

ASSEMBLY BILL

No. 2695

Introduced by Assembly Member Obernolte

February 19, 2016

An act to amend Section 709 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, as introduced, Obernolte. Juvenile proceedings: competency.

Existing law authorizes, during the pendency of any juvenile proceeding, the minor's counsel or the court to express a doubt as to the minor's competency. Existing law requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency. Existing law requires the court to appoint an expert, as specified, to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency.

This bill would revise and recast these provisions to, among other things, expand upon the duties imposed upon the expert during his or her evaluation of a minor whose competency is in doubt, as specified. The bill would authorize the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts with regard to determining competency, as specified. The bill would require the question of the minor's competency to be determined at an evidentiary hearing, except as specified, and places the burden on the minor to establish by a preponderance of the evidence that he or she is incompetent. The bill would require the court, upon a finding of

incompetency, to refer the minor to services designed to help the minor attain competency. If the court finds that the minor will not achieve competency, the bill would require the court to dismiss the petition. The bill would authorize the court to invite specified persons and agencies to discuss any services that may be available to the minor after the court's jurisdiction is terminated, and would require the court to make certain referrals for the minor. The bill would require, among others, the presiding judge of a juvenile court, the probation department, and the county mental health department to develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services. By imposing additional duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 709 of the Welfare and Institutions Code
2 is amended to read:
3 709. (a) ~~During the pendency of any juvenile proceeding, the~~
4 ~~minor's counsel or the court may express a doubt as to the minor's~~
5 ~~competency. A minor is incompetent to proceed if he or she lacks~~
6 ~~sufficient present ability to consult with counsel and assist in~~
7 ~~preparing his or her defense with a reasonable degree of rational~~
8 ~~understanding, or lacks a rational as well as factual understanding,~~
9 ~~of the nature of the charges or proceedings against him or her. If~~
10 ~~the court finds substantial evidence raises a doubt as to the minor's~~
11 ~~competency, the proceedings shall be suspended.~~
12 (b) ~~Upon suspension of proceedings, the court shall order that~~
13 ~~the question of the minor's competence be determined at a hearing.~~
14 ~~The court shall appoint an expert to evaluate whether the minor~~
15 ~~suffers from a mental disorder, developmental disability,~~

1 developmental immaturity, or other condition and, if so, whether
2 the condition or conditions impair the minor's competency. The
3 expert shall have expertise in child and adolescent development,
4 and training in the forensic evaluation of juveniles, and shall be
5 familiar with competency standards and accepted criteria used in
6 evaluating competence. The Judicial Council shall develop and
7 adopt rules for the implementation of these requirements.

8 (e) If the minor is found to be incompetent by a preponderance
9 of the evidence, all proceedings shall remain suspended for a period
10 of time that is no longer than reasonably necessary to determine
11 whether there is a substantial probability that the minor will attain
12 competency in the foreseeable future, or the court no longer retains
13 jurisdiction. During this time, the court may make orders that it
14 deems appropriate for services, subject to subdivision (h), that may
15 assist the minor in attaining competency. Further, the court may
16 rule on motions that do not require the participation of the minor
17 in the preparation of the motions. These motions include, but are
18 not limited to, the following:

19 (1) Motions to dismiss.

20 (2) Motions by the defense regarding a change in the placement
21 of the minor.

22 (3) Detention hearings.

23 (4) Demurrers.

24 (d) If the minor is found to be competent, the court may proceed
25 commensurate with the court's jurisdiction.

26 (e) This section applies to a minor who is alleged to come within
27 the jurisdiction of the court pursuant to Section 601 or 602.

28 709. (a) (1) *Whenever the court has a doubt that a minor who*
29 *is subject to any juvenile proceedings is mentally competent, the*
30 *court shall suspend all proceedings and proceed pursuant to this*
31 *section.*

32 (2) *A minor is mentally incompetent for purposes of this section*
33 *if he or she is unable to understand the nature of the proceedings,*
34 *including his or her role in the proceedings, or unable to assist*
35 *counsel in conducting a defense in a rational manner, including*
36 *a lack of a rational and factual understanding of the nature of the*
37 *charges or proceedings. Incompetency may result from the*
38 *presence of any condition or conditions, including, but not limited*
39 *to, mental illness, mental disorder, developmental disability, or*
40 *developmental immaturity. Except as specifically provided*

1 otherwise, this section applies to a minor who is alleged to come
2 within the jurisdiction of the court pursuant to Section 601 or 602.

3 (3) During the pendency of any juvenile proceeding, the court
4 may receive information from any source regarding the minor's
5 ability to understand the proceedings. The minor's counsel or the
6 court may express a doubt as to the minor's competency. The
7 receipt of information or the expression of doubt of the minor's
8 counsel does not automatically require the suspension of
9 proceedings. If the court has a doubt as to the minor's competency,
10 the court shall suspend the proceedings.

11 (b) (1) Unless the parties stipulate to a finding that the minor
12 lacks competency, or the parties are willing to submit on the issue
13 of the minor's lack of competency, the court shall appoint an expert
14 to evaluate the minor and determine whether the minor suffers
15 from a mental illness, mental disorder, developmental disability,
16 developmental immaturity, or other condition affecting competency
17 and, if so, whether the minor is competent.

18 (2) The expert shall have expertise in child and adolescent
19 development and forensic evaluation of juveniles for purposes of
20 adjudicating competency, shall be familiar with competency
21 standards and accepted criteria used in evaluating juvenile
22 competency, and shall have received training in conducting
23 juvenile competency evaluations.

24 (3) The expert shall personally interview the minor and review
25 all of the available records provided, including, but not limited
26 to, medical, education, special education, probation, child welfare,
27 mental health, regional center, and court records, and any other
28 relevant information that is available. The expert shall consult
29 with the minor's counsel and any other person who has provided
30 information to the court regarding the minor's lack of competency.
31 The expert shall gather a developmental history of the minor. If
32 any information is unavailable to the expert, he or she shall note
33 in the report the efforts to obtain that information. The expert shall
34 administer age-appropriate testing specific to the issue of
35 competency unless the facts of the particular case render testing
36 unnecessary or inappropriate. In a written report, the expert shall
37 opine whether the minor has the sufficient present ability to consult
38 with his or her counsel with a reasonable degree of rational
39 understanding and whether he or she has a rational and factual
40 understanding of the proceedings against him or her. The expert

1 *shall also state the basis for these conclusions. If the expert*
2 *concludes that the minor lacks competency, the expert shall make*
3 *recommendations regarding the type of remediation services that*
4 *would be effective in assisting the minor in attaining competency,*
5 *and, if possible, the expert shall address the likelihood of the minor*
6 *attaining competency within a reasonable period of time.*

7 *(4) The Judicial Council shall adopt a rule of court identifying*
8 *the training and experience needed for an expert to be competent*
9 *in forensic evaluations of juveniles, and shall develop and adopt*
10 *rules for the implementation of the other requirements in this*
11 *subdivision.*

12 *(5) Statements made to the appointed expert during the minor's*
13 *competency evaluation, statements made by the minor to mental*
14 *health professionals during the remediation proceedings, and any*
15 *fruits of those statements shall not be used in any other hearing*
16 *against the minor in either juvenile or adult court.*

17 *(6) The district attorney or minor's counsel may retain or seek*
18 *the appointment of additional qualified experts who may testify*
19 *during the competency hearing. The expert's report and*
20 *qualifications shall be disclosed to the opposing party within a*
21 *reasonable time before, but no later than five court days before,*
22 *the hearing. If disclosure is not made in accordance with this*
23 *paragraph, the expert shall not be allowed to testify, and the*
24 *expert's report shall not be considered by the court unless the*
25 *court finds good cause to consider the expert's report and*
26 *testimony. If, after disclosure of the report, the opposing party*
27 *requests a continuance in order to further prepare for the hearing*
28 *and shows good cause for the continuance, the court shall grant*
29 *a continuance for a reasonable period of time.*

30 ~~(f)~~

31 *(7) If the expert believes the minor is developmentally disabled,*
32 *the court shall appoint the director of a regional center for*
33 *developmentally disabled individuals described in Article 1*
34 *(commencing with Section 4620) of Chapter 5 of Division 4.5, or*
35 *his or her designee, to evaluate the minor. The director of the*
36 *regional center, or his or her designee, shall determine whether*
37 *the minor is eligible for services under the Lanterman*
38 *Developmental Disabilities Services Act (Division 4.5*
39 *(commencing with Section 4500)), and shall provide the court with*
40 *a written report informing the court of his or her determination.*

1 The court's appointment of the director of the regional center for
2 determination of eligibility for services shall not delay the court's
3 proceedings for determination of competency.

4 ~~(g)~~

5 (8) An expert's opinion that a minor is developmentally disabled
6 does not supersede an independent determination by the regional
7 center ~~whether the minor is eligible~~ *regarding the minor's*
8 *eligibility* for services under the Lanterman Developmental
9 Disabilities Services Act (Division 4.5 (commencing with Section
10 4500)).

11 ~~(h)~~

12 (9) Nothing in this section shall be interpreted to authorize or
13 require *either of* the following:

14 ~~(1) The court to place~~

15 (A) *Placement of* a minor who is incompetent in a
16 developmental center or community facility operated by the State
17 Department of Developmental Services without a determination
18 by a regional center director, or his or her designee, that the minor
19 has a developmental disability and is eligible for services under
20 the Lanterman Developmental Disabilities Services Act (Division
21 4.5 (commencing with Section 4500)).

22 ~~(2) The director of the regional center, or his or her designee,~~
23 ~~to make determinations~~

24 (B) *Determinations* regarding the competency of ~~a minor~~ *minor*
25 *by the director of the regional center or his or her designee.*

26 (c) *The question of the minor's competency shall be determined*
27 *at an evidentiary hearing unless there is a stipulation or submission*
28 *by the parties on the findings of the expert. The minor has the*
29 *burden of establishing by a preponderance of the evidence that he*
30 *or she is incompetent.*

31 (d) *If the court finds the minor to be competent, the court shall*
32 *reinstate proceedings and proceed commensurate with the court's*
33 *jurisdiction.*

34 (e) *If the court finds, by a preponderance of evidence, that the*
35 *minor is incompetent, all proceedings shall remain suspended for*
36 *a period of time that is no longer than reasonably necessary to*
37 *determine whether there is a substantial probability that the minor*
38 *will attain competency in the foreseeable future, or the court no*
39 *longer retains jurisdiction. During this time, the court may make*
40 *orders that it deems appropriate for services. Further, the court*

1 *may rule on motions that do not require the participation of the*
2 *minor in the preparation of the motions. These motions include,*
3 *but are not limited to, all of the following:*

4 *(1) Motions to dismiss.*

5 *(2) Motions regarding a change in the placement of the minor.*

6 *(3) Detention hearings.*

7 *(4) Demurrers.*

8 *(f) Upon a finding of incompetency, the court shall refer the*
9 *minor to services designed to help the minor attain competency.*
10 *Service providers and evaluators shall adhere to the standards*
11 *stated in this section and the California Rules of Court. Services*
12 *shall be provided in the least restrictive environment consistent*
13 *with public safety. Priority shall be given to minors in custody.*
14 *Service providers shall determine the likelihood of the minor*
15 *attaining competency within a reasonable period of time, and if*
16 *the opinion is that the minor will not attain competency within a*
17 *reasonable period of time, the minor shall be returned to court at*
18 *the earliest possible date. The court shall review remediation*
19 *services at least every 30 calendar days for minors in custody and*
20 *every 45 calendar days for minors out of custody.*

21 *(g) (1) Upon receipt of the recommendation by the remediation*
22 *program, the court shall hold an evidentiary hearing on whether*
23 *the minor is remediated or is able to be remediated unless the*
24 *parties stipulate to, or agree to the recommendation of, the*
25 *remediation program. If the recommendation is that the minor has*
26 *attained competency, and if the minor disputes that*
27 *recommendation, the burden is on the minor to prove by a*
28 *preponderance of evidence that he or she remains incompetent. If*
29 *the recommendation is that the minor is unable to be remediated*
30 *and if the prosecutor disputes that recommendation, the burden*
31 *is on the prosecutor to prove by a preponderance of evidence that*
32 *the minor is remediable. If the prosecution contests the evaluation*
33 *of continued incompetence, the minor shall be presumed*
34 *incompetent and the prosecution shall have the burden to prove*
35 *by a preponderance of evidence that the minor is competent. The*
36 *provisions of subdivision (c) shall apply at this stage of the*
37 *proceedings.*

38 *(2) If the court finds that the minor has been remediated, the*
39 *court shall reinstate the proceedings.*

1 (3) *If the court finds that the minor has not yet been remediated,*
2 *but is likely to be remediated, the court shall order the minor to*
3 *return to the remediation program.*

4 (4) *If the court finds that the minor will not achieve competency,*
5 *the court shall dismiss the petition. The court may invite persons*
6 *and agencies with information about the minor, including, but not*
7 *limited to, the minor and his or her attorney, the probation*
8 *department, parents, guardians, or relative caregivers, mental*
9 *health treatment professionals, the public guardian, educational*
10 *rights holders, education providers, and social services agencies,*
11 *to the dismissal hearing to discuss any services that may be*
12 *available to the minor after jurisdiction is terminated. If*
13 *appropriate, the court shall refer the minor for evaluation pursuant*
14 *to Article 6 (commencing with Section 5300) of Chapter 2 of Part*
15 *1 of Division 5 or Article 3 (commencing with Section 6550) of*
16 *Chapter 2 of Part 2 of Division 6.*

17 (h) *The presiding judge of the juvenile court, the probation*
18 *department, the county mental health department, the public*
19 *defender and other entity that provides representation for minors,*
20 *the district attorney, the regional center, if appropriate, and any*
21 *other participants that the presiding judge shall designate, shall*
22 *develop a written protocol describing the competency process and*
23 *a program to ensure that minors who are found incompetent*
24 *receive appropriate remediation services.*

25 SEC. 2. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.