

**ORANGE COUNTY JUVENILE COURT**

**TITLE: Competency Protocol (WIC §709)**

**A. Introduction:**

1. The following protocol applies when it appears that there is a doubt as to the competency of a minor to stand trial or participate in Juvenile proceedings in a delinquency case.
2. This protocol is intended to supplement the provisions of Welfare and Institutions Code, section 709, and the California Rules of Court, Rule 5.645. In the event that a conflict arises between this protocol and the statute or rule, the statutory and rule provisions control.

**B. Informal Resolution:**

1. Pursuant to WIC §680, when it appears that there may be a doubt as to the competency of the minor, the parties are encouraged to seek an informal resolution of the matter, by way of stipulation or agreement.
2. In order to attempt to facilitate an informal resolution, the Court may order that a recommendation be prepared by the Interagency Juvenile Competency Attainment Team (IJCAT), under the protocol stated below.

**C. Formal Declaration of Doubt:**

1. Pursuant to §709, when the Court or minor's counsel formally declares a doubt as to the competency of the minor, proceedings as to the minor shall be suspended.
2. When the Court or minor's counsel formally declares a doubt as to the competency of the minor, the Court shall set the matter for a Competency Determination Hearing.
  - a) If the minor is in-custody, the Competency Determination Hearing shall be set within ten court days from the declaration of doubt.
  - b) If the minor is out of custody, the Competency Determination Hearing shall be set within thirty court days from the declaration of doubt.

- c) Upon a showing of good cause, the Court may extend the date for the setting of the Competency Determination Hearing or continue the hearing date.
3. When the Court or minor's counsel formally declares a doubt as to the competency of the minor, the Court shall appoint an expert psychologist or psychiatrist, qualified pursuant to this protocol, from the Court's 730 panel, to assess the minor and express an opinion as to the minor's competence.
- a) The order appointing the evaluator shall identify the issues upon which the evaluator shall opine, as stated in this protocol.
  - b) The order appointing the evaluator shall order the evaluator to submit a report within seven calendar days of the examination of the minor, if the minor is in-custody, or within fourteen calendar days if the minor is out of custody. For good cause shown, the Court may extend the time for submission of the evaluation.

**D. Evaluation of the Minor:**

**1. Qualifications of the evaluator:**

(a) To be appointed as an expert, an individual must be a:

(i) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

(ii) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist.

(b) The expert, whether a licensed psychiatrist or psychologist, must:

(i) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(ii) Have expertise in the cultural and social characteristics of children and adolescents;

(iii) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;

(iv) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(v) Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents; and

(vi) Be proficient in the language preferred by the child, 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 child.

**2. Issues to be determined by the evaluator:** the order appointing the evaluator shall state the following issues upon which the evaluator shall be ordered to express an opinion:

- a) In the opinion of the evaluator, does the minor suffer from a mental disorder, developmental disability, developmental immaturity or other condition?
  - If so, describe the disorder, disability, immaturity or condition.
- b) In the opinion of the evaluator, is the minor competent to stand trial, meaning:
  - Is the minor able to understand the nature of the proceedings, and the minor's interest in the proceeding?; or
  - Is the minor able to assist his or her attorney in the conduct of a defense in a rational manner?
- c) If the minor is not competent to stand trial is the minor likely to benefit from attempts at attaining competency?
  - If so, in the opinion of the evaluator, what interventions, treatment, education, programs or trainings may assist the minor in attaining competency.

**3. Scheduling the evaluation:** The Probation Department shall be responsible for coordinating and scheduling the evaluation of the minor.

- a) Probation shall expend its best efforts to schedule the evaluation so as to meet the time-lines set forth in this protocol for the submission of reports and conducting of the Competency Determination Hearing.

- b) Upon the scheduling of the evaluation, Probation shall advise the Court, all counsel, the minor and minor's parents of the date, time and location of the evaluation.
4. **Records to be provided to the evaluator:** Probation shall be responsible for obtaining all records, by subpoena duces tecum, including school, medical, mental health and employment records.
- a) Probation shall serve upon the custodian of records for the minor's school, medical, mental health, employment or other relevant records a subpoena duces tecum for the records, requiring that such records to produced to the court.
  - b) Counsel for the minor, and the prosecuting agency, shall provide to Probation the name, address and other identifying information of any health care provider, school, employer or custodian of any other relevant records regarding the minor.
    - In the event that minor's counsel objects to revealing the identity of any health care provider, school or employer or custodian of any other relevant records regarding the minor, minor's counsel shall raise the objection in court, and the Court may examine minor's counsel in chambers in order to rule on the objection.
  - c) Upon the production of the minor's records to the Court, the Court shall make such records available for review by minor's counsel, for the purpose of determining whether to raise an objection to the revealing of all, or a portion of the records, to the parties and the evaluator.
  - d) In the event minor's counsel objects to the revealing of all, or a portion of the records, to the parties and the evaluator, the Court may, in its discretion, conduct an in-camera inspection of such records, pursuant to Evidence Code, section 915, before providing such records to Probation, for delivery to the evaluator.
  - e) After minor's counsel has had an opportunity to review the records produced to the Court, and the Court has ruled upon any objection regarding the records, the records authorized by the Court to be released shall be provided to Probation and the parties. Probation shall be responsible for providing such records to the evaluator.
5. **Submission of Evaluator's Report:** The evaluator's report shall be submitted within seven calendar days of the examination of the minor, if the minor is in-custody, or within fourteen calendar days if the minor is out of custody. For good cause shown, the Court may extend the time for submission of the evaluation.

**E. Competency Determination Hearing:**

1. The Court shall conduct a hearing to determine whether the minor is competent. At the hearing, the Court may consider the evaluator's report, testimony by the evaluator, and any other records or testimony proffered by the parties.
2. Upon a finding of competence, the suspension of proceedings shall be ordered vacated.
3. Upon a finding of incompetence, the Court shall set the matter for a Service Plan Review Hearing.
  - a) In the event the minor is detained in-custody, the Service Plan Review Hearing shall be set no later than 10 calendar days from the finding of incompetence.
  - b) In the event the minor is out of custody, the Service Plan Review Hearing shall be set no later than 30 calendar days from the finding of incompetence.
  - c) Upon a showing of good cause, the Court may extend the date for the setting of the Service Plan Review Hearing or continue the hearing date.
4. Upon a finding of incompetence, the Court shall immediately order the Probation Department to convene the IJCAT, and order the preparation of written recommendations to the Court for attaining competency and/or for other therapeutic, placement, or rehabilitative services for the minor.

**F. Interagency Juvenile Competency Attainment Team (IJCAT)**

1. In the event of a finding of incompetence, the minor's case shall be assigned to the Interagency Juvenile Competency Attainment Team (IJCAT).
  - a) The IJCAT will be comprised of decision making representatives of the Orange County Probation Department, the Health Care Agency, the Orange County Regional Center, Social Service Agency, and the Department of Education.
  - b) The purpose of the IJCAT is to:
    - Express an opinion whether or not there are services and/or placement that may provide a substantial probability the minor will attain competency in the foreseeable future;
    - Provide recommendations to the Court for services and/or placement that may assist the minor in attaining competency and/or for other therapeutic, placement, or rehabilitative services;

- Coordinating services and resources for the minor;
  - For monitoring the programs and services ordered by the Court.
- c) Each agency member of the IJCAT shall designate the person or persons that will represent the agency, and shall designate a person that Probation will contact for the purposes of scheduling the IJCAT meeting.
2. The IJCAT may be convened, upon referral by the Court, for the purpose of providing recommendations to the Court in order to assist in an informal disposition of the minor's case, before a formal hearing to determine competency.
  3. The Probation Department shall be responsible for coordinating and scheduling the IJCAT, including providing any reports, school, medical and employment records, court transcripts, and judicial rulings necessary for the IJCAT to make its recommendations to the Court.
  4. The Court, District Attorney, Public Defender or other counsel representing the minor shall not be permitted to participate in the meeting and discussions of the IJCAT. (The opportunity of the parties to question or otherwise object to the team's recommendations will be during the Service Plan Review Hearing, described below.)
    - a) The District Attorney, Public Defender or other counsel representing the minor may submit a memorandum to Probation, for consideration by the IJCAT during its deliberations, presenting any concerns, positions or requests.
    - b) If it deems it necessary to complete its work, the IJCAT may initiate questions for response by the parties. In the event it has questions, Probation will be responsible for forwarding any questions to all parties and obtaining responses.
  5. Upon a Court finding of incompetence, the IJCAT shall promptly meet and confer, and provide written recommendations to the Court for attaining competency and/or for other therapeutic, placement, or rehabilitative services, no later than 1:30 p.m. on the court day preceding the Service Plan Review Hearing.
    - a) The Probation Department shall be responsible for delivery of the IJCAT recommendations to the Court and all parties.
  6. Upon Court approval of a service plan for the minor, the Probation Department shall, with the assistance of the IJCAT, be responsible for the implementation, coordination and monitoring the progress of the plan.

- a) The Probation Department shall attempt to obtain the consent of the minor's parent or guardian for the treatment and services described in the service plan. If the Probation Officer is not able to obtain such consent, the Probation Officer may apply ex parte, with notice to the parties, for a court order allowing the treatment and services.

#### **G. Service Plan Review Hearing**

1. At the Service Plan Review Hearing, the Court shall review the service plan recommendations of the IJCAT with the parties, and thereafter adopt or reject the plan, in whole or in part, with any amendments deemed by the Court to be appropriate.
  - a) At the Review Hearing, the Court and counsel for the parties may consult with all or any member of the IJCAT regarding its recommendations.
  - b) In its discretion, the Court may conduct an evidentiary hearing regarding the recommendations and opinion of the IJCAT.
  - c) Upon adoption of a service plan, the Court shall order the Probation Department to implement the plan, and make all orders necessary for the plan's implementation, including orders notwithstanding the minor's parents or guardians refusal to grant consent for treatment and services.
2. In the event that the Court adopts a service plan to assist the minor in attaining competency, the Court shall set an Attainment of Competency Hearing not later than 60 days from the adoption of the service plan.
3. In the event that the IJCAT opines, and the Court finds, that there are not services and/or placement that may provide a substantial probability the minor will attain competency in the foreseeable future, the Court may set the matter for further hearings and conferences to determine an appropriate disposition of the matter and services for the minor.

#### **H. Attainment of Competency Hearing**

1. At the Attainment of Competency Hearing, the Court shall find whether the minor is competent or continues to be incompetent.
  - a) In its discretion, the Court may order a re-evaluation of the minor to assess the minor's competency.
  - b) The Court may order an evidentiary hearing to determine the minor's competency.

2. Prior to the Attainment of Competency Hearing, the Probation Department shall deliver a report to the Court and all parties concerning the minor's progress on the service plan, the treatment and programs completed by the minor, whether and what further services may benefit the minor in attaining competency, and any other information relevant to determining whether the minor is competent or continues to be incompetent.
  - a) The Probation Department shall deliver its report no later than 1:30 p.m. on the court day preceding the Attainment of Competency Hearing.
  - b) The Probation Department may convene or otherwise seek the assistance of the IJCAT for the preparation of its report.
3. In the event the minor is found competent, the Court may proceed commensurate with the Court's jurisdiction.
4. In the event the minor is found to continue to be incompetent, the Court may:
  - a) set the matter for further hearings and conferences to determine an appropriate disposition of the matter and services for the minor; or
  - b) find that the provision of further and/or other services may assist the minor in attaining competency, order further or other services, and set the matter for a continued Attainment of Competency Hearing, no later than 60 calendar days from such an order.

**I. Jurisdiction**

1. At any time during the suspension of proceedings, pursuant to *Welfare and Institutions Code*, section 709, the Court may consider and make any orders for the disposition of the matter and for the minor, in the best interests of minor and the public, consistent with *Welfare and Institutions Code*, section 202.
2. At any time during the suspension of proceedings, pursuant to *Welfare and Institutions Code*, section 709, the Court shall rule upon any motions described in section 709, subdivision (c).