to examine the defendant for mental competency purposes. Requires the court, if it finds any one of a list of conditions to be true, to issue an order, as specified, valid for no more than one year, authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at a state hospital or other facility. Provides that if an administrative law judge upholds the 21-day certification by the defendant's treating psychiatrist that antipsychotic medication is medically necessary, the court may, for a period not to exceed 14 days, extend the certification and continue the required hearing pursuant to stipulation between the parties or upon a finding of good cause. Allows the district attorney, county counsel, or representative of a state hospital or other facility to petition the court for an order, reviewable as specified, to administer involuntary medication pursuant to specified criteria. Requires the court to review the order to administer involuntary medication at the time of the review of the initial competency report by the medical director of the treatment facility and at review of the 6-month progress reports. Allows the district attorney, county counsel, or representative of a state hospital or other facility to petition the court, within 60 days of the expiration of a one-year involuntary medication order, for a renewal of the order, subject to specified conditions.

*Status:* Signed into law by Governor (Stats. 2014, ch. 733)

**AB 2190 (Maienschein) – Criminal defendants: gravely disabled persons**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2151-2200/ab\\_2190\\_bill\\_20140928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2151-2200/ab_2190_bill_20140928_chaptered.pdf)

Allows a court, when appropriate, to conditionally release a defendant found to be incompetent to a placement in the community, rather than in a custodial or inpatient setting, to receive mental health treatment until competency is restored. Requires the court to find that the alternative placement would provide more appropriate treatment for the defendant and that the placement would not pose a danger to the health and safety of others. Requires a court to consider all listed

criteria before placing an offender who is subject to Penal Code section 1601 on outpatient status rather than requiring the court to find that all of the listed criteria have been met. Requires that if a criminal court with jurisdiction orders an evaluation of the defendant's mental condition, and that evaluation leads to a conservatorship investigation, the officer conducting the investigation must submit a copy of the report to the defendant or defendant's attorney, who in turn may authorize its release to the criminal court. Also makes the conservatorship report otherwise confidential.

*Status:* Signed into law by Governor (Stats. 2014, ch. 734)

**AB 2543 (Levine), as proposed to be amended\* – State hospitals: placement evaluations**

[\*Note: no link is provided as the proposed amendments did not go into print.]

Allows, at the election of the Director of State Hospitals, for an evaluation panel, instead of the treating psychiatrist, to determine whether a defendant committed to DSH to regain competency lacks capacity to make decisions regarding antipsychotic medication, as specified, and allows the lead member of the panel to present the case for the certification for involuntary treatment.

*Status:* Held in Assembly Public Safety Committee

**AB 2625 (Achadjian) – Defendants: competence**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2601-2650/ab\\_2625\\_bill\\_20140928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2601-2650/ab_2625_bill_20140928_chaptered.pdf)

Requires the medical director of the state hospital or other treatment facility to which a defendant is confined for treatment to regain mental competence to do the following if the medical director's report concerning the defendant's progress toward mental competency recovery indicates that the defendant has no substantial likelihood of regaining mental competence in the foreseeable future: (1) promptly notify and provide a copy of the report to the defense counsel and the district attorney and (2) provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that transportation will be needed for the patient. Specifies, for the cases referenced above, that the committing court shall order the defendant to be returned to the court for further proceedings to determine if the defendant is eligible to be placed under a specified conservatorship no later than 10 days following receipt of the medical director's report. Provides that the court shall transmit a copy of its order to the community program director or his or her designee. Requires that a defendant committed to a state hospital for treatment to regain mental competency, but who has not recovered competence, be returned to the committing court no later than 90 days before the expiration of the defendant's term of commitment.

*Status:* Signed into law by Governor (Stats. 2014, ch. 742)

**SB 1412 (Nielsen) – Criminal proceedings: mentally incompetent offenders**

[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1401-1450/sb\\_1412\\_bill\\_20140928\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1401-1450/sb_1412_bill_20140928_chaptered.pdf)

Applies and adapts the procedures and standards currently governing persons found incompetent to stand trial to cases where a defendant subject to mandatory supervision or postrelease community supervision (PRCS) faces revocation of his or her conditional release due to incompetency. Among other things, prohibits a person from having his or her probation, mandatory supervision, PRCS, or parole revoked while that person is mentally incompetent. Specifies that only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, PRCS, or parole. Credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the period of revocation or the remaining term of supervision that was suspended. Allows the court, if a defendant is found mentally incompetent during postrelease community supervision or parole revocation hearings, to (1) order the defendant to undergo treatment or (2) dismiss the pending revocation matter and return the defendant to supervision, in which case the court could (a) modify the terms and conditions of supervision, (b) refer the matter to the public guardian of the county to initiate conservatorship proceedings, or (c) refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant. Requires the court—if a person is subject to parole due to a conviction for an offense of first- or second-degree murder or a registerable sex offense in which at least one victim of the offense was a child less than 14 years old, and the person is found mentally incompetent—to remand the person to the custody of the Department of Corrections and Rehabilitation on a finding of probable cause that the person violated a term or condition of parole.

*Status:* Signed into law by Governor (Stats. 2014, ch. 759)

*LPS BILLS:*

**AB 1725 (Maienschein), as amended April 30, 2014 – Conservatorship hearings**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1701-1750/ab\\_1725\\_bill\\_20140430\\_amended\\_asm\\_v98.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1701-1750/ab_1725_bill_20140430_amended_asm_v98.pdf)

The bill would have allowed a probate court to recommend an LPS conservatorship for an individual for whom a conservatorship has been established under the Probate Code, subject to a hearing attended by the proposed conservatee or the proposed conservatee's counsel, as specified. It also would have required the officer providing conservatorship investigation to file a copy of his or her report with the court making the recommendation in the probate conservatorship within 30 days of the recommendation.

*Status:* Died on suspense in Assembly Appropriations Committee

**AB 2266 (Waldron), as introduced – Mental health: assisted outpatient treatment**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2251-2300/ab\\_2266\\_bill\\_20140221\\_introduced.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2251-2300/ab_2266_bill_20140221_introduced.pdf)

Sought to increase the maximum period of imposed outpatient treatment under the Assisted Outpatient Treatment Demonstration Project (“Laura’s law”) from six months to one year.

*Status:* Failed passage in Assembly Judiciary Committee

*MISCELLANEOUS BILLS:*

**AB 1014 (Skinner) - Gun violence restraining orders**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1001-1050/ab\\_1014\\_bill\\_20140930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1001-1050/ab_1014_bill_20140930_chaptered.pdf)

Authorizes a court to issue a temporary emergency gun violence restraining order if a law enforcement officer asserts and a judicial officer finds that there are reasonable grounds to believe that the subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent personal injury to himself, herself, or another person, as specified. Authorizes a court to issue an ex parte gun violence restraining order, upon a showing of good cause, prohibiting the subject of the petition from having under his or her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition, as specified. Requires the ex parte order to expire no later than 14 days after the date on the order and the court to hold a hearing within 21 days of issuing the ex parte gun violence restraining order to determine if a gun violence restraining order that is in effect for one year should be issued. Authorizes a court to issue a gun violence restraining order prohibiting the subject of the petition from having under his or her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition for a period of one year when evidence is clear and convincing to believe that the subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, is substantially likely to cause personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury to himself, herself, or another person, as specified. Authorizes the renewal of the order for additional one-year periods, and would permit the restrained person to request one hearing to terminate the order during the effective period of the initial order or each renewal period.

Makes it a misdemeanor for an individual to file a petition for a gun violence restraining order knowing the information in the petition to be false or intending to harass. Provides that a person who violates a gun violence restraining order is guilty of a misdemeanor and shall be prohibited from having under his or her custody and control, owning, purchasing, possessing, receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, commencing

upon the expiration of the existing gun violence restraining order. Allows a search warrant to be issued when the property or things to be seized are a firearm, firearms, or ammunition that is in the custody and control of, or is owned or possessed by, a person who is the subject of a gun violence restraining order. Requires the law enforcement officer executing a search warrant issued upon that ground to take custody of any firearm or ammunition that is in the restrained person's custody and control or possession, that is owned by the restrained person, or that is discovered under a consensual or other lawful search, and provides rules for executing the search warrant when the location to be searched is jointly occupied by the restrained person and one or more other persons.

*Status:* Signed into law by Governor (Stats. 2014, ch. 872)

**AB 1847 (Chesbro) – Mental health disorders: language**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1801-1850/ab\\_1847\\_bill\\_20140718\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1801-1850/ab_1847_bill_20140718_chaptered.pdf)

Deletes certain offensive and outdated terms once used to describe mental health conditions and disabilities in various California statutes (*other than the Penal Code*) and replaces them with more current, less offensive, terms.

*Status:* Signed into law by Governor (Stats. 2014, ch. 144)

**AB 1929 (Chau) – California Housing Finance Agency: MHSA funding: special needs housing for person with mental illness**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1901-1950/ab\\_1929\\_bill\\_20140927\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1901-1950/ab_1929_bill_20140927_chaptered.pdf)

Requires the California Housing Finance Agency, with the concurrence of the Department of Health Care Services, to release unencumbered Mental Health Services Act funding upon request of the respective county, and for counties to utilize these released funds to provide housing assistance to people with mental illness.

*Status:* Signed into law by Governor (Stats. 2014, ch. 674)

**AB 2198 (Levine) – Mental health professionals: suicide prevention training**

[http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2151-2200/ab\\_2198\\_bill\\_20140821\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2151-2200/ab_2198_bill_20140821_enrolled.pdf)

Would have required Psychologists, Licensed Marriage and Family Therapists, Licensed Education Psychologists, Licensed Clinical Social Workers, and Licensed Professional Clinical Counselors to complete either 15 or more hours of coursework during a degree program, or six or more hours of continuing education coursework as part of license renewal, in the areas of suicide assessment, management, and treatment, depending on the professional's date of graduation.

*Status:* Vetoed by Governor\*

Members of the Mental Health Issues Implementation Task Force

October 1, 2014

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\*Veto message: [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2151-2200/ab\\_2198\\_vt\\_20140918.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2151-2200/ab_2198_vt_20140918.html)

**SB 1054 (Steinberg) – Mentally ill offender crime reduction grants**

[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_1051-1100/sb\\_1054\\_bill\\_20140918\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1051-1100/sb_1054_bill_20140918_chaptered.pdf)

Extends a recommendations plan deadline for the California Juvenile Justice Data Working Group and makes various changes to the Mentally Ill Offender Crime Reduction (MIOCR) grant program.

*Status:* Signed into law by Governor (Stats. 2014, ch. 436)

**This document is a working draft and contains input from members of the Joint Juvenile Competency Issues Working Group. The working group last collaborated August 7, 2014 via teleconference call. Additional comments have been submitted and will be considered by members at the next working group meeting.**

**JOINT JUVENILE COMPETENCY ISSUES WORKING GROUP  
WELFARE AND INSTITUTIONS CODE §709**

1 (a) During the pendency of any juvenile proceeding, any party, participant, or the court may express a  
2 doubt as to the minor's competency. Doubt expressed by a party or participant does not automatically  
3 trigger a competency evaluation, but is information that must be considered by the court in  
4 determining whether to order a competency evaluation. A minor is incompetent to proceed if he or  
5 she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense  
6 with a reasonable degree of rational understanding, or lacks a rational as well as factual  
7 understanding, of the nature of the charges or proceedings against him or her. Incompetency to stand  
8 trial may result from the presence of any condition or conditions that result in an inability to assist  
9 counsel or understand the nature of the proceeds, including mental illness or mental disorder,  
10 developmental disability, or developmental immaturity. If the court finds substantial evidence that  
11 raises a doubt as to the minor's competency, the proceedings shall be suspended.  
12

13 (b) At any time after the court determines that the minor may be incompetent to stand trial, the court  
14 may, with consent of minor's counsel and the District Attorney's Office, and consultation with the  
15 Probation Department, continue hearing on a Petition for up to twelve months and order the minor to  
16 participate in a voluntary service program directed by the probation officer. The minor shall be  
17 released from custody. Probation shall make referrals and assist the family in accessing appropriate  
18 services to address the issues that brought the minor before the court. This occurs without an  
19 admission and without adjudging the minor a ward of the court. Upon successful completion of the  
20 voluntary service program, the Court shall dismiss the proceedings.

21  
22 (b) (c) Upon suspension of proceedings, the court shall order that the question of the minor's  
23 competence be determined at an evidentiary hearing. At this hearing, minor's counsel has the burden  
24 of establishing by a preponderance of the evidence that the minor is incompetent to proceed. The  
25 court shall appoint an expert to evaluate whether the minor suffers from a mental illness or mental  
26 disorder, developmental disability, developmental immaturity, or other condition and, if so, whether  
27 the condition or conditions impair the minor's competency. The expert shall have expertise in child

**Comment [A1]:** Seek comment on this issue: Is addition of "participant" and this sentence necessary?

**Comment [KM2]:** In addition to developmental disability, might we want to discuss the addition of "and/or intellectual deficit?" Intellectual deficit may be different than developmental disability (for example, the difference between someone with Down's Syndrome and a young with an intellectual deficit due to traumatic brain injury (TBI) as a result of an accident or severe abuse resulting in injury to the brain.

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**JOINT JUVENILE COMPETENCY ISSUES WORKING GROUP  
WELFARE AND INSTITUTIONS CODE §709**

1 and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar  
2 with competency standards and accepted criteria  
3 used in evaluating competence. The expert shall personally interview the minor and review all  
4 available records provided to the expert, including but not limited to medical, education, special  
5 education, child welfare, mental health, regional center, and court records. The expert should consult  
6 with the minor's defense attorney to ascertain their reasons for doubting competency. The expert  
7 should gather a developmental history of the minor. The expert must administer age-appropriate  
8 testing specific to the issue of competency. This expert shall state in the written report whether the  
9 minor has sufficient present ability to consult with his or her attorney with a reasonable degree of  
10 rational understanding and whether he or she has a rational as well as a factual understanding of the  
11 proceedings against him or her. The expert shall also state the reasons for making the conclusion,  
12 what type of treatment would be effective in restoring the minor to competency, and whether the  
13 minor can attain competency within a reasonable period of time. The Judicial Council shall develop  
14 and adopt rules for the implementation of these requirements.

15  
16 (d) The District Attorney or the minor may retain or seek the appointment of additional qualified  
17 experts, whose reports shall be confidential unless the expert testifies during the competency hearing.  
18 In the event the party who has obtained the confidential report anticipates presenting the expert's  
19 testimony and report, or the report without the expert's testimony, the report and the expert's  
20 qualifications shall be disclosed to the opposing party within a reasonable time prior to the hearing,  
21 and not later than 5 court days prior to the hearing. If, after disclosure of the report, the opposing  
22 party requests a continuance in order to prepare further for the hearing, the court shall grant a  
23 continuance for a reasonable period of time upon a showing of good **cause**.

24  
25 (k) (e) If the expert believes the minor is developmentally disabled, the court shall appoint the  
26 director of a regional center for developmentally disabled individuals described in Article 1  
27 (commencing with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to evaluate the

**Comment [A3]:** Research needed. DA retained expert, can the report be confidential? Must it be handed over? Is the standard different for DA and minor's atty?

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**JOINT JUVENILE COMPETENCY ISSUES WORKING GROUP  
WELFARE AND INSTITUTIONS CODE §709**

1 minor. The director of the regional center, or his or her designee, shall determine whether the minor is  
2 eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5  
3 (commencing with Section 4500)), and shall provide the court with a written report informing the  
4 court of his or her determination. The court's appointment of the director of the regional center for  
5 determination of eligibility for services shall not delay the court's proceedings for determination of  
6 competency.

7  
8 ~~(f)~~ (f) An expert's opinion that a minor is developmentally disabled does not supersede an  
9 independent determination by the regional center whether the minor is eligible for services under the  
10 Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

11  
12 ~~(m)~~ (g) Nothing in this section shall be interpreted to authorize or require the following:

13 (1) The court to place a minor who is incompetent in a developmental center or community facility  
14 operated by the State Department of Developmental Services without a determination by a regional  
15 center director, or his or her designee, that the minor has a developmental disability and is eligible for  
16 services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing  
17 with Section 4500)).

18  
19 (2) The director of the regional center, or his or her designee, to make determinations regarding the  
20 competency of a minor.

21  
22 (h) Statements made during the examination by the minor to appointed experts, statements made to  
23 experts pursuant to Evidence Code Section 1017 which are submitted to the court on the issue of  
24 competence, and any statements made at trial on the issue of competency, and any fruits of the  
25 competency examination, shall not be used in any other hearing involving or against the minor in  
26 either juvenile or adult court.

**Comment [A4]:** Research: Total exclusion or only against the minor? What if discloses abuse that results in 300 filing.

What if youth wants to use the report at a later hearing?

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**JOINT JUVENILE COMPETENCY ISSUES WORKING GROUP  
WELFARE AND INSTITUTIONS CODE §709**

1  
2 ~~(e)~~ (i) If the minor is found to be incompetent by the court by a preponderance of the evidence, all  
3 proceedings shall remain suspended for a period of time that is no longer than reasonably necessary  
4 to determine whether there is a substantial probability that the minor will attain competency in the  
5 foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make  
6 orders that it deems appropriate for services, subject to subdivision ~~(h)~~ (i), that may assist the minor  
7 in attaining competency. Further, the court may rule on motions that do not require the participation  
8 of the minor in the preparation of the motions. These motions include, but are not limited to, the  
9 following:

- 10 (1) Motion to dismiss  
11 (2) Motion by the defense regarding a change in the placement of the minor.  
12 (3) Detention hearings  
13 (4) Demurrers  
14

15 ~~(d)~~ (j) If the minor is found to be competent, the court may proceed commensurate with the court's  
16 jurisdiction.  
17

18 (k)The Presiding Judge of the Juvenile Court, the County Probation Department, the County Mental  
19 Health Department, and any other participants the Presiding Judge shall designate, shall develop a  
20 written protocol and program to ensure that minors who are found incompetent receive appropriate  
21 services for the remediation of competency. Remediation counselors or evaluators shall adhere to the  
22 standards in subsection (c).

23  
24 (l) Upon a finding of incompetency the court may refer the minor to the county's remediation  
25 program, as described in (k). The program shall provide services in the least restrictive environment  
26 consistent with public safety. Priority shall be given to minors in custody. The Court shall review the

**Comment [MM5]:** Is this the correct section reference?

**Comment [A6]:** Working Group selected to use term in legislation. As noted in the recent article in the Juvenile and Family Court Journal (Spring 2014), some scholars prefer the term *remediation* rather than *restoration* when referring to juveniles because, in some states, juveniles may be found to be incompetent due to developmental immaturity as well as because of mental illness and intellectual deficits/developmental disabilities. Remediation involves utilization of developmentally and culturally appropriate interventions along with juvenile/child-specific case management to address barriers to adjudicative competency. Juvenile and Family Court Journal 65, No 2 (Spring) © 2014 National Council of Juvenile and Family Court Judges; *A Community-Based Model for Remediating Juvenile Adjudicated Incompetent to Stand Trial: Feedback from Youth, Attorneys, and Judges* by Shelly L. Jackson, Ph.D., Janet I. Warren, DSW, and Jessica Jones Coburn.

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WELFARE AND INSTITUTIONS CODE §709**

1 remediation services provided to the minor at least every 30 calendar days, and the minor shall be  
2 returned to court at the earliest possible time with a recommendation of remediation or non-  
3 remediation.

4  
5 (m) Upon presentation of the recommendation the parties can stipulate, submit, or have a hearing on  
6 whether the minor has been remediated or is able to be remediated. If the recommendation is that the  
7 minor's competency has been remediated, the burden is on the minor to show, by a preponderance of  
8 evidence, incompetence. If the recommendation is that the minor is not able to be remediated, the  
9 people must demonstrate by a preponderance of evidence that the minor is restorable.

10  
11 (n) If the court finds the minor is able to be remediated, the minor is returned to the remediation  
12 program.

13  
14 (o) If it appears that the minor will not achieve remediation, the court shall set a hearing to determine  
15 if the minor is remediable, and the court shall order or convene a multidisciplinary team to determine  
16 what services are necessary and available after dismissal of the petition. All persons and agencies  
17 with information about the minor or about services which may be available to the minor shall be  
18 invited to this meeting. Such persons and agencies may include, but not be limited to, the prosecutor;  
19 the minor and his or her attorney; parents, guardians, or relative caregiver; mental health treatment  
20 professionals; public guardian; educational rights holder; education provider; and social services  
21 agency. Unless the court convenes the multidisciplinary team meeting, the Probation Department or  
22 its designee shall prepare a report for the court and counsel identifying the recidivism risk of the  
23 minor, the services available to the minor and his or her family, obstacles to such services, and any  
24 other relevant information. If appropriate, the Court shall refer the minor for evaluation pursuant to  
25 Welfare and Institutions Code sections 6550, et seq. or 5300, et seq.  
26

**Comment [A7]:** Alternative: The court may order the multidisciplinary team meeting to provide a report to the court and counsel identifying the recidivism risk of the minor, the services available to the minor and his or her family, obstacles to such services, and any other relevant information.

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**JOINT JUVENILE COMPETENCY ISSUES WORKING GROUP  
WELFARE AND INSTITUTIONS CODE §709**

1 (p) If the minor is found not restorable, the Court shall consider what services, if any, have or will be  
2 provided to reduce the minor's risk of recidivism. If appropriate, the Court shall refer the minor for  
3 evaluation pursuant to Welfare and Institutions Code sections 6550, et seq. or 5300, et seq. If the  
4 minor is found not restorable the petition shall be dismissed.  
5

6 ~~(f)~~(q) If the expert believes the minor is developmentally disabled, the court shall appoint the director  
7 of a regional center for developmentally disabled individuals described in Article 1 (commencing  
8 with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to evaluate the minor. The  
9 director of the regional center, or his or her designee, shall determine whether the minor is eligible for  
10 services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing  
11 with Section 4500)), and shall provide the court with a written report informing the court of his or her  
12 determination. The court's appointment of the director of the regional center for determination of  
13 eligibility for services shall not delay the court's proceedings for determination of competency.  
14

15 ~~(h)~~ (r) Nothing in this section shall be interpreted to authorize or require the following.  
16

17 (1) The court to place a minor who is incompetent in a developmental center or community facility  
18 operated by the State Department of Developmental Services without a determination by a regional  
19 center director, or his or her designee, that the minor has a developmental disability and is eligible for  
20 services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing  
21 with Section 4500))  
22

23 (2) The director of the regional center, or his or her designee, to make determinations regarding the  
24 competency of a minor.