

**MEMORANDUM OF UNDERSTANDING  
DEVELOPMENT OF COMPETENCY  
AUGUST 2015**

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**Purpose**

The purpose of this Memorandum of Understanding is to memorialize our recognition of the unique and complex issues that arise when doubts are raised as to the legal competence of minors suspected of criminal activity who may be subject to the jurisdiction of the Juvenile Justice Court and our commitment to enhanced coordination, integration and cooperation of efforts to improve the process for determining and developing the legal competency of minors involved with the juvenile justice system within the County of Santa Clara.

**Background**

In an effort to enhance and improve the process for determining and developing legal competency of youths suspected of criminal activity, the County of Santa Clara Juvenile Justice Court, Behavioral Health Department and Probation Department agreed to create a Competency Development Program for the specific purpose of providing such service. Pursuant to this Program, a detailed Protocol was established based on two principles. First, in the absence of adequate statutes and case law, the court can create a plan that works for minors, or for a particular minor. Second, a juvenile court judge must control all proceedings with a view toward the expeditious determination of not only the jurisdictional facts of the case but also the present condition and future welfare of minors before the Court.

The current Protocol set forth in the “Juvenile Competency Manual and Protocol” requires coordination and oversight by a number of different County agencies as well as the County of Santa Clara County Juvenile Justice Court. Because of the complex nature of the issues involved, the entire competency process can take anywhere from one day to three years.

In October 2013 the County of Santa Clara Juvenile Justice Commission issued a Competency Restoration Program Report noting that "There is no statute that provides for a county run restoration (now development) of competency program." The Commission recommended that the Juvenile Justice Court, Behavioral Health Department and Probation Department formalize the Competency Restoration (now “Development”) Program and Protocol in a memorandum of understanding.

**Goals**

- + Affirm commitment to participation in the Competency Development Program and its improvement.
- + Establish agreed upon Protocols for Development of Competency for minors suspected of criminal activity.

- + More effectively determine methods and procedures necessary to develop competency in youth suspected of criminal activity.
- + Educate participants on the Protocol and steps to take when a minor is either found to be competent or not competent.
- + Reserve the right of all to challenge, in whole or in part, the Competency Development Program in whole or in part, any findings of competency made pursuant to the Program or any competency findings made in the future.

### **The Signatories' Responsibilities**

1. The Signatories to this Memorandum of Understanding "MOU" agree to adhere to and abide by the process and procedures established by the Competency Development Program as set forth in the Juvenile Competency Manual and Protocol.

2. Each of the parties to this MOU have unique responsibilities for helping to determine and restore competency and, in keeping with the Protocol established by the Juvenile Court and the Competency Development Program.

3. The Behavioral Health Department agrees to adhere to the protocols outlined in the Juvenile Competency Manual and Protocol and, pursuant to that Protocol, shall:

- a. Hire and train staff to provide direct Competency Development services to youths referred to program.
- b. Maintain and manage contract of psychologists who are qualified to provide post-services Competency evaluations.

4. The Probation Department agrees to adhere to the protocols outlined in the Juvenile Competency Manual and Protocol and, pursuant to that Protocol, agrees to:

- a. Report to the Juvenile Court when a doubt arises regarding a minor's Competence and/or upon request provide the Juvenile Court with information regarding a minor's competence;
- b. Deliver to Behavioral Health all legal documents from the Probation file when a Competency Development Program is ordered;
- c. Supervise the minor during the duration of the Competency Development Program and provide the Court in writing any updates and/or suggestions related to housing.

5. The Juvenile Justice Court agrees to adhere to the protocols outlined in the Juvenile Competency Manual and Protocol, and, pursuant to that protocol shall provide oversight

of the court's forensic evaluators, conduct appropriate trials and reviews, commit to the timelines established in the protocol, make appropriate findings and use applicable law, collaborate with all systems partners including the Competency Development team, and provide general oversight of the competency process and procedures.

6. The Office of the District Attorney agrees to adhere to the protocols outlined in the Juvenile Competency Manual and Protocol.

7. The Public Defender's Office agrees to adhere to the protocols outlined in the Juvenile Competency Manual and Protocol.

8. All parties to this MOU agree to meet as needed to review the Juvenile Competency Manual and Protocol and for suggesting any changes as may be necessary for the improvement of the Competency Protocol and/or to reflect changes in applicable law. Nothing herein prevents the parties from entering into additional MOUs as may be necessary for the purpose of determining and restoring competency in minors accused of criminal activity.

9. This MOU will be continually effective until such time as any Party desires it to be reviewed and/or updated.

10. Termination. Signatories may withdraw from this MOU at any time by making said request in writing with the effective date and reason for withdrawal.

11. Participation. Signatories commit to attend (or send a designated delegate with decision making authority) and actively participate in all relevant meetings, to the best of their abilities.

**Signatories:**



Honorable Patrick Tondreau  
Juvenile Justice Court

Toni Tullys  
Behavioral Health Department

Approved as to Form and Legality

  
County Counsel

Date 9-3-15

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Honorable Patrick Tondreau  
Juvenile Justice Court



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Toni Tullys  
Behavioral Health Department

Approved as to Form and Legality

  
\_\_\_\_\_  
County Counsel

Date 9-3-15

*Jeff Rosen*  
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Jeff Rosen  
District Attorney

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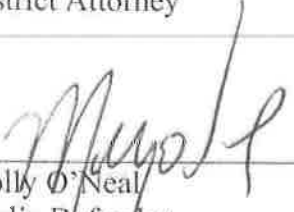
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Molly O'Neal  
Public Defender

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Laura Garnette  
Chief Probation Officer

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Jeff Rosen  
District Attorney



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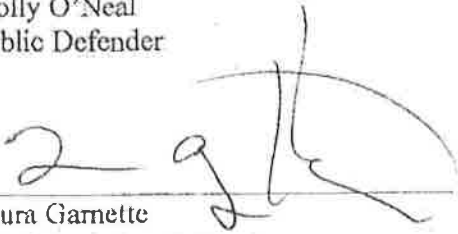
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