



# Superior Court of California County of Orange

Chambers of  
**DOUGLAS J. HATCHIMONJI**  
PRESIDING JUDGE OF JUVENILE COURT

341 THE CITY DRIVE  
ORANGE, CA 92868  
PHONE: 657-622-5502

## **Administrative Order re: Competency (WIC §709)**

**Administrative Order No. 13/010**

**Revised: March 7, 2013**

### **A. Introduction:**

1. The following administrative order 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 administrative order is intended to supplement the provisions of Welfare and Institutions Code, section 709, and the California Rules of Court, Rule 5.645(d). In the event that a conflict arises between this order 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.

### **C. Formal Declaration of Doubt:**

1. Pursuant to §709, when minor's counsel formally declares a doubt as to the competency of the minor, the Court will determine whether substantial evidence raises a doubt as to the minor's competence. Upon the Court's finding of substantial evidence of a doubt as to the minor's competency proceedings as to the minor shall be suspended.
  - a) Pursuant to Rule 5.645(d), evidence is substantial if it raises a reasonable doubt about the child's competence to stand trial.
2. When the Court finds substantial evidence of 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 fifteen 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.

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- 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 finds substantial evidence of a doubt as to the competency of the minor, the Court shall appoint an expert psychologist or psychiatrist, qualified pursuant to this order, from the Court's panel, to assess the minor and express an opinion as to the minor's competence.
    - a) The Court shall execute the Order Appointing Juvenile Competency Evaluator (Welfare and Institutions Code § 709), with an attached "Guidelines for Juvenile Competency Evaluators". (A copy of the Order Appointing is attached hereto and incorporated herein.)
    - b) The order appointing the evaluator shall order the evaluator to submit a report within seven calendar days of the date set for the Competency Determination Hearing. For good cause shown, the Court may extend the time for submission of the evaluation.
  4. Unless good cause is shown, the Court shall not appoint an evaluator who has previously conducted a mental health evaluation of the minor, pursuant to Evidence Code, section 730.
  5. Prior to the Court's execution of the Order Appointing Competency Evaluator, minor's counsel shall fill-in, on the Order, the names and identifying information of those persons whom the evaluator may interview, if the information is reasonably available.
  6. When the Court finds substantial evidence of a doubt as to the competency of a minor, minor's counsel, in cooperation with the Probation court officer, shall expend reasonable efforts to secure the signature of the minor's parent or authorized caretaker on release of information forms.
  7. Pursuant to Rule 5.645(d)(2), the Court in its discretion may appoint or otherwise order the involvement of clinicians with other professional qualifications, including a court certified language interpreter, relevant to the case.

**D. Evaluation of the Minor:**

1. **Qualifications of the evaluator:**
  - a) Pursuant to Rule 5.645(d), a psychiatrist appointed to evaluate the competency of a minor shall possess the following minimum qualifications:
    - 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 focused on children and adolescents and one year of child and adolescent fellowship training.

- Possess demonstrable professional experience addressing child and adolescent development issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;
  - Have expertise in the cultural and social characteristics of children and adolescents;
  - Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;
  - Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;
  - Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents;
  - 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.
- b) Pursuant to Rule 5.645(d), a psychologist appointed to evaluate the competency of a minor shall possess the following minimum qualifications:
- 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.
  - Possess demonstrable professional experience addressing child and adolescent development issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;
  - Have expertise in the cultural and social characteristics of children and adolescents;
  - Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children;
  - Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;
  - Possess a comprehensive understanding of effective interventions as well as treatment, training, and programs for the attainment of competency available to children and adolescents;
  - 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:** pursuant to section 709(b), the order appointing the evaluator shall state the following issues upon which the evaluator shall be ordered to express an opinion:

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- 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, if the minor has a mental disorder, developmental disability, developmental immaturity or other condition, does the condition or conditions impair the minor's competency to stand trial, meaning:
    - Does the minor have a rational and factual understanding of the nature of the charges or 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 with a reasonable degree of rational understanding?
  - 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; and
    - In the opinion of the evaluator, how long will it take for such interventions to be effective.
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 timelines set forth in this order for the submission of reports and conducting of the Competency Determination Hearing.
  - b) Upon the scheduling of the evaluation, Probation shall advise 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:** Minor's counsel shall be primarily responsible, working in cooperation with Probation, for obtaining all records regarding the minor, relevant to the claim of incompetency, including school, medical, mental health and employment records.
- a) The records regarding the minor, relevant to the claim of incompetency, may include, but is not limited to:
    - Police report[s] – (Petitioner shall redact the names, only, of the victim and witnesses, designating those persons as V-1 and W-1, etc., and shall provide the report[s] to Probation.)
    - CAST interviews – (Transcripts of any CAST interviews shall be provided, and not video or audio recording, without court order. Petitioner shall redact the names, only, of the victim and witnesses, designating those persons as V-1 and W-1, etc., and shall provide the transcript[s] to Probation.)

- Video, audio recordings, transcripts or reports of interviews of the minor.
  - The identity and records of any mental health provider that evaluated or treated the minor.
  - The identity and records of any physical medicine provider that evaluated or treated the minor.
  - The records of any school attended by the minor.
  - Any employment records of the minor.
  - Records of the Probation Department.
  - Dependency court files and records of the Social Services Agency regarding the minor. (The Court will make the dependency court file and SSA file available, at the Court, for inspection by petitioner and minor's counsel. Petitioner and minor's counsel shall jointly review the dependency case files, confer and agree as to the relevant records to be considered by the competency evaluator. In the event that counsel cannot agree as to certain records, the court shall review the records in dispute and determine whether they should be provided to the evaluator.)
- b) Within two court days after the Court finds substantial evidence of a doubt as to the minor's competency, minor's counsel and petitioner, if so it desires, shall provide a list of the records and sources of records relevant to the determination of the minor's competency.
- c) Minor's counsel shall be primarily responsible for gathering the records regarding the minor, with the assistance and cooperation of Probation. Minor's counsel and probation shall cooperate in obtaining any consents required for the release of records. Probation's cooperation with minor's counsel includes obtaining records under its control. Minor's counsel may issue subpoena duces tecum for the records, if necessary. Minor's counsel may seek from the Court orders necessary for the production of relevant records, including orders pursuant to Welfare and Institutions Code, section 827.
- d) Minor's counsel shall deliver the records to Probation. Minor's counsel shall not redact any information in the records provided to Probation. Before the delivery of the records to Probation, if minor's counsel believes that information should be redacted from the records, Court authorization for redaction must be sought, by way of noticed request to the Court, and the Court may, in its discretion, conduct an in-camera inspection of such records, pursuant to Evidence Code, section 915, regarding the requested redaction.
- e) Probation shall be responsible for the delivery of the records to the evaluator. Once Probation has received the records reflected on the list of records and sources previously exchanged, Probation shall:
- Transmit to the evaluator: (a) the Court's Order Appointing Juvenile Competency Evaluator (Welfare and Institutions Code § 709), with

- attached "Guidelines for Juvenile Competency Evaluators"; and (b) all records received for the evaluator's consideration.
- Provide copies of items (a) and (b) to counsel for the minor and the petitioner.
5. The evaluator may contact and interview those persons identified on the Order Appointing Juvenile Competency Evaluator if, in the professional judgment of the evaluator, necessary to a complete evaluation of the minor and to address the issues to be considered.
    - a) If other persons are identified that the evaluator believes are necessary to interview, the assigned Probation Officer shall contact, coordinate and arrange for the interview of such persons.
  6. Probation shall be responsible for delivering copies of all records to the Interagency Juvenile Competency Attainment Team (IJCAT) before the IJCAT meeting described in this order for providing recommendations to the Court.
  7. Pursuant to *Maldonado v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1112, 1129, fn 10 (citing *People vs. Arcega* (1982) 32 Cal.3d 504, 520, and *Tarantino vs. Superior Court* (1975) 48 Cal.App.3d 465, 469), the minor may not decline, nor may be instructed not to answer, any questions by the evaluator during his examination.
  8. At no time, shall counsel for any party communicate on an ex parte basis with the competency evaluator.
    - a) Counsel shall not initiate any contact with the evaluator. In the event that counsel is contacted by the evaluator, counsel shall refuse to discuss the matter with the evaluator and shall direct the evaluator to contact the Probation officer assigned the matter.
    - b) Probation officer assigned the matter shall be the communication conduit with the evaluator. The probation officer will report to the petitioner and minor's counsel the substance of any communication with the evaluator.
  9. The reports and records of any psychological or psychiatric evaluation or testing of the minor prepared in contemplation of litigation shall not be provided to the court appointed competency evaluator.
    - a) By noticed motion, counsel may apply to the Court for an order permitting all or a portion of any such reports or records to be delivered to the evaluator.
    - b) In ruling upon the motion, the Court may grant a request, upon a showing of good cause, and taking into consideration that the integrity and independence of the court appointed evaluation is the basis for the general rule against providing such records and reports.

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10. The evaluator's report shall be submitted within seven calendar days prior to the date set for the Competency Determination Hearing. 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:
  - a) Order the Probation Department to convene the IJCAT;
  - b) Order the Probation Department to immediately deliver the evaluator's report and copies of all records provided to the evaluator to each member of the IJCAT; and
  - c) 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) Pursuant to the Memorandum of Understanding entered into between the Juvenile Court of Orange County and the agencies of the IJCAT, signed on various dates (by the Court, on February 15, 2012), the IJCAT is 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 available 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;
    - Coordinate services and resources for the minor;
    - Monitor the programs and services ordered by the Court.
  - c) It shall not be the purpose of the IJCAT to express an opinion as to the competency of the minor to stand trial. The referral of the matter to the IJCAT being conditioned upon the prior judicial determination that the minor is incompetent. The IJCAT meetings, as described in this order, must assume that the minor is not competent to stand trial.
  - d) It shall not be the purpose of the IJCAT to substitute the opinion, if any, of the appointed competency evaluator as to the interventions that may assist the minor in attaining competency, if any. The purpose of the IJCAT is to utilize the combined knowledge and experience of the team members in ascertaining the availability the interventions, services and/or placement described by the evaluator. In this context, "availability" of services means: whether such interventions exist in the county, state or country; the requirements and eligibility of the minor for such services; the funding mechanisms for providing such services to the minor; the logistical, administrative, financial and other barriers for providing such services; the time constraints for providing services.
  - e) 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, shall deliver the evaluator's report and copies of all records provided to the evaluator to each member of the IJCAT, and any other records, court transcripts, or 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.)

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- a) The District Attorney and counsel representing the minor may submit a written memorandum to the Probation Department and served upon all parties, 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. Upon good cause being shown, the Court may shorten or extend the time for the setting of the Attainment of Competency Hearing.

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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. Upon good cause being shown, the Court may shorten or extend the time for the setting of the Attainment of Competency Hearing.

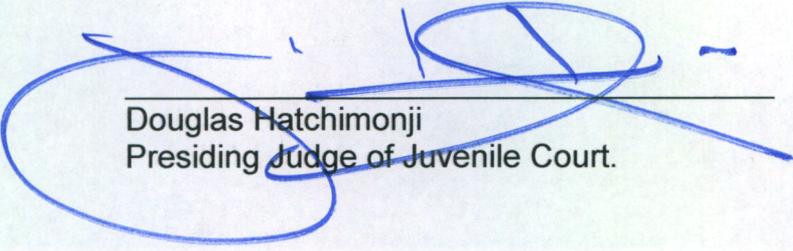
#### I. Jurisdiction

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.

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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).

Dated this 12<sup>th</sup> day of March, 2013



Douglas Hatchimonji  
Presiding Judge of Juvenile Court.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

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In re: \_\_\_\_\_  
a minor.

**ORDER APPOINTING JUVENILE  
COMPETENCY EVALUATOR  
(Welfare and Institutions Code §709)**

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TO: Dr. \_\_\_\_\_

A doubt having been expressed as to the competency of the above-named minor to stand trial, the Court orders, as follows:

1. Pursuant to Welfare and Institutions Code, section 709, you are hereby appointed to evaluate the minor and express opinions on the issues stated in the "Guidelines for Juvenile Competency Evaluators", attached to this order.
2. The evaluator is directed to review and consider the attached "Guidelines for Juvenile Competency Evaluators".
3. The Competency Determination Hearing is set for \_\_\_\_\_, at 8:30 a.m., in Department L- \_\_\_\_\_, of the above-entitled court.
4. The evaluator's original report shall be received by the Court not later than seven calendar days prior to the date set for the Competency Determination Hearing. Reports may be sent to the Juvenile Court by fax to: (657) 622-8384 or may be sent to the Court by mail to: Juvenile Court, Lamoreaux Justice Center, 341 The City Drive, P.O. Box 14169, Orange, Ca. 92863-1569, so long as it is received seven calendar days prior to the hearing date. The evaluator shall also

send copies of the report to the assigned probation officer and counsel for the parties, as follows:

- a. Assigned Probation officer: \_\_\_\_\_
  - i. Address: \_\_\_\_\_
  - ii. Email address: \_\_\_\_\_
  - iii. Phone: \_\_\_\_\_
- b. District attorney: \_\_\_\_\_
  - i. Address: \_\_\_\_\_
  - ii. Email address: \_\_\_\_\_
  - iii. Phone: \_\_\_\_\_
- c. Minor's counsel: \_\_\_\_\_
  - i. Address: \_\_\_\_\_
  - ii. Email address: \_\_\_\_\_
  - iii. Phone: \_\_\_\_\_
- d. Other: \_\_\_\_\_
  - i. Address: \_\_\_\_\_
  - ii. Email address: \_\_\_\_\_
  - iii. Phone: \_\_\_\_\_

- 5. In the event that the evaluator's report cannot be completed and transmitted by the date set forth above, the evaluator shall immediately contact the assigned Probation officer. The assigned Probation officer shall immediately advise the Court and counsel for the parties of the inability to meet the deadline.
- 6. The assigned Probation Officer shall provide to the evaluator relevant records regarding the minor, pursuant to the Orange County Juvenile Court Competency Protocol.
- 7. The evaluator may contact directly and interview those persons identified on the attached list, who, in the professional judgment of the evaluator, are necessary to a complete evaluation of the minor and to address the issues to be considered. If other persons are identified by the evaluator that the evaluator believes are necessary to interview, the assigned Probation officer shall contact, coordinate, schedule and arrange for the interview of all such persons identified by the evaluator. In the event that consent and/or release of information is requested by any person to be interviewed by the evaluator, the assigned Probation officer shall facilitate obtaining such consent or releases.
- 8. Counsel for the parties shall not initiate contact with the competency evaluator, and are directed to refuse to discuss the case or issues with the evaluator. If the evaluator has any questions regarding the evaluation, the case or the minor, the evaluator shall contact the assigned Probation officer. The Probation officer shall report to the prosecutor and minor's counsel the substance of any communication with the evaluator.

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9. The Orange County Probation Department, Orange County Sheriff's Department, or any other person, agency or organization having custody of the minor, is hereby ordered to provide the above-named doctor and/or his/her respective agents access to the minor for a face-to-face contact examination, in an unmonitored, private visitation booth/attorney-bond room/examination room. The above-named doctor and/or his/her respective agents are permitted to use any testing equipment/audio or video recording devices deemed necessary to conduct said examination. This order shall remain in effect until the case is concluded.
  
10. All invoices for the evaluation shall be sent to: Juvenile Court Administration, Lamoreaux Justice Center, 341 The City Drive, P.O. Box 14169, Orange, Ca. 92863-1569.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

## Guidelines for Juvenile Competency Evaluators Welfare and Institutions Code, section 709

### Introduction:

A doubt has been expressed as to the competency of the minor to stand trial. You have been asked to express an opinion as to whether the minor has a mental disorder, developmental disability, developmental immaturity or other condition rendering the minor incompetent to stand trial. These guidelines are intended to assist you in your examination of the minor and in the preparation of your report. The following topics are addressed below:

- Competency legal standard
- Bases for your opinion
- Primary issues to be addressed
- Records for review
- Communications with attorneys
- Evaluation report format

### Competency legal standard:

**Legal standard:** "A minor is incompetent to proceed [to trial] 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." Welfare and Institutions Code, section 709(a).

**Juvenile norms:** Competency evaluations for juveniles should be made in light of juvenile, rather than adult norms. You should examine the minor's understanding, taking into consideration the perspective of children in general. You should describe the minor being examined in comparison to average children of the same age.

### Bases for your opinion:

As to the issues you are being asked to consider, in your report, it is important to describe, in detail, all bases for your opinion. This should include data or observations that led to your opinion, any standards, criteria or studies you relied upon, as well as the results of any tests performed, statements by the minor or any other person you interviewed, information and data contained in the records provided to you, or any other information from any other source you utilized. The bases for your opinion may also include your own thinking and rationale in reaching your opinion.

### Primary issues to be addressed:

Your report must address, opine upon and express the bases for your opinions on the following issues:

1. **Is the minor currently able to understand the nature of the proceedings?**  
Understanding the nature of the proceedings includes such things as the child's understanding and appreciation of what the child is accused of having committed and that he or she is facing consequences. But "[a] minor's education regarding and

knowledge of the juvenile delinquency process is not a factor in determining whether the minor is competent.” *In re Alejandro G.* (2012) 205 Cal.App. 4<sup>th</sup> 472, 475. In describing the bases your opinion on this issue, you should articulate the degree to which you believe the minor is able to understand the nature of the proceedings. Further, if the child lacks an understanding or appreciation of the nature of the proceedings, opine as to the capacity of the minor to understand and appreciate following education or treatment.

2. **Is the minor able to assist his or her attorney in the conduct of a defense in a rationale manner?** The ability to assist his or her attorney includes such things as the ability to communicate in a meaningful and focused manner, consistent with the minor’s age, concerning the proceeding; for instance the ability to communicate the minor’s perceptions as to what occurred in the alleged crime and the reasons for the minor’s conduct. The ability to assist counsel also includes the understanding that the child’s attorney is on the minor’s side. In describing the bases your opinion on this issue, you should articulate the degree to which you believe the minor is able to assist his or her counsel.
3. **Does the minor suffer from a mental disorder described in the Diagnostic and Statistical Manual of Mental Disorders impairing the minor’s competency?** If so, please state the mental disorder you have diagnosed and the bases for your diagnosis.
4. **Does the minor suffer from a developmental disability impairing the minor’s competency?** If so, please state the development disability you believe the minor has, the extent of the minor’s disability, and all bases for your opinion.
5. **Does the minor suffer from developmental immaturity impairing the minor’s competency?** If you believe the minor is not competent to stand trial because he or she is developmentally immature, it is very important to fully explain in your report the reasoning and the bases for your opinion. This explanation should include a description of the nature of the minor’s immaturity, such as whether he or she is immature in relation to similarly aged minors or immature in relation to adults. Additionally, if the minor is developmentally immature, opine as to the treatment or educational interventions that may assist the minor in attaining competency, including the passage of time or change of environment, and the length of time it will take to attain competency. From your explanation, other evidence and applicable legal authorities, the Court will decide whether the minor is not competent to stand trial, under Welfare and Institutions Code, section 709.
6. **Does the minor suffer from some other condition impairing the minor’s competency?** If you believe the minor is not competent to stand trial because of some other condition (other than a mental disorder, developmental disability or developmental immaturity), it is very important to fully explain your reasoning and the bases for your opinion, including a clear description of the condition.
7. **If the minor is incompetent, are there interventions that may assist the minor in attaining competency, including psychiatric, psychological, medical or educational treatment; and if so, what is the likelihood of the minor attaining competency and over what time span?** Interventions to assist the minor in attaining competency may include not only the administration of medication, but also removing or

altering the minor's use of drugs, narcotics, controlled substances, or alcohol, whether prescribed or illegal, the passage of time or change of environment. If psychological or educational intervention may be helpful, provide a full description of the intervention, including the names of the treatment regimen, programs or persons. Express an opinion regarding the likelihood of the minor attaining competency, under the intervention you prescribe, and the time it will take for the intervention to be effective.

### Records for review:

The Probation Department will provide to you records regarding the minor. Because of time pressures and the availability of some records, all records relevant to your evaluation may not be provided to you. The records regarding the minor may include:

- Police report[s] – (Petitioner shall redact the names, only, of the victim and witnesses, designating those persons as V-1 and W-1, etc.).
- CAST interviews – (Transcripts of any CAST interviews shall be provided, and not video or audio recording, without court order. Petitioner shall redact the names, only, of the victim and witnesses, designating those persons as V-1 and W-1, etc.)
- Video, audio recordings, transcripts or reports of interviews of the minor.
- The identity and records of any mental health provider that evaluated or treated the minor.
- The identity and records of any physical medicine provider that evaluated or treated the minor. (Except, any psychological or psychiatric evaluation or testing of the minor prepared in contemplation of litigation.)
- The records of any school attended by the minor.
- Any employment records of the minor.
- Records of the Probation Department.
- Dependency court files and records of the Social Services Agency regarding the minor.

### Communications with attorneys:

Attorneys for the parties are prohibited from initiating contact with the competency evaluator, and are directed to refuse to discuss the case or issues with the evaluator. This prohibition is to preserve the integrity of the evaluation process. If you have any questions about the evaluation, the case or the minor, contact the assigned Probation officer. The Probation officer is the designated communication conduit with the evaluator, and is required to report to the prosecutor and minor's counsel the substance of any communication with the evaluator.

The reports and records of any psychological or psychiatric evaluation or testing of the minor prepared in contemplation of litigation shall not be provided to the court appointed competency evaluator. An attorney for a party may seek a Court order permitting the release of such a report, and the Court may issue such an order, taking into consideration that the integrity and independence of the court appointed evaluation is the basis for the general rule against providing such records and reports.

### Evaluation report format:

It is not the purpose of these guidelines to dictate or otherwise prescribe how you should, within the context of your professional judgment, conduct your examination of the minor. The purpose of the report format described below is to provide the Court, attorneys, Probation officer and the parties a clear understanding of your opinions concerning the minor and all bases for those opinions.

#### A. Background Information:

1. Name of minor:
  - a) Age
  - b) Date of Birth
  - c) Sex
  - d) Primary language
  - e) Race/Ethnicity
2. Date of evaluation:
  - a) Location of evaluation
  - b) Date of report dictation/writing
3. Referral date:
  - a) Primary reason for referral

#### B. Records reviewed:

1. List of records received and reviewed
2. Summary of relevant information from records reviewed

#### C. Persons interviewed:

1. List of persons interviewed
  - a) Date of each interview
  - b) Location of each interview
  - c) Length of each interview
  - d) Persons present during each interview
  - e) Whether language translation was required.
2. Summary of relevant information from each person interviewed.

#### D. Interview and evaluation of the minor:

1. Informed consent obtained.
2. Circumstances of interview:
  - a) Date of interview
  - b) Location of interview

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- c) Length of interview
- d) Persons present during interview
- e) Whether language translation was required

3. Summary of observations and interview of the minor.

**E. Psychological testing**

- 1. List of psychological testing performed
- 2. Circumstances of testing
  - a) Date of each test
  - b) Location of each test
  - c) Person present and/or assisting in test
  - d) Issues and circumstances impacting test administration
  - e) Whether language translation was required for test administration
- 3. Summary of relevant findings or results of testing, including test validity.

**F. Books, journals, papers consulted.**

- 1. Cite all books, professional journals or papers consulted in connection with the evaluation.

**G. Background Information and Relevant History:**

- 1. Past legal history
  - a) State all sources of information as to the minor's past legal history.
- 2. Developmental history
  - a) State all sources of information as to the minor's developmental history.
- 3. Family history and circumstances
  - a) State all sources of information as to the minor's family history and circumstances
- 4. Compliance/conduct/behavioral history – home/school/community
  - a) State all sources of information as to the minor's compliance/conduct/behavioral history at home, school and community.
- 5. Educational history/progress/issues.
  - a) State all sources of information as to the minor's educational history/progress/issues.
- 6. Psychosocial history/peer relationships/group affiliations
  - a) State all sources of information as to the minor's psychosocial history, peer relationships and/or group affiliations.

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7. Medical/health/hospitalizations/physical disabilities/injuries/serious illnesses.
  - a) State all sources of information as to the minor's medical/health/hospitalizations/physical disabilities/injuries/serious illnesses.
8. Mental health/psychiatric history
  - a) State all sources of information as to the minor's mental health/psychiatric history.
9. Substance abuse history
  - a) State all sources of information as to the minor's substance abuse history

**H. Primary issues to be addressed:**

1. Is the minor currently able to understand the nature of the proceedings?
2. Is the minor able to assist his or her attorney in the conduct of a defense in a rational manner?
3. Does the minor suffer from a mental disorder described in the Diagnostic and Statistical Manual of Mental Disorders impairing the minor's competency?
4. Does the minor suffer from a developmental disability impairing the minor's competency?
5. Does the minor suffer from developmental immaturity impairing the minor's competency?
6. Does the minor suffer from some other condition impairing the minor's competency?
7. If the minor is incompetent, are there interventions that may assist the minor in attaining competency, including psychiatric, psychological, medical or educational treatment; and if so, what is the likelihood of the minor attaining competency and over what time span?

**I. Other relevant comments, opinions or conclusions.**

**List of Persons That May Be Contacted and Interviewed by the Evaluator**

The evaluator may contact directly and interview those persons identified on the attached list, who, in the professional judgment of the evaluator, are necessary to a complete evaluation of the minor and to address the issues to be considered. If other persons are identified by the evaluator that the evaluator believes are necessary to interview, the assigned Probation officer shall contact, coordinate, schedule and arrange for the interview of all such persons identified by the evaluator. In the event that consent and/or release of information is requested by any person to be interviewed by the evaluator, the assigned Probation officer shall facilitate obtaining such consent or releases.

1. Minor's mother: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
2. Minor's father: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
3. Treating mental health provider: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
4. Treating mental health provider: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
5. Treating medical doctor: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
6. Teacher: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone number: \_\_\_\_\_
7. Caretaker/Foster parent/Guardian: \_\_\_\_\_
  - a. Address: \_\_\_\_\_
  - b. Telephone Number: \_\_\_\_\_

8. Other knowledgeable person: \_\_\_\_\_

a. Address: \_\_\_\_\_

b. Telephone number: \_\_\_\_\_

9. Other knowledgeable person: \_\_\_\_\_

a. Address: \_\_\_\_\_

b. Telephone number: \_\_\_\_\_

10. Other knowledgeable person: \_\_\_\_\_

a. Address: \_\_\_\_\_

b. Telephone number: \_\_\_\_\_

11. Other knowledgeable person: \_\_\_\_\_

a. Address: \_\_\_\_\_

b. Telephone number: \_\_\_\_\_