

PROTOCOL FOR COMPETENCE EVALUATIONS

I. POLICY:

- A. It is the policy in San Diego County to evaluate a minor's competence as early as possible and, when indicated, to provide services to help the minor regain competence in a timely manner.
- A minor is mentally incompetent if, as a result of mental disorder or developmental disability or developmental immaturity, he/she lacks sufficient present ability to consult with counsel and assist in preparing his/her 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 him/her. (Welf. & Inst. Code, § 709.)
- B. In furtherance of this policy, it is the responsibility of Juvenile Forensic Services and TERM to assist both the Juvenile Court and the Probation Department when a minor has been referred for a competence evaluation.
- C. In all cases, if the court or the minor's attorney has some reason to doubt the minor's competence, the issue will be raised at the earliest possible point in the proceedings.

II. PROCEDURE FOR MINORS IN CUSTODY:

- A. When the issue of competence is raised with respect to a minor who is in custody, the court shall suspend the delinquency proceedings and order the Juvenile Forensic Services STAT Team to evaluate the minor's competence if the court finds substantial evidence raises a doubt as to the minor's competence. 1. When a competence evaluation is ordered, the court will set a Mental

Competence Hearing on the next mental competence calendar that is at least three court days later. The court order will advise the evaluator of the date and time of the Mental Competence Hearing. Upon a showing of good cause, the court may continue the hearing or set it on a later date.

2. At the conclusion of the court session at which the evaluation is ordered, the Court Officer will deliver the court order to the Program Manager (or designee) for the Juvenile Forensic Services STAT Team.
 3. The Program Manager (or designee) will assign the evaluation to a psychiatrist or psychologist who is qualified and able to perform the evaluation.
 - a. The psychiatrist or psychologist will assess the minor, dictate the evaluation, and deliver the dictated report to the Program Manager (or designee).
 - b. The report will be given transcription priority and will be delivered for review, correction, and signature to the evaluating psychiatrist or the evaluating psychologist and to the Program Manager (or designee) or the Chief of Juvenile Forensic Services.
- B. The original and three copies of the signed, written report will be delivered to the Administration Office of the court no later than 1:00 p.m. on the court day **preceding** the Mental Competence Hearing.
- C. Upon receipt, the reports will be available to be picked up by the minor's attorney, the District Attorney, and the designated Probation Officer in the Administration Office of the court between 7:30 a.m. and 4:30 p.m.

III. **PROCEDURE FOR MINORS NOT IN CUSTODY:**

- A. When the issue of competence is raised with respect to a minor who is not in custody, the court shall suspend the delinquency proceedings and order TERM to appoint a qualified evaluator to assess the minor's competence if the court finds substantial evidence raises a doubt as to the minor's competence.
1. The court will order the minor to participate in the evaluation and will order the minor's parent or guardian to cooperate with the Probation Department and the appointed evaluator in arranging for the evaluation and the minor's transportation to the evaluation.
 2. The court will set a Mental Competence Hearing on the next mental competence calendar that is at least ten court days later. The court order will advise the evaluator of the date and time of the Mental Competence Hearing. Upon a showing of good cause, the court may continue the hearing or set it on a later date.
 3. The Court Officer will fax the court order to TERM at the conclusion of the court session. The fax cover sheet will flag the case as needing immediate attention.
 4. TERM will appoint a qualified evaluator¹ and supply that evaluator with the minor's name, the name of the minor's parent or guardian, and the minor's telephone number. If requested, TERM will also advise the minor's attorney and the District Attorney of the evaluator's name.

¹ The court clerk will not follow the standard referral process of choosing three evaluators and having the minor's attorney rank them. TERM will appoint the evaluator.

5. The evaluator will contact the minor's parent or guardian to make arrangements for an appointment and will then notify the designated Probation Officer of the appointment time and place.

- The Probation Officer will inform the minor, the minor's parent or guardian, and the minor's attorney by phone and by mail of the appointment time and place and of the Probation Officer's ability to assist the family with arranging transportation to the appointment.

B. The evaluator will assess the minor and deliver the signed, written report to TERM. TERM will fax the report to the Administration Office of the court no later than 1:00 p.m. on the court day **preceding** the Mental Competence Hearing.

C. Upon receipt, the court will make three copies of the report, which will be available to be picked up by the minor's attorney, the District Attorney, and the designated Probation Officer in the Administration Office of the court between 7:30 a.m. and 4:30 p.m.

IV. **ISSUES FOR THE COURT:**

A. At the Mental Competence Hearing, the court will use the evaluator's report to decide if the minor is mentally competent under California law. The District Attorney or the minor's attorney may contest the report, request a second opinion, or request an evidentiary hearing. (See Section V, below.)

B. "A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her 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 him or her." A minor may be incompetent as a result of "a mental disorder, developmental disability, developmental immaturity, or other condition." A finding of incompetence must be by a preponderance of the evidence. (Welf. & Inst. Code, § 709.)

- C. Nothing said by the minor in the course of a competence evaluation may be used against the minor at a subsequent adjudication hearing.

- D. In all competence evaluations, the questions that follow below must be addressed and answered for the court. The evaluator should answer "yes" or "no" and then provide a more detailed response for each question.
 - 1. In the opinion of the evaluator, does the minor have a mental disorder?

 - 2. In the opinion of the evaluator, does the minor have a developmental disability?²

 - 3. In the opinion of the evaluator, is the minor developmentally immature?

 - 4. Is the minor able to understand the nature of the proceedings?

 - 5. Is the minor able to assist his/her attorney in the conduct of a defense in a rational manner?

² "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. The term includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. (Welf. & Inst. Code, § 4512.)

6. In the opinion of the evaluator, is the minor competent to stand trial? If no, is the minor likely to benefit from attempts at restoration?
7. Does the evaluator have any information to suggest the minor is a danger to himself/herself or to others or is gravely disabled?

V. **EVALUATION TO BE USED IF COMPETENCE IS CONTESTED**

- A. If the District Attorney or the minor's attorney contests the report, requests a second opinion, or requests an evidentiary hearing, the court may appoint a qualified TERM evaluator to complete a comprehensive psychological evaluation that addresses competence. If there is a conflict between the two evaluations, the court may appoint a qualified TERM evaluator to complete a third evaluation.
- B. If requested by the District Attorney or the minor's attorney, the court may set a contested evidentiary hearing to address the minor's competence. The court order will advise the evaluator of the date and time of the hearing.
- C. The procedure for minors not in custody governs timing, completion, and distribution of the report. (See Section III, above.)

VI. **IF THE COURT FINDS THE MINOR TO BE *COMPETENT* TO STAND TRIAL:**

- A. The court will reinstate the delinquency proceedings and proceed with the case.
 1. If the minor is in custody, the minor will continue to receive the level of care determined appropriate by the Juvenile Forensic Services STAT Team.

2. If the minor is not in custody, the Probation Department will make appropriate referrals, if indicated.
- B. Even if the court finds the minor to be competent, the court may order a mental health evaluation, if the court suspects that the minor may be a danger to self, a danger to others, or gravely disabled. (See separate procedure entitled "Court-Ordered Inpatient Mental Health Evaluations.")
 - C. If the court suspects that the minor may have a developmental disability, the court will refer the minor to the Regional Center for an evaluation. For a minor who is in custody, Regional Center staff will be allowed to evaluate the minor in Juvenile Hall. For a minor who is not in custody, the minor's parent or guardian is responsible for arranging the evaluation with the Regional Center. If the parent or guardian is unable or unwilling to make the arrangements, the court will order the evaluation and designate the minor's attorney or the Probation Department to facilitate the arrangements.

VII. **IF THE COURT FINDS THE MINOR TO BE INCOMPETENT TO STAND TRIAL:**

- A. The court will order a mental health evaluation.
 1. If it appears that the minor may require hospitalization through the mental health system, he/she will be referred to the Emergency Screening Unit (ESU) or to another Lanterman-Petris-Short (LPS) facility for an evaluation pursuant to Welfare and Institutions Code sections 705 and 6550 for wards, or pursuant to Welfare and Institutions Code section 705 and Penal Code section 4011.6 for non-wards. (See separate procedure entitled "Court-Ordered Inpatient Mental Health Evaluations.")

2. In all other cases the minor will be referred to a TERM evaluator for a psychological or psychiatric evaluation, if deemed appropriate by the court. The evaluation must be completed within 10 court days. The court will authorize county treasurer funds for the evaluation at the standard rate for a psychological or psychiatric evaluation, depending upon the type of evaluation deemed necessary by the court. If the court orders a psychological evaluation, it should include all of the elements of the psychological evaluation identified in the TERM Provider Handbook. In addition, the evaluation should include, but not be limited to: ideal treatment; potential for success of that treatment; any cited risks if treatment is not provided; length of treatment; other treatment options to be considered; availability of the recommended treatment in San Diego County or elsewhere; whether the minor can be safely returned home; whether the minor can be safely released from Juvenile Hall; and whether there is a need for a psychiatric evaluation.

B. A Probation Officer will be designated to begin immediate coordination of a restoration and/or placement and services plan for the minor. The Probation Officer will communicate with the minor's attorney about the plan.³

1. For a minor who is in custody, a competence restoration program will be provided by the STAT Team. The minor will spend no more than eight weeks in a custodial competence restoration program, subject to further order of the court. The minor may be released from custody at any time it is deemed appropriate by the court. The minor may be held for more than eight weeks, but only if it is deemed necessary by the court for the safety of the minor and/or the community.

³ The court, the minor's attorney, the prosecuting attorney, and the Probation Department will work together to obtain appropriate services for the minor.

2. For a minor who is not in custody, a competence restoration program will be provided in the community if such a program is available.
- C. A Placement and Treatment Hearing will be set to review the mental health evaluation, the information provided by the Probation Officer, and the status of the restoration process. The hearing will be set for three weeks after the Mental Competence Hearing. The date will be advanced if the evaluation and report are completed earlier.
1. The TERM evaluator assigned to do the psychological or psychiatric evaluation will submit the completed evaluation to TERM within 10 court days after the Mental Competence Hearing. TERM will review the evaluation and provide it to the designated Probation Officer. The Probation Officer will use the evaluation to complete a report and will attach the evaluation to the report.
 2. The Probation Department will submit the original and three copies of the informational report, which will include the status of the restoration process and a plan for placement and treatment, to the court, the minor's attorney, and the District Attorney no later than 1:00 p.m. on the court day **preceding** the Placement and Treatment Hearing.
- D. At the Placement and Treatment Hearing the court will review the status of the restoration process and determine detention and treatment of the minor.
1. The court will decide whether "it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another

that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the child's welfare." (Welf. & Inst. Code, § 636.)

2. If necessary, the minor may be detained in Juvenile Hall. If secure detention is not necessary, the minor may be placed on home supervision or electronic surveillance. The court may make any further orders necessary for the protection of the minor and the community.
3. If the court determines that the minor may benefit from further efforts at restoration, the court will set a Post-Restoration Hearing to occur in five weeks. The court will assign an independent evaluator to assess the minor's competence at the conclusion of the restoration program. The Probation Officer will notify the independent evaluator of the court date and coordinate with the evaluator to allow him/her to complete an assessment of the minor one week before the court date.

E. Post-Restoration Hearing

1. Upon completion of the restoration program, the restoration team will submit a report detailing the minor's treatment and state that restoration courses have been completed. The report will not offer an opinion as to whether the minor is competent. The restoration team will deliver the report to the designated Probation Officer at least three court days before the hearing.
2. The independent evaluator will submit a report assessing the minor's competence. The evaluator will deliver the report to the designated Probation Officer at least three court days before the hearing.

3. The Probation Department will submit the original and three copies of its report, which will include information about possible placement and treatment options for the minor and which will have attached the reports from the restoration team and the independent evaluator, to the court, the minor's attorney, and the District Attorney no later than 1:00 p.m. on the court day **preceding** the Post-Restoration Hearing.
 4. At the Post-Restoration Hearing the court will determine if the minor is competent or remains incompetent. If the minor is found competent, the court will reinstate the delinquency proceedings and proceed with the case. If the minor is found incompetent and the court finds that the minor will benefit from further efforts at restoration, the court may order additional time and set a continued Post-Restoration Hearing within five weeks.
- F. If it appears that the minor may not ever regain competence, the court, the minor's attorney, the prosecuting attorney, and the Probation Department will work together to obtain appropriate services for the minor.
1. When the minor suffers from a developmental disability the court will refer the minor to the Regional Center for an evaluation. The minor's attorney and the designated Probation Officer will take all necessary steps to obtain Regional Center services for the minor.
 - a. When a Regional Center referral is ordered by the court, the court will set a status review hearing to take place within 15 days.
 - b. If the minor is already a Regional Center client, the Probation Department will submit a plan to work

collaboratively with Regional Center staff to obtain appropriate community supports and services.

- c. If the minor is not already a Regional Center client, the Probation Department will work with the minor's family to facilitate the completion of a Regional Center evaluation within the 120 days allowed. If the minor's parent or guardian is unable or unwilling to make the arrangements, the court will order the evaluation and designate the minor's attorney or the Probation Department to facilitate the arrangements. Regional Center will give priority to evaluations for minors in custody.
 - d. The court will order 15-day status review hearings until completion of the Regional Center evaluation and submission of a plan for placement and treatment by the Probation Department. The Regional Center will submit an update for each status review hearing regarding the status of the evaluation.
2. When the minor is alleged to have committed an offense involving physical violence or danger to others, the court may direct the filing in any other court of a petition for the commitment of a mentally retarded individual to the State Department of Developmental Services. (Welf. & Inst. Code, §§ 6500 et seq., 6512, 6551; Cal. Rules of Court, rule 5.645.)
 3. The court may refer the minor to the Public Conservator for the filing of a petition for conservatorship.

- G. Where appropriate, the minor may be offered any other relevant information and counseling to assist him/her in understanding the proceedings and assisting counsel.
- H. At the conclusion of the appropriate course of treatment, the minor will be reassessed for competence, per the procedures delineated above.
- I. In all cases, the minor will continue to receive the level of care determined appropriate by the treating/evaluating psychiatrist and permitted by law, including medications and outpatient treatment.
- J. During the time that the minor is not competent, the court may rule on motions that do not require the participation of the minor. These motions include, but are not limited to: motions to dismiss, motions by the defense regarding a change in the placement of the minor, detention hearings, demurrers, motions to continue, and time waivers.

VIII. **CONTINUED SERVICES:**

- A. The minor and all services provided to him or her will be monitored by the Probation Department.
- B. The Probation Department will attempt to obtain the consent of the minor's parent or guardian for all necessary treatment and will assist the treating psychiatrist in obtaining consent for medications. If the Probation Officer is not able to obtain such consent, the Probation Officer will apply ex parte for a court order allowing the treatment and medications.

IX. **JURISDICTION:**

- A. The Juvenile Court will maintain jurisdiction during the time that the minor is being evaluated for competence and during the time that the minor is attempting to regain competence.

- B. The Juvenile Court may dismiss the petition and terminate its jurisdiction when it finds that the minor will not regain competence and that the minor and the safety of the community are being adequately served by an alternative forum.