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CHAMBERS OF
MICHAEL NASH
PRESIDING JUDGE

January 9, 2012

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

FROM: Michael Nash, Presiding Judge
Los Angeles Juvenile Court

SUBJECT: AMENDED COMPETENCY TO STAND TRIAL PROTOCOL

Assembly Bill 2212 was signed into law on September 30, 2010. It added §709 to the Welfare and Institutions Code1 and sets forth the basic procedures to follow when minor's counsel or the court expresses a doubt as to a minor's competency to stand trial (CST). Under §709 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." The following protocol implements §709 for the Los Angeles County Juvenile Court.

Los Angeles County Juvenile Court's Protocol Regarding Juvenile Competency to Stand Trial

A. Informal Resolution

Pursuing formal CST proceedings in low-level cases may be contrary to efforts to rehabilitate minors and protect public safety. Formal proceedings are also costly and time consuming. If a doubt is raised in these cases and there is substantial evidence that a minor is incompetent to stand trial[2], the court should explore resolving the matter without initiating formal competency proceedings.

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[1] All statutory references are to the California Welfare and Institutions Code unless otherwise noted.
[2] The minor may, for example, be a Regional Center client or have a documented history of mental illness.

If the court believes that the voluntary participation of a minor and family in community based programs will serve the needs of the minor and the public, then the court should consider dismissal under §782. The court should also consider supervising the case for a period of time to assure the minor's voluntary participation in community based programs.

If the court believes that informal probation supervision would be helpful to keep a minor from re-offending, it may consider granting §654 supervision. This option should only be considered for minors who are eligible for §654 supervision and are capable of consenting to the terms of §654 supervision.

B. Formal CST Proceedings

During the pendency of juvenile proceedings, minor's counsel, or the court, may express a doubt as to a minor's competency, or request a CST evaluation. Minor's counsel may choose not to disclose the CST evaluation until, and unless, a doubt is expressed. If the court finds substantial evidence raises a doubt as to the minor's competency the court shall suspend proceedings. If the court suspends proceedings, or grants minor's request for a CST evaluation, it shall appoint an expert from the Juvenile Competency to Stand Trial Panel (JCST Panel) under Evidence Code §730 to perform a CST evaluation. 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.[3] 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 open the "§730 Panel Log" in the "Teaming" folder on their computer's desktop and assign the JSCT Panel evaluator who is next available in rotation. The clerk shall record the appointment and other data in the §730 Panel Log. Minor's counsel shall immediately notify the evaluator of the appointment. Minor's counsel and the district attorney shall send any relevant information, including special education records and recent psychological testing reports, 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 Central Juvenile Hall. For detained minors, the court shall set a CST hearing within 15 days from the suspension of proceedings.

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

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 hearing within 30 days from the suspension of proceedings.

No statements, admissions, or confessions made by, or incriminating information obtained from, a minor in the course of a JCST evaluation shall be admitted into evidence or used against the minor in any juvenile, criminal, or civil proceeding.

The JCST evaluator will conduct the EC §730 evaluation using tests that are designed to evaluate the minor's functional competency. The Juvenile Adjudicative Competence Interview should be used unless its use is contraindicated. The evaluator may choose to interview minor's caretakers or other relevant persons. 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, whether the evaluator is qualified to administer the additional tests.

The JCST evaluator shall submit a report, and three copies, to the court within 2 days prior to the date set for the CST hearing. If the court ordered that the evaluation not be disclosed to the court or the district attorney unless a doubt was expressed, then the JCST evaluator shall submit a report, and three copies, to minor's counsel 2 days prior to the date set for the CST hearing. The CST report shall include the evaluator's opinion as to whether:

1. Minor has a mental disorder.
2. Minor has a developmental disability.
3. Due to a mental disorder, developmental disability, immaturity or other condition does the minor lack sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding.
4. Due to a mental disorder, developmental disability, immaturity or other condition does the minor lack, a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.
5. There is a substantial probability that the minor will attain competency in the foreseeable future with appropriate mental health and education services.

C. CST Hearing

At the CST hearing the court shall receive the JCST evaluator's report, and any other relevant evidence, to determine whether minor is competent. The district attorney, or minor's counsel may request, with good cause, another §730 evaluation[4] and a full evidentiary hearing. If such a request is made the CST hearing shall be continued for not longer than 15 calendar days for detained minors, or 30 calendar days for non-

[4] This protocol does not limit the district attorney or the minor's counsel's ability to obtain additional CST evaluations without court funds.

detained minors. The party raising the issue of competency shall have the burden of proving the minor is IST by a preponderance of the evidence. If the court finds minor IST, the court shall determine whether minor is likely to attain competency with appropriate mental health and education services.

If the JCST evaluator believes the minor is developmentally disabled, 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.

1) Minor Found CST

If the court finds minor competent, it shall reinstate the delinquency proceedings and proceed with the case. If the court or counsel believe that minor would benefit from a referral to DMH or Regional Center services it shall order minor's counsel or Probation to request an assessment[5]. (See Appendix "A" for list Regional Center Liaisons.)

2) Minor Found IST

If the court finds minor IST, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. If the minor is detained, the court shall set an IST Planning Hearing within 15 calendar days. If the minor is released, the court shall set an IST Planning Hearing within 30 calendar days.

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] Probation Department Directive Number 1242 shall be followed for minors in Juvenile Hall who are Regional Center clients or who are being referred for a Regional Center assessment under this protocol.

5. Motions to join or subpoena governmental agencies that have an obligation to provide services to minor

If the minor is detained, the court shall order Probation (and the Department of Children and Family Services (DCFS) if the minor is a dependent of the court) to evaluate minor and submit an IST Planning Report to the court. The report should specify whether minor is a Regional Center client (or has been referred to Regional Center for an eligibility assessment), whether minor is receiving special education services and whether minor is receiving services from the Department of Mental Health (DMH) or DCFS. Probation should consult with DMH to determine whether mental health services are available to help minor attain competency. The report should also address whether minor's needs can best be met safely in the home, community or an open residential placement. If Probation concludes that minor's needs can only be met safely in a locked facility, it should, after consultation with DMH, assess whether minor could receive services or placement through the Lanterman-Petris-Short Act (LPS Act).[6]

If the minor is not detained, the court shall order Probation (and DCFS if the minor is a dependent of the court) to evaluate minor and submit an IST Planning Report to the court.

Minor's case should remain in the home court unless that court does not believe it can adequately monitor the case. No case should be sent to the Juvenile Mental Health Court unless it meets that court's eligibility criteria as detailed in the October, 2001 protocol.

D. IST Planning Hearing

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

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

If the minor is detained and 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 begin immediate coordination of a mental health and education services to help minor attain competency. If the minor is not detained, the court shall coordinate attainment services through the minor's local education agency, therapist, Regional Center, DMH and other appropriate entities.

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[6] §5000 et seq., (specifically §5150 et seq., and 5350 et seq.)

For all minors, if the finding of IST was based upon minor having a developmental disability, the court shall refer the minor to Regional Center for assessment and services.

Providing services to attain competency may include the coordination of services from DMH, Regional Center, education agencies and any other entity that has an obligation to provide services to the minor. To do this the court, or counsel, should consider joining such entities in the court proceeding pursuant to §727(a) for adjudged wards or §362(a) for adjudged dependents. If the minor has not been adjudged a ward or a dependent the court may issue subpoenas for persons, or agencies, who have an obligation to provide services to the minor.

The case shall be set for an Attainment of Competency Hearing within sixty days.

Pending attainment of competency, minor shall be held in the least restrictive setting and may only be detained if 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, or the minor is likely to flee to avoid the jurisdiction of the court. (§636) The court shall review the appropriateness of minor's detention at every hearing after a finding of IST.

2) 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 minor may require hospitalization due to a mental health disorder or a developmental disability it may order 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 the 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. Minor may receive mental health services while the LPS Act proceedings are pending.

E. Attainment of CST Hearing

At the Attainment Hearing Probation shall submit a report that documents the specific services provided to the minor and, after consultation with the service provider,

whether such services have been successful in helping minor to attain competency, and, if not, whether further efforts are likely to succeed. Minor's counsel or the district attorney may submit any additional evidence to help the court make a determination as to whether minor has attained competency or whether further efforts are likely to succeed. Minor's counsel or the district attorney may a request a further JCST evaluation or a full evidentiary hearing as detailed in section B.

If the court believes that minor has attained competency it shall reinstate juvenile proceedings. If the court finds that minor is not likely to attain competency in the foreseeable future, it shall dismiss the petition and, if appropriate, refer the matter for proceedings under the LPS Act. (§705) If the court finds that further efforts at attainment would be successful, it may order these services be provided for another period of sixty days.

The minor may not be held in a juvenile hall to participate in attainment services for more than one hundred and twenty days.

F. Jurisdiction see new 709

The Juvenile Court shall maintain jurisdiction during the time that the minor is being evaluated for competency and during the time that the minor is participating in a program to attain competency. The court may also retain jurisdiction over the minor while he or she is subject to LPS Act proceedings.

Regional Center Juvenile Forensic Liaisons

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