

Rule 5.645 of the California Rules of Court is amended, and subdivisions (a)–(c) are renumbered as rule 5.643, effective January 1, 2020, to read:

1 **Rule ~~5.645~~ 5.643. Mental health or condition of child; court procedures**

2
3 **(a) Doubt concerning the mental health of a child (§§ 357, 705, 6550, 6551)**

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5 Whenever the court believes that the child who is the subject of a petition filed
6 under section 300, 601, or 602 is mentally disabled or may be mentally ill, the court
7 may stay the proceedings and order the child taken to a facility designated by the
8 court and approved by the State Department of Mental Health as a facility for 72-
9 hour treatment and evaluation. The professional in charge of the facility must
10 submit a written evaluation of the child to the court.

11
12 **(b) * * ***

13
14 **(c) Findings regarding ~~mental retardation~~ developmental disability (§ 6551)**

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16 Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150)
17 applies.

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19 (1) If the professional finds that the child ~~is mentally retarded~~ has a
20 developmental disability and recommends commitment to a state hospital, the
21 court may direct the filing in the appropriate court of a petition for
22 commitment of a child ~~as a mentally retarded person who has a~~
23 developmental disability to the State Department of Developmental Services
24 for placement in a state hospital.

25
26 (2) If the professional finds that the child ~~is not mentally retarded~~ does not have a
27 developmental disability, the child must be returned to the juvenile court on
28 or before the expiration of the 72-hour period, and the court must proceed
29 with the case under section 300, 601, or 602.

30
31 (3) The jurisdiction of the juvenile court must be suspended while the child is
32 subject to the jurisdiction of the appropriate court under a petition for
33 commitment of a ~~mentally retarded~~ person who has a developmental
34 disability, or under remand for 90 days for intensive treatment or
35 commitment ordered by that court.

36
37 **Rule 5.645. Mental health or condition of child; competency evaluations**

1 ~~(d)(a)~~ **Doubt as to capacity to cooperate with counsel child's competency (§§ 601,**
2 **602, 709; Pen. Code, § 1367)**
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4 (1) If the court finds that there is substantial evidence ~~that regarding~~ a child who
5 is the subject of a petition filed under section 601 or 602 ~~lacks sufficient~~
6 ~~present ability to consult with counsel and assist in preparing his or her~~
7 ~~defense with a reasonable degree of rational understanding, or lacks a rational~~
8 ~~as well as factual understanding of the nature of the charges or proceedings~~
9 ~~against him or her, that raises a doubt as to the child's competency as defined~~
10 ~~in section 709, the court must suspend the proceedings and conduct a hearing~~
11 ~~regarding the child's competence competency. Evidence is substantial if it~~
12 ~~raises a reasonable doubt about the child's competence to stand trial.~~

13
14 ~~(A)(2)~~ Unless the parties have stipulated to a finding of incompetency, the
15 court must appoint an expert to examine the child to evaluate the child and
16 determine whether the child suffers from a mental illness, mental disorder,
17 developmental disability, developmental immaturity, or other condition
18 affecting competency and, if so, whether the condition or conditions impair
19 the child's competency the child is incompetent as defined in section
20 709(a)(2).
21

22 ~~(3)~~ Following the hearing on competency, the court must proceed as directed in
23 section 709.
24

25 **(b) Expert qualifications**
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27 ~~(B)(1)~~ To be appointed as an expert, an individual must be a:

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29 ~~(i)(A)~~ Licensed psychiatrist who has successfully completed four years of
30 medical school and either four years of general psychiatry residency,
31 including one year of internship and two years of child and adolescent
32 fellowship training, or three years of general psychiatry residency,
33 including one year of internship and one year of residency that focus on
34 children and adolescents and one year of child and adolescent
35 fellowship training; or
36

37 ~~(ii)(B)~~ Clinical, counseling, or school psychologist who has received a
38 doctoral degree in psychology from an educational institution
39 accredited by an organization recognized by the Council for Higher
40 Education Accreditation and who is licensed as a psychologist.
41

42 ~~(C)(2)~~ The expert, whether a licensed psychiatrist or psychologist, must:
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- 1 (i)(A) Possess demonstrable professional experience addressing child and
2 adolescent developmental issues, including the emotional, behavioral,
3 and cognitive impairments of children and adolescents;
4
5 (ii)(B) Have expertise in the cultural and social characteristics of children and
6 adolescents;
7
8 (iii)(C) Possess a curriculum vitae reflecting training and experience in the
9 forensic evaluation of children and adolescents;
10
11 (iv)(D) Be familiar with juvenile competency standards and accepted criteria
12 used in evaluating juvenile competence;
13
14 (v)(E) ~~Possess a comprehensive understanding of~~ Be familiar with effective
15 interventions, as well as treatment, training, and programs for the
16 attainment of competency available to children and adolescents; ~~and~~
17
18 (vi)(F) Be proficient in the language preferred by the child, or if that is not
19 feasible, employ the services of a certified interpreter and use
20 assessment tools that are linguistically and culturally appropriate for the
21 child; and
22
23 (G) Be familiar with juvenile competency remediation services available to
24 the child.

25
26 ~~(2)~~(3) Nothing in this rule precludes involvement of clinicians with other
27 professional qualifications from participation as consultants or witnesses or in
28 other capacities relevant to the case.

29
30 ~~(3) Following the hearing on competence, the court must proceed as directed in~~
31 ~~section 709.~~

32
33 (c) **Interview of child**

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35 The expert must attempt to interview the child face-to-face. If an in-person
36 interview is not possible because the child refuses an interview, the expert must try
37 to observe and make direct contact with the child to attempt to gain clinical
38 observations that may inform the expert's opinion regarding the child's
39 competency.

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41 (d) **Review of records**

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43 (1) The expert must review all the records provided as required by section 709.

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(2) The written protocol required under section 709(i) must include a description of the process for obtaining and providing the records to the expert to review, including who will obtain and provide the records to the expert.

(e) Consult with the child’s counsel

- (1) The expert must consult with the child’s counsel as required by section 709. This consultation must include, but is not limited to, asking the child’s counsel the following:
 - (A) If the child’s counsel raised the question of competency, why the child’s counsel doubts that the child is competent;
 - (B) What has the child’s counsel observed regarding the child’s behavior; and
 - (C) A description of how the child interacts with the child’s counsel.
- (2) No waiver of the attorney-client privilege will be deemed to have occurred from the child’s counsel report of the child’s statements to the expert, and all such statements are subject to the protections in (g)(2) of this rule.

(f) Developmental history

The expert must gather a developmental history of the child as required by section 709. This history must be documented in the report and must include the following:

- (1) Whether there were complications or drug use during pregnancy that could have caused medical issues for the child;
- (2) When the child achieved developmental milestones such as talking, walking, and reading;
- (3) Psychosocial factors such as abuse, neglect, or drug exposure;
- (4) Adverse childhood experiences, including early disruption in the parent-child relationship;
- (5) Mental health services received during childhood and adolescence;
- (6) School performance, including an Individualized Education Plan, testing, achievement scores, and retention;

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(7) Acculturation issues;

(8) Biological and neurological factors such as neurological deficits and head trauma; and

(9) Medical history including significant diagnoses, hospitalizations, or head trauma.

(g) Written report

(1) Any court-appointed expert must examine the child and advise the court on the child’s competency to stand trial. The expert’s report must be submitted to the court, to the counsel for the child, to the probation department, and to the prosecution. The report must include the following:

(A) A statement identifying the court referring the case, the purpose of the evaluation, and the definition of competency in the state of California.

(B) A brief statement of the expert’s training and previous experience as it relates to evaluating the competence of a child to stand trial.

(C) A statement of the procedure used by the expert, including:

(i) A list of all sources of information considered by the expert including those required by section 709(b)(3);

(ii) A list of all sources of information the expert tried or wanted to obtain but, for reasons described in the report, could not be obtained;

(iii) A detailed summary of the attempts made to meet the child face-to-face and a detailed account of any accommodations made to make direct contact with the child; and

(iv) All diagnostic and psychological tests administered, if any.

(D) A summary of the developmental history of the child as required by this rule.

(E) A summary of the evaluation conducted by the expert on the child, including the current diagnosis or diagnoses that meet criteria under the most recent version of the *Diagnostic and Statistical Manual of Mental*

1 Disorders, when applicable, and a summary of the child’s mental or
2 developmental status.

3
4 (F) A detailed analysis of the competence of the child to stand trial under
5 section 709, including the child’s ability or inability to understand the
6 nature of the proceedings or assist counsel in the conduct of a defense
7 in a rational manner as a result of a mental or developmental
8 impairment.

9
10 (G) An analysis of whether and how the child’s mental or developmental
11 status is related to any deficits in abilities related to competency.

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13 (H) If the child has significant deficits in abilities related to competency, an
14 opinion with explanation as to whether treatment is needed to restore or
15 attain competency, the nature of that treatment, its availability, and
16 whether restoration is likely to be accomplished within the statutory
17 time limit.

18
19 (I) A recommendation, as appropriate, for a placement or type of
20 placement, services, and treatment that would be most appropriate for
21 the child to attain or restore competence. The recommendation must be
22 guided by the principle of section 709 that services must be provided in
23 the least restrictive environment consistent with public safety.

24
25 (J) If the expert is of the opinion that a referral to a psychiatrist is
26 appropriate, the expert must inform the court of this opinion and
27 recommend that a psychiatrist examine the child.

28
29 (2) Statements made to the appointed expert during the child’s competency
30 evaluation and statements made by the child to mental health professionals
31 during the remediation proceedings, and any fruits of these statements, must
32 not be used in any other hearing against the child in either juvenile or adult
33 court.

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35 **Advisory Committee Comment**

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37 ~~Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and~~
38 ~~adopt rules regarding the qualification of experts to determine competency for purposes of~~
39 ~~juvenile adjudication. Upon a court finding of incompetency based on a developmental disability,~~
40 ~~the regional center determines eligibility for services under Division 4.5 of the Lanterman~~
41 ~~Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).~~