

AMENDED IN ASSEMBLY MARCH 16, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 689**

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**Introduced by Assembly Member Obernolte**

February 15, 2017

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An act to repeal and add Section 709 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 689, as amended, Obernolte. Juvenile proceedings: competency.

Existing law authorizes, during the pendency of any juvenile proceeding, the minor's counsel or the court to express a doubt as to the minor's competency. Existing law requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency. Existing law requires the court to appoint an expert, as specified, to evaluate whether the 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.

This bill would revise and recast these provisions to, among other things, expand upon the duties imposed upon an expert during his or her evaluation of a minor whose competency is in doubt, as specified. The bill would authorize the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts with regard to determining competency, as specified. The bill would require the Judicial Council to adopt a rule of court relating to the qualifications of those experts, as specified.

The bill would also add provisions that would require a minor's competency to instead be determined at an evidentiary hearing, and

would establish a presumption of mental competency, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent, except as specified. The bill would require the court, upon a finding of incompetency, to *immediately* refer the minor to services designed to help the minor attain competency, as specified. If the court finds that the minor will not achieve competency within a reasonable period of time, the bill would require the court to dismiss the petition. The bill would authorize the court to allow specified persons and agencies to discuss any services that may be available to the minor after the court’s jurisdiction is terminated, and would require the court to make certain referrals for the minor. The bill would require, among others, the presiding judge of a juvenile court, the probation department, and the county mental health department to develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

By imposing additional duties on local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 709 of the Welfare and Institutions Code
- 2 is repealed.
- 3 SEC. 2. Section 709 is added to the Welfare and Institutions
- 4 Code, to read:
- 5 709. (a) (1) Whenever the court has a doubt that a minor who
- 6 is subject to any juvenile proceedings is mentally competent, the
- 7 court shall suspend all proceedings and proceed pursuant to this
- 8 section.

1 (2) A minor is mentally incompetent for purposes of this section  
2 if he or she is unable to understand the nature of the proceedings,  
3 including his or her role in the proceedings, or unable to assist  
4 counsel in conducting a defense in a rational manner, including a  
5 lack of a rational and factual understanding of the nature of the  
6 charges or proceedings. Incompetency may result from the presence  
7 of any condition or conditions, including, but not limited to, mental  
8 illness, mental disorder, developmental disability, or developmental  
9 immaturity. Except as specifically provided otherwise, this section  
10 applies to a minor who is alleged to come within the jurisdiction  
11 of the court pursuant to Section 601 or 602.

12 (3) During the pendency of any juvenile proceeding, the court  
13 may receive information from any source regarding the minor's  
14 ability to understand the proceedings. The minor's counsel or the  
15 court may express a doubt as to the minor's competency. The  
16 receipt of information or the expression of doubt of the minor's  
17 counsel does not automatically require the suspension of  
18 proceedings. If the court has a doubt as to the minor's competency,  
19 the court shall suspend the proceedings.

20 (b) (1) Unless the parties stipulate to a finding that the minor  
21 lacks competency, or the parties are willing to submit on the issue  
22 of the minor's lack of competency, the court shall appoint an expert  
23 to evaluate the minor and determine whether the minor suffers  
24 from a mental illness, mental disorder, developmental disability,  
25 developmental immaturity, or other condition affecting competency  
26 and, if so, whether the minor is competent.

27 (2) The expert shall have expertise in child and adolescent  
28 development and forensic evaluation of juveniles for purposes of  
29 adjudicating competency, shall be familiar with competency  
30 standards and accepted criteria used in evaluating juvenile  
31 competency, and shall have received training in conducting juvenile  
32 competency evaluations.

33 (3) The expert shall personally interview the minor and review  
34 all of the available records provided, including, but not limited to,  
35 medical, education, special education, probation, child welfare,  
36 mental health, regional center, and court records, and any other  
37 relevant information that is available. The expert shall consult with  
38 the minor's counsel and any other person who has provided  
39 information to the court regarding the minor's lack of competency.  
40 The expert shall gather a developmental history of the minor. If

1 any information is unavailable to the expert, he or she shall note  
2 in the report the efforts to obtain that information. The expert shall  
3 administer age-appropriate testing specific to the issue of  
4 competency unless the facts of the particular case render testing  
5 unnecessary or inappropriate. In a written report, the expert shall  
6 opine whether the minor has the sufficient present ability to consult  
7 with his or her counsel with a reasonable degree of rational  
8 understanding and whether he or she has a rational and factual  
9 understanding of the proceedings against him or her. The expert  
10 shall also state the basis for these conclusions. If the expert  
11 concludes that the minor lacks competency, the expert shall make  
12 recommendations regarding the type of remediation services that  
13 would be effective in assisting the minor in attaining competency,  
14 and, if possible, the expert shall address the likelihood of the minor  
15 attaining competency within a reasonable period of time.

16 (4) The Judicial Council, in conjunction with groups or  
17 individuals representing judges, defense counsel, district attorneys,  
18 counties, advocates for people with developmental and mental  
19 disabilities, state psychologists and psychiatrists, professional  
20 associations and accredited bodies for psychologists and  
21 psychiatrists, and other interested stakeholders, shall adopt a rule  
22 of court identifying the training and experience needed for an  
23 expert to be competent in forensic evaluations of juveniles. The  
24 Judicial Council shall develop and adopt rules for the  
25 implementation of the other requirements in this subdivision.

26 (5) Statements made to the appointed expert during the minor's  
27 competency evaluation, statements made by the minor to mental  
28 health professionals during the remediation proceedings, and any  
29 fruits of those statements shall not be used in any other hearing  
30 against the minor in either juvenile or adult court.

31 (6) The district attorney or minor's counsel may retain or seek  
32 the appointment of additional qualified experts who may testify  
33 during the competency hearing. The expert's report and  
34 qualifications shall be disclosed to the opposing party within a  
35 reasonable time before, but no later than five court days before,  
36 the hearing. If disclosure is not made in accordance with this  
37 paragraph, the expert shall not be allowed to testify, and the  
38 expert's report shall not be considered by the court unless the court  
39 finds good cause to consider the expert's report and testimony. If,  
40 after disclosure of the report, the opposing party requests a

1 continuance in order to further prepare for the hearing and shows  
2 good cause for the continuance, the court shall grant a continuance  
3 for a reasonable period of time.

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

17 (8) An expert's opinion that a minor is developmentally disabled  
18 does not supersede an independent determination by the regional  
19 center regarding the minor's eligibility for services under the  
20 Lanterman Developmental Disabilities Services Act (Division 4.5  
21 (commencing with Section 4500)).

22 (9) Nothing in this section shall be interpreted to authorize or  
23 require either of the following:

24 (A) Placement of a minor who is incompetent in a developmental  
25 center or community facility operated by the State Department of  
26 Developmental Services without a determination by a regional  
27 center director, or his or her designee, that the minor has a  
28 developmental disability and is eligible for services under the  
29 Lanterman Developmental Disabilities Services Act (Division 4.5  
30 (commencing with Section 4500)).

31 (B) Determinations regarding the competency of a minor by the  
32 director of the regional center or his or her designee.

33 (c) The question of the minor's competency shall be determined  
34 at an evidentiary hearing unless there is a stipulation or submission  
35 by the parties on the findings of the expert. It shall be presumed  
36 that the minor is mentally competent, unless it is proven by a  
37 preponderance of the evidence that the minor is mentally  
38 incompetent. With respect to a minor under 14 years of age at the  
39 time of the commission of the alleged offense, the court shall make

1 a determination as to the minor's capacity, pursuant to Section 26  
2 of the Penal Code prior to deciding the issue of competency.

3 (d) If the court finds the minor to be competent, the court shall  
4 reinstate proceedings and proceed commensurate with the court's  
5 jurisdiction.

6 (e) If the court finds, by a preponderance of evidence, that the  
7 minor is incompetent, all proceedings shall remain suspended for  
8 a period of time that is no longer than reasonably necessary to  
9 determine whether there is a substantial probability that the minor  
10 will attain competency in the foreseeable future, or the court no  
11 longer retains jurisdiction. During this time, the court may make  
12 orders that it deems appropriate for services. Further, the court  
13 may rule on motions that do not require the participation of the  
14 minor in the preparation of the motions. These motions include,  
15 but are not limited to, all of the following:

16 (1) Motions to dismiss.

17 (2) Motions regarding a change in the placement of the minor.

18 (3) Detention hearings.

19 (4) Demurrers.

20 (f) Upon a finding of incompetency, the court shall *immediately*  
21 refer the minor to services designed to help the minor attain  
22 ~~competency immediately.~~ *competency*. Service providers and  
23 evaluators shall adhere to the standards stated in this section and  
24 the California Rules of Court. Services shall be provided in the  
25 least restrictive environment consistent with public safety. Priority  
26 shall be given to minors in custody. Service providers shall  
27 determine the likelihood of the minor attaining competency within  
28 a reasonable period of time, and if the opinion is that the minor  
29 will not attain competency within a reasonable period of time, the  
30 minor shall be returned to court at the earliest possible date. The  
31 court shall review cases every 15 days until remediation services  
32 begin. After remediation services have commenced, the court shall  
33 review cases every 30 days.

34 (g) (1) Upon receipt of the recommendation by the remediation  
35 program, the court shall hold an evidentiary hearing on whether  
36 the minor is remediated or is able to be remediated unless the  
37 parties stipulate to, or agree to the recommendation of, the  
38 remediation program. If the recommendation is that the minor has  
39 attained competency, and if the minor disputes that  
40 recommendation, the burden is on the minor to prove by a

1 preponderance of evidence that he or she remains incompetent. If  
2 the recommendation is that the minor is unable to be remediated  
3 and if the prosecutor disputes that recommendation, the burden is  
4 on the prosecutor to prove by a preponderance of evidence that  
5 the minor is remediable. If the prosecution contests the evaluation  
6 of continued incompetence, the minor shall be presumed  
7 incompetent and the prosecution shall have the burden to prove  
8 by a preponderance of evidence that the minor is competent. The  
9 provisions of subdivision (c) shall apply at this stage of the  
10 proceedings.

11 (2) If the court finds that the minor has been remediated, the  
12 court shall reinstate the proceedings.

13 (3) If the court finds that the minor has not yet been remediated,  
14 but is likely to be remediated within a reasonable period of time,  
15 the court shall order the minor to return to the remediation program.

16 (4) If the court finds that the minor will not achieve competency  
17 within a reasonable period of time, the court shall dismiss the  
18 petition. The court may invite persons and agencies with  
19 information about the minor, including, but not limited to, the  
20 minor and his or her attorney, the probation department, parents,  
21 guardians, or relative caregivers, mental health treatment  
22 professionals, the public guardian, educational rights holders,  
23 education providers, and social services agencies, to the dismissal  
24 hearing to discuss any services that may be available to the minor  
25 after jurisdiction is terminated. If appropriate, the court shall refer  
26 the minor for evaluation pursuant to Article 6 (commencing with  
27 Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3  
28 (commencing with Section 6550) of Chapter 2 of Part 2 of Division  
29 6.

30 (h) The presiding judge of the juvenile court, the probation  
31 department, the county mental health department, the public  
32 defender and other entity that provides representation for minors,  
33 the district attorney, the regional center, if appropriate, and any  
34 other participants that the presiding judge shall designate, shall  
35 develop a written protocol describing the competency process and  
36 a program to ensure that minors who are found incompetent receive  
37 appropriate remediation services.

38 SEC. 3. To the extent that this act has an overall effect of  
39 increasing certain costs already borne by a local agency for  
40 programs or levels of service mandated by the 2011 Realignment

1 Legislation within the meaning of Section 36 of Article XIII of  
2 the California Constitution, it shall apply to local agencies only to  
3 the extent that the state provides annual funding for the cost  
4 increase. Any new program or higher level of service provided by  
5 a local agency pursuant to this act above the level for which  
6 funding has been provided shall not require a subvention of funds  
7 by the state or otherwise be subject to Section 6 of Article XIII B  
8 of the California Constitution.

9 However, if the Commission on State Mandates determines that  
10 this act contains other costs mandated by the state, reimbursement  
11 to local agencies and school districts for those costs shall be made  
12 pursuant to Part 7 (commencing with Section 17500) of Division  
13 4 of Title 2 of the Government Code.



**Assembly Bill No. 935**

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Passed the Assembly September 13, 2017

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*Chief Clerk of the Assembly*

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Passed the Senate September 12, 2017

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 709 of the Welfare and Institutions Code, relating to juveniles.

## LEGISLATIVE COUNSEL'S DIGEST

AB 935, Mark Stone. Juvenile proceedings: competency.

Existing law authorizes, during the pendency of any juvenile proceeding, the minor's counsel or the court to express a doubt as to the minor's competency. Existing law requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency. Upon suspension of proceedings, existing law requires the court to order that the question of the minor's competence be determined at a hearing. Existing law requires the court to appoint an expert, as specified, to evaluate whether the 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.

This bill would revise and recast these provisions to, among other things, expand upon the duties imposed upon the expert during his or her evaluation of a minor whose competency is in doubt, as specified. The bill would authorize the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts with regard to determining competency, as specified. The bill would require the Judicial Council to adopt a rule of court relating to the qualifications of those experts, as specified. The bill would require the minor's competency to be determined at an evidentiary hearing, except as specified, and establish a presumption of competency, unless it is proven by a preponderance of the evidence that he or she is incompetent. If the minor is found incompetent and the petition contains only misdemeanor offenses, the bill would require the petition to be dismissed. The bill would require the court, upon a finding of incompetency, to refer the minor to services designed to help the minor attain competency. If the court finds that the minor will not achieve competency within 6 months, the bill would require the court to dismiss the petition. The bill would authorize the court to

invite specified persons and agencies to discuss any services that may be available to the minor after the court's jurisdiction is terminated, and would require the court to make certain referrals for the minor. The bill would require, among others, the presiding judge of a juvenile court, the probation department, and the county mental health department to develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services. The bill would prohibit secure confinement from extending beyond 6 months from the finding of incompetence, however, under specified conditions, the bill would authorize the court to order secure confinement for an additional 6 months, not exceeding one year. The bill would prohibit the total remediation period from exceeding one year from the finding of incompetence. By imposing additional duties on local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 709 of the Welfare and Institutions Code is amended to read:

709. (a) (1) Whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and proceed pursuant to this section.

(2) A minor is mentally incompetent for purposes of this section if he or she is unable to understand the nature of the proceedings, including his or her role in the proceedings, or unable to assist counsel in conducting a defense in a rational manner, including a

lack of a rational and factual understanding of the nature of the charges or proceedings. 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. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

(3) Notwithstanding paragraph (1), during the pendency of any juvenile proceeding, the court may receive information from any source regarding the minor's ability to understand the proceedings. The minor's counsel or the court may express a doubt as to the minor's competency. The receipt of information or the expression of doubt of the minor's counsel does not automatically require the suspension of proceedings. If the court has a doubt as to the minor's competency, the court shall suspend the proceedings.

(b) (1) 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, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the minor is incompetent as defined in paragraph (2) of subdivision (a).

(2) The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, shall be familiar with competency standards and accepted criteria used in evaluating juvenile competency, shall have received training in conducting juvenile competency evaluations, and shall be familiar with competency remediation for the condition or conditions affecting competence in the particular case.

(3) The expert shall personally interview the minor and 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. The expert shall consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency. The expert shall gather a developmental history of the minor. If any information is unavailable to the expert, he or she shall note

in the report the efforts to obtain that information. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. 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. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her. The expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, 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.

(4) The Judicial Council, in conjunction with groups or individuals representing judges, defense counsel, district attorneys, chief probation officers, 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, and other interested stakeholders, shall adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles. The Judicial Council shall develop and adopt rules for the implementation of the other requirements in this subdivision.

(5) Statements made to the appointed expert during the minor's competency evaluation and statements made by the minor to mental health professionals during the remediation proceedings shall not be used in any other hearing against the minor in either juvenile or adult court.

(6) The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The expert's report and qualifications shall be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing. If disclosure is not made in accordance with this

paragraph, the court may make any order necessary to enforce the provisions of this paragraph, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the expert's report upon a showing of good cause, or any other lawful order. If, after disclosure of the report, the opposing party requests a continuance in order to further prepare for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time.

(7) If the expert believes the minor is developmentally disabled, the 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 his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency.

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

(9) This section shall not be interpreted to authorize or require either of the following:

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

(B) Determinations regarding the competency of a minor by the director of the regional center or his or her designee.

(c) 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. It shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. With respect to a minor under 14 years of age at the time of the commission of the alleged offense, the court shall make a determination as to the minor's capacity pursuant to Section 26 of the Penal Code prior to deciding the issue of competency.

(d) If the court finds the minor to be competent, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction.

(e) If the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed. Prior to a dismissal, the court may make orders that it deems appropriate for services. Further, the 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.

(f) If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

(g) Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor attain competency, including, but 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. Service providers and evaluators shall adhere to the standards stated in this section and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety, as determined by the court. Service providers shall determine the likelihood of the minor attaining competency within the foreseeable future, and if the opinion is that the minor will not attain

competency within six months, 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 and every 45 calendar days for minors out of custody prior to the expiration of the total remediation period specified in paragraph (3) of subdivision (h). 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. The court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.

(h) (1) Upon receipt of the 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 has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent. 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. 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. The provisions of subdivision (c) shall apply at this stage of the proceedings.

(2) If the court finds that the minor has been remediated, the court shall reinstate the proceedings.

(3) If the 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. However, the total remediation period shall not exceed one year from the finding of incompetency.

(4) If the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The court may invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, the



probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. If appropriate, the court shall refer the minor for evaluation pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3 (commencing with Section 6550) of Chapter 2 of Part 2 of Division 6.

(5) (A) Secure confinement shall not extend beyond six months from the finding of incompetence, except as provided in this section. Only in cases when the petition involves an offense listed in subdivision (b) of Section 707, may the court consider whether it is necessary and in the best interest of the minor and the public's safety to order secure confinement of a minor for up to an additional six months, not to exceed one year. In making that determination, the court shall consider all of the following:

(i) Where will the minor have the best chance of obtaining competence.

(ii) Whether the placement is the least restrictive setting appropriate for the minor.

(iii) Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate.

(iv) Whether the placement is necessary for the safety of the minor or others.

(B) If the court determines, upon consideration of these factors, that it is in the best interest 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.

(i) The presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and other entity that provides representation for minors, the district attorney, the regional center, if appropriate, and any other participants that the presiding judge shall designate, shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

SEC. 2. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for

programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved \_\_\_\_\_, 2017

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*Governor*



OFFICE OF THE GOVERNOR

OCT 13 2017

To the Members of the California State Assembly:

I am returning Assembly Bill 935 without my signature.

This bill revises the procedure to determine the mental competence of a juvenile charged with a crime, and limits the time a juvenile who is found to be incompetent can be incarcerated.

I applaud the author for addressing a subject that is in need of review, and I support finding a solution to address any gaps in the procedures for juveniles who are found not to be competent to face court proceedings.

I am concerned, however, with the rare instances in which youth are accused of very serious crimes. I encourage further review as to how these situations may be accounted for while preserving the author's underlying intent.

Sincerely,

A handwritten signature in black ink that reads "Ed G. Brown Jr." with a large, sweeping flourish at the end.

Edmund G. Brown Jr.