




JUVENILE DIVISION
The Superior Court
201 CENTRE PLAZA DRIVE
MONTEREY PARK, CALIFORNIA 91754

CHAMBERS OF
VICTOR H. GREENBERG
PRESIDING JUDGE

March 6, 2019

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TO: All Juvenile Delinquency Court Judicial Officers and
All Interested Parties, Entities and Agencies

FROM: Victor H. Greenberg, Presiding Judge 
Los Angeles County Juvenile Courts

SUBJECT: **COMPETENCY TO STAND TRIAL PROTOCOL**

This protocol supersedes the competency policy dated June 1, 2015 and the revised protocol dated June 9, 2015 and is effective March 1, 2019.

Welfare and Institutions Code § 709¹ sets forth the basic procedures to follow when minor's counsel or the court has a doubt about a minor's competency to stand trial (CST). A minor is incompetent to stand trial (IST) "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." This protocol implements §709, as amended by AB 1214, for the Los Angeles County Juvenile Court.

¹ All statutory references are to the California Welfare and Institutions Code unless otherwise noted.

LOS ANGELES SUPERIOR COURT, JUVENILE DIVISION
COMPETENCY TO STAND TRIAL PROTOCOL
EFFECTIVE DATE: March 1, 2019

A. Informal Resolution

Informal resolution of CST cases is often better for the minor and for the protection of public safety. Informal resolution allows the youth to avoid protracted litigation, including many days of missed school attending court hearings, evaluations and remediation sessions, as well as days of missed work for parents. Informal resolution also allows a minor to earn an early dismissal of the petition. Informal resolution protects the public by providing early intervention to address the underlying reasons for a minor's criminal behavior. Therefore, in cases where CST is likely to be an issue, and where the public's safety is not jeopardized, the court should explore resolving the case before a doubt is raised, and without initiating formal competency proceedings.

Informal resolution may include the voluntary participation of a minor and family in community-based programs, which provide counseling and supervision. If this type of intervention would address the needs of the minor and advances public safety, then the court should consider diverting the case with the promise of a dismissal under §782. Another option for informal resolution is granting §654.2 supervision. This option should only be considered for minors who are eligible for §654.2 supervision and are capable of consenting to the terms of §654.2 supervision.

As early as possible, and prior to the determination of competency, the court shall determine, for any minor under the age of 14 at the time of the alleged offense, whether he or she has the capacity to commit a crime pursuant to Penal Code §26.

B. Formal CST Procedures

During the pendency of juvenile proceedings, the minor's counsel, or the court, may either (1) request a CST evaluation before expressing a doubt as to the minor's competency, or (2) express a doubt as to the minor's competency.

1) Request by Counsel for a CST Evaluation Without Expression of a Doubt

If minor's counsel requests a CST evaluation without expressing a doubt as to minor's competency, and the court finds substantial evidence raises a doubt as to the minor's competency, the court shall appoint an expert from the Juvenile Competency to Stand Trial Panel (JCST Panel) under Evidence Code §730 to perform a CST evaluation.

This evaluation shall be presumed confidential, and minor's counsel may choose not to disclose the CST evaluation, until, and unless, a doubt is expressed.

2) If a Doubt is Declared/Suspension of Proceedings

If minor's counsel expresses a doubt as to minor's competency and the court finds substantial evidence of a doubt, the court shall suspend proceedings. The court shall appoint an expert from the JCST Panel under Evidence Code §730 to perform a CST evaluation. If minor's counsel had requested a JSCT evaluation before expressing a doubt, that report shall be submitted to the court and the District Attorney.

The JCST Panel shall consist of experts in child and adolescent development, who have training in the forensic evaluation of juveniles, and are familiar with the competency standards and accepted criteria used in evaluating competence and in the remediation of incompetency.² The reports of the JCST Panel may periodically be reviewed by court administration for quality assurance and data collection purposes only. The Juvenile Court shall maintain a list of approved JCST Panel evaluators and appointments will be made from that list on a rotating basis. JCST Panel experts will be paid at the rate of \$850 per assessment. Any additional fees must be further authorized by the court.

When the court orders a CST evaluation, the clerk of the court shall refer to the "§730 Panel Log" and assign the JCST Panel evaluator who is next available in rotation. The court may deviate from following the rotation upon a showing of good cause. The clerk shall record the appointment in the §730 Panel Log. The minor's counsel shall immediately notify the evaluator of the appointment and whether the appointment was made prior to the expression of a doubt. The minor's counsel should send any relevant information, including special education records and recent psychological testing reports, that they believe will be of assistance in making a CST determination, to the JCST evaluator.

If the minor is detained, the evaluation will take place at Juvenile Hall. For detained minors, the court shall set a CST readiness hearing within 20 days from the suspension of proceedings. If the minor is not detained, the evaluator will schedule the appointment with the minor's parent or guardian. For non-detained minors, the court shall set a CST readiness hearing within 30 days from the suspension of proceedings.

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

² The JCST panel shall also comply with any rules promulgated by the Judicial Council under §709(b)(4).

The JCST evaluator will conduct the evaluation using tests that are designed to evaluate the minor's functional competency. The Juvenile Adjudicative Competence Interview shall be used unless its use is contraindicated. If the evaluator determines that more extensive testing is required than that provided for in a functional CST evaluation, then the report should state the reasons for the additional testing and whether the evaluator is qualified to administer the additional tests.

The JCST evaluator shall do the following:

- Interview the minor and review all the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available.
- Consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency.
- Gather a developmental history of the minor. If any information is unavailable to the JCST evaluator, he or she shall note in the report the efforts to obtain that information.
- Administer age-appropriate testing specific to the issue of competency unless the facts of the case render testing unnecessary or inappropriate.
- Be proficient in the language preferred by the minor, or, if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor.
- Opine in a written report 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.
- If minor is determined IST, specify whether the basis for that judgment is a mental health disorder, developmental disability, immaturity or any combination thereof.
- Give his or her opinion, if possible, on whether minor is likely to attain competency in the foreseeable future.
- State the basis for these conclusions.

If the JCST evaluator concludes that the minor lacks competency, the JCST evaluator shall give his or her opinion, if possible, on whether the minor is likely to attain competency in the foreseeable future.

The JCST evaluator shall submit a report (and three copies) only to minor's counsel if the appointment was made prior to a doubt being expressed, or to the court and minor's counsel if a doubt was expressed, within 5 days prior to the date set for the CST readiness hearing.

While proceedings are suspended the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. 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:

1. Motions to dismiss
2. Motions by the defense regarding a change in the placement of the minor
3. Detention hearings
4. Demurrers
5. Motions to join in the juvenile court proceedings agencies that may have failed to meet a legal obligation to provide services to minor. (§727(b)(1))

C. CST Readiness Hearing

At the CST readiness hearing the court shall receive the JCST evaluator's report and any other relevant evidence to determine whether the minor is competent. The district attorney, or the minor's counsel may request, with good cause, another §730 evaluation. Either party may obtain a CST evaluation without court funds. Disclosure of the evaluator's report and qualifications shall be in accordance with §709(b)(6). Additionally, the district attorney must obtain a court order for any competency evaluation of minor after petitioning the court pursuant to the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

The parties may stipulate that a minor lacks competency, but the court must base its determination of competency, or lack of competency, on reliable evidence. If a request for a full evidentiary hearing is made, the court shall schedule a CST hearing within 15 calendar days for detained minors, or 30 calendar days for non-detained minors.

If the JCST evaluator believes the minor is developmentally disabled and the minor is not a Regional Center client, the court shall appoint the director of a Regional Center for developmentally disabled individuals, 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 Regional Center services 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 determination of competency.

D. CST Hearing

At the CST hearing the court shall receive the JCST evaluator's report and any other relevant evidence to determine whether the minor is competent. The minor shall have the burden of proving that he or she is IST by a preponderance of the evidence.

1) Minor Found CST

If the court finds the minor CST, it shall reinstate the delinquency proceedings and proceed with the case.

2) Minor Found IST

If the court finds the minor IST and the petition contains only misdemeanor offenses, the petition shall be dismissed.

If the court finds the minor is not likely to attain competency in the foreseeable future, the petition shall be dismissed. If the court is unable to make this decision at the CST hearing, it shall set an IST Planning Hearing.

However, prior to the dismissal of a 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 §5300) of Chapter 2 of Part 1 of Division 5 or Article 3 (commencing with §6550) of Chapter 2 of Part 2 of Division 6.

If a detained minor is found IST, and the petition contains at least one felony, the court shall set an IST Planning Hearing within 15 calendar days. If a non-detained minor is found IST the court shall set an IST Planning Hearing within 30 calendar days. The court shall order Probation (and the Department of Children and Family Services (DCFS) if the minor is a dependent of the court) to submit an IST Planning Report to the court.

The report should specify whether the minor is:

- a Regional Center client (or has been referred to Regional Center for an eligibility assessment),
- receiving special education services, and
- receiving services from the Department of Mental Health (DMH) or DCFS.

Probation shall develop a case plan to help the minor attain competency. The report should also address whether the minor's needs can best be met safely in the home, community, or an open residential placement.

If minor is a Regional Center client, the forensic liaison should be consulted, and the report should address what services, or placements the Regional Center can provide. If Probation concludes that the minor's needs can only be met safely in a locked facility, it should, after consultation with DMH, assess whether the minor could receive services or placement through the Lanterman-Petris-Short Act (LPS Act).³

If the minor is not detained, the court should again explore informal resolution to avoid utilizing remediation services which can be particularly burdensome for minors and families. A finding of incompetency alone shall not be the basis for detention.

E. IST Planning Hearing

At the IST Planning Hearing the court should first determine whether there is a substantial probability that the minor will attain competency in the foreseeable future.

1) If the Minor is Likely to Attain Competency in the Foreseeable Future

If the court finds that there is a substantial probability that the minor will attain competency in the foreseeable future, the court shall order Probation and DMH to coordinate remediation services to help the minor attain competency. Remediation services may be provided through Regional Center as provided for in minor's Individualized Program Plan. No minor should be ordered to participate in a remediation program unless there is a likelihood that additional services would help minor attain competency in the foreseeable future.

³ §5000 et seq., (specifically §5150 et seq., and 5350 et seq.)

The case shall be set for a Remediation of Competency Hearing within six months from a referral for remediation services. The court shall review detained minors' progress in remediation service every 30 days and non-detained minors' progress every 45 days. The need for a minor's continued detention is always at-issue and alternatives to detention should be explored by the court and counsel. The first period of remediation services should not exceed six months from the finding of incompetence. If further remediation services are ordered and the petition does not have a §707(b) offense (see Section E) the total remediation period shall not exceed 1 year from the finding of incompetence. If the petition has a §707(b) offense, the total period shall not exceed 18 months from the finding of incompetence.

2) If the Court Cannot Determine Whether Minor is Likely to Attain Competency in the Foreseeable Future

If the court cannot determine whether minor is likely to attain competency in the foreseeable future, then it may dismiss the case, or order remediation services 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 and is consistent with the time-lines in section E (1).

3) If Minor is Not Likely to Attain Competency in the Foreseeable Future

If the court finds that there is not a substantial probability that the minor will attain competency in the foreseeable future it shall dismiss the petition. If it appears that the minor may require hospitalization due to a mental health disorder or a developmental disability, it may order DMH to perform a mental health evaluation pursuant to §705 and §6550 for wards, or pursuant to §705 and Penal Code §4011.6 for non-wards. (See also California Rules of Court, Rule 5.645.)

If DMH determines that a minor would benefit from a conservatorship under the LPS Act, it shall file an Application for Mental Health Conservatorship Investigation with the Public Guardian's Office for the purpose of initiating LPS Act proceedings. If the court has retained jurisdiction pending LPS proceedings it shall order 15-day status review hearings to monitor the provision of Regional Center and/or DMH services. The Regional Center and/or DMH shall submit an update at each status review hearing. The minor may receive mental health services while the LPS Act proceedings are pending.

F. Remediation Hearings

At the Remediation Hearing the court shall receive evidence from the remediation program that documents the specific services provided and minor's progress. The program may recommend that the minor be reevaluated for competency⁴, or that minor receive additional remediation services if there is a substantial likelihood that minor will attain competency in the foreseeable future, or opine whether minor is not likely to attain competency in the foreseeable future.

If after receipt of the remediation program's report, the court, defense counsel or district attorney remains in doubt about minor's competency the court shall appoint a JCST evaluator, next in rotation (unless the parties agree to use the same JCST evaluator who did the initial competency evaluation), to conduct a competency evaluation. The court should then continue the case for receipt of the report and a further Remediation Hearing.

At the Remediation Hearing the court shall determine whether the minor:

- has attained competency,
- would be likely to attain competency with additional remediation services, or
- is not likely to attain competency.

If the JCST evaluator determines that the minor 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.

If the court believes that a minor has not attained competency, but with further remediation services is likely to attain competency, the court may order additional remediation services consistent with the time-lines in section E (1).

⁴ The agencies that provide remediation services do not employ psychologists or psychiatrists to assess competency. If a minor has made progress in the remediation program that may warrant a reevaluation by a JCST evaluator.

The Department of Mental Health and Probation shall provide the court with suitable alternatives, if possible, for the continued delivery of remediation services upon release from custody.

The court shall not continue a minor's detention beyond six months from the finding of incompetence, unless it determines, on the record, that it is in the best interests of the minor and the public's safety that the minor remains detained. In making this determination the court shall consider the following:

- Where the minor will have the best chance of obtaining competence,
- Whether the placement is the least restrictive setting appropriate for the minor,
- Whether alternatives to secure confinement have been identified and pursued as well as why alternatives are not available or appropriate, and
- Whether the placement is necessary for the safety of the minor or others.

In any case where a detained minor is charged with a §707(b) offense, the court may continue minor's detention for an additional year, but not to exceed 18 months from the finding of incompetence, after the court has considered the above criteria, and determines that it is in the best interests of the minor, and the public's safety, that the minor remains detained.

If the court believes the minor has not attained competency and further remediation services are not likely to succeed, then the court shall dismiss the underlying petition, or, at the request of the district attorney, appoint a JCST evaluator, next in rotation (unless the parties and the court agree to use the initial JCST evaluator), to conduct a competency evaluation. The court may also refer minor for an LPS conservatorship.

Prior to the dismissal of a petition on the grounds that a minor is not likely to attain competency in the foreseeable future, the court may invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, parents, guardians, relative caregivers, Probation Department, Department of Children and Family Services, 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 §5300) of Chapter 2 of Part 1 of Division 5 or Article 3 (commencing with §6550) of Chapter 2 of Part 2 of Division 6.