

# Competency in Juvenile Justice Proceedings

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## In the beginning . . .

*In re Gault* (1967) 387 U.S. 1

A minor in a juvenile court proceeding is entitled to counsel.

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## In the beginning . . .

*Kent v. U.S.* (1966) 383 U.S. 541

The right to counsel is meaningless unless that right is construed to mean effective counsel.



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***James H. v. Superior Court* (1978)  
77 Cal.App.3d 169, 174**

“Due process demands that a person constitutionally entitled to the right to effective counsel be afforded a hearing as to his competency to cooperate with that counsel.”



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***James H. v. Superior Court (1978)***  
**77 Cal.App.3d 169, 176**

Because there was no statutory procedure regarding juvenile competency, “juvenile courts throughout the nation have been improvising procedures to comply with newly announced constitutional mandates.”



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***James H. v. Superior Court (1978)***  
**77 Cal.App.3d 169, 176**

“Without any fuss or commotion, the juvenile courts have done so without recourse to the Legislature or to the reviewing courts. They have done so without any evangelistic illusions of judicial wisdom. They have simply been forced to rely on their inherent powers to formulate procedures which have not yet attained legislative approval.”



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***James H. v. Superior Court (1978)***  
**77 Cal.App.3d 169, 176-177.**

Thus, the Court has the authority to determine the minor's competence, and if the minor is not competent, to suspend proceedings and order the minor into treatment pursuant to WIC sections 705 and 6550.



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**Courts Improvise for 20 years . . .**

With the commitment and treatment of incompetent youth proceeding civilly under the LPS Act, while the delinquency proceedings are suspended.

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

*In re Robert B.* (1995) 39 Cal.App.4<sup>th</sup> 1816



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**And then: *In re Patrick H.* (1997) 54  
Cal.App.4<sup>th</sup> 1346, 1359**

It is error to commit a  
minor for competency  
restoration pursuant to  
Penal Code section 1370.



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## **Back to Improvising**

Without specific statutory guidance  
or authority to guide them for the  
next 15 years, Juvenile Courts were  
again left to improvise when faced  
with minors who were incompetent  
to stand trial.



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## WIC sec. 709

Finally, the CA Legislature enacted WIC sec. 709, which became effective in 2012, establishing procedures for the determination of competence.

Yet, section 709 did not answer all the questions. Many grey areas remain.



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## Recent Decisions

*In re R.V.* (2015) 61 Cal.4<sup>th</sup> 181

A minor is presumed competent, and the party challenging competency has the burden of proof in competency proceedings pursuant to WIC sec. 709.



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## Recent Decisions

*In re Albert C.* (2017) 3 Cal.5th 483, 495

Section 709 “requires *suspension* of proceedings for ‘a period of time that is no longer than reasonably necessary’ . . . [it] does not preempt a local rule or protocol that constrains *detention* to a period of time shorter than what is ‘reasonably necessary’ within the meaning of that statute.”



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## Attempts to Establish More Comprehensive Procedures

- AB 2695, introduced in 2016, similarly sought to expand and clarify the evaluation process and set time limits on restoration to competency.
- AB 935, introduced in 2017, sought to clarify the evaluation process and set a six-month time limit on restoration to competency.



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## Best Practices

- Probation's role
- Child welfare's role
- Court's role

## Hypotheticals

- Child is accused of a sex offense and the victim lives in the home. The defense attorney declares a doubt and, after evaluation, the court finds the minor incompetent. Competence restoration progress is reviewed every six months for a year. The prognosis is not good. What should be done.



## Hypotheticals

- The child is a dependent of the court and commits a very serious crime – murder – and is declared incompetent. Restoration to competency takes a long time. Where should he be placed during restoration? What if he can't be restored?

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