

AMENDED IN ASSEMBLY APRIL 19, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2695**

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**Introduced by Assembly Member Obernolte**

February 19, 2016

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

LEGISLATIVE COUNSEL’S DIGEST

AB 2695, as amended, 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 Judicial Council to adopt a rule of court relating to the qualifications of those experts, 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 a~~

*presumption of competency, unless it is proven 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, competency within a reasonable period of time, 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 Notwithstanding these provisions, the bill would prohibit remediation services from exceeding certain time periods, as specified.*

*By imposing additional duties on local officials, the this 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) (1) Whenever the court has a doubt that a minor who
- 4 is subject to any juvenile proceedings is mentally competent, the
- 5 court shall suspend all proceedings and proceed pursuant to this
- 6 section.
- 7 (2) A minor is mentally incompetent for purposes of this section
- 8 if he or she is unable to understand the nature of the proceedings,
- 9 including his or her role in the proceedings, or unable to assist
- 10 counsel in conducting a defense in a rational manner, including a

1 lack of a rational and factual understanding of the nature of the  
2 charges or proceedings. Incompetency may result from the presence  
3 of any condition or conditions, including, but not limited to, mental  
4 illness, mental disorder, developmental disability, or developmental  
5 immaturity. Except as specifically provided otherwise, this section  
6 applies to a minor who is alleged to come within the jurisdiction  
7 of the court pursuant to Section 601 or 602.

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

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

23 (2) The expert shall have expertise in child and adolescent  
24 development and forensic evaluation of juveniles for purposes of  
25 adjudicating competency, shall be familiar with competency  
26 standards and accepted criteria used in evaluating juvenile  
27 competency, and shall have received training in conducting juvenile  
28 competency evaluations.

29 (3) The expert shall personally interview the minor and review  
30 all of the available records provided, including, but not limited to,  
31 medical, education, special education, probation, child welfare,  
32 mental health, regional center, and court records, and any other  
33 relevant information that is available. The expert shall consult with  
34 the minor's counsel and any other person who has provided  
35 information to the court regarding the minor's lack of competency.  
36 The expert shall gather a developmental history of the minor. If  
37 any information is unavailable to the expert, he or she shall note  
38 in the report the efforts to obtain that information. The expert shall  
39 administer age-appropriate testing specific to the issue of  
40 competency unless the facts of the particular case render testing

1 unnecessary or inappropriate. In a written report, the expert shall  
2 opine whether the minor has the sufficient present ability to consult  
3 with his or her counsel with a reasonable degree of rational  
4 understanding and whether he or she has a rational and factual  
5 understanding of the proceedings against him or her. The expert  
6 shall also state the basis for these conclusions. If the expert  
7 concludes that the minor lacks competency, the expert shall make  
8 recommendations regarding the type of remediation services that  
9 would be effective in assisting the minor in attaining competency,  
10 and, if possible, the expert shall address the likelihood of the minor  
11 attaining competency within a reasonable period of time.

12 (4) The ~~Judicial Council~~ *Council, in conjunction with groups*  
13 *or individuals representing judges, defense counsel, district*  
14 *attorneys, counties, advocates for people with developmental and*  
15 *mental disabilities, state psychologists and psychiatrists,*  
16 *professional associations and accredited bodies for psychologists*  
17 *and psychiatrists, and other interested stakeholders,* shall adopt a  
18 rule of court identifying the training and experience needed for an  
19 expert to be competent in forensic evaluations of ~~juveniles, and~~  
20 *juveniles. The Judicial Council* shall develop and adopt rules for  
21 the implementation of the other requirements in this subdivision.

22 (5) Statements made to the appointed expert during the minor's  
23 competency evaluation, statements made by the minor to mental  
24 health professionals during the remediation proceedings, and any  
25 fruits of those statements shall not be used in any other hearing  
26 against the minor in either juvenile or adult court.

27 (6) The district attorney or minor's counsel may retain or seek  
28 the appointment of additional qualified experts who may testify  
29 during the competency hearing. The expert's report and  
30 qualifications shall be disclosed to the opposing party within a  
31 reasonable time before, but no later than five court days before,  
32 the hearing. If disclosure is not made in accordance with this  
33 paragraph, the expert shall not be allowed to testify, and the  
34 expert's report shall not be considered by the court unless the court  
35 finds good cause to consider the expert's report and testimony. If,  
36 after disclosure of the report, the opposing party requests a  
37 continuance in order to further prepare for the hearing and shows  
38 good cause for the continuance, the court shall grant a continuance  
39 for a reasonable period of time.

(7) If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5, 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 services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), 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 proceedings for determination of competency.

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

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

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

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

(c) The question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert. ~~The minor has the burden of establishing by a preponderance of the evidence that he or she is incompetent. It shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent.~~

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

(e) If the court finds, by a preponderance of evidence, that the minor is incompetent, 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. During this time, the court may make orders that it deems appropriate for services. 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, all of the following:

- (1) Motions to dismiss.
- (2) Motions regarding a change in the placement of the minor.
- (3) Detention hearings.
- (4) Demurrers.

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

(g) (1) Upon receipt of the recommendation by the remediation program, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program. If the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent. If the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed

1 incompetent and the prosecution shall have the burden to prove  
2 by a preponderance of evidence that the minor is competent. The  
3 provisions of subdivision (c) shall apply at this stage of the  
4 proceedings.

5 (2) If the court finds that the minor has been remediated, the  
6 court shall reinstate the proceedings.

7 (3) If the court finds that the minor has not yet been remediated,  
8 but is likely to be ~~remediated~~, *remediated within a reasonable*  
9 *period of time*, the court shall order the minor to return to the  
10 remediation program.

11 (4) If the court finds that the minor will not achieve ~~competency~~,  
12 *competency within a reasonable period of time*, the court shall  
13 dismiss the petition. The court may invite persons and agencies  
14 with information about the minor, including, but not limited to,  
15 the minor and his or her attorney, the probation department,  
16 parents, guardians, or relative caregivers, mental health treatment  
17 professionals, the public guardian, educational rights holders,  
18 education providers, and social services agencies, to the dismissal  
19 hearing to discuss any services that may be available to the minor  
20 after jurisdiction is terminated. If appropriate, the court shall refer  
21 the minor for evaluation pursuant to Article 6 (commencing with  
22 Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3  
23 (commencing with Section 6550) of Chapter 2 of Part 2 of Division  
24 6.

25 (5) *In no case shall remediation extend beyond two years, or a*  
26 *period of time equal to the maximum term of detention for the most*  
27 *serious charge on the petition, whichever is shorter; on a petition*  
28 *that contains a felony offense. In no case shall remediation extend*  
29 *beyond one year, or a period of time equal to the maximum term*  
30 *of detention provided by law for the most serious offense,*  
31 *whichever is shorter; on a petition that contains only misdemeanor*  
32 *offenses.*

33 (h) The presiding judge of the juvenile court, the probation  
34 department, the county mental health department, the public  
35 defender and other entity that provides representation for minors,  
36 the district attorney, the regional center, if appropriate, and any  
37 other participants that the presiding judge shall designate, shall  
38 develop a written protocol describing the competency process and  
39 a program to ensure that minors who are found incompetent receive  
40 appropriate remediation services.

1 SEC. 2. If the Commission on State Mandates determines that  
2 this act contains costs mandated by the state, reimbursement to  
3 local agencies and school districts for those costs shall be made  
4 pursuant to Part 7 (commencing with Section 17500) of Division  
5 4 of Title 2 of the Government Code.

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