


MEMORANDUM

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| DATE | May 4, 2017 |
| TO | Policy and Advocacy Committee |
| FROM |  Jason Glasspiegel Central Services Coordinator |
| SUBJECT | Agenda Item #6(c)(21) – AB 689 (Oberholte) Juvenile Proceedings: Competency |

Background:

This bill would revise the duties of a court appointed expert who performs evaluations on a minor whose competency is in doubt. This bill would require the Judicial Council in conjunction with various stakeholders to develop and adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles. This bill would also require a minor's competency be determined at an evidentiary hearing, would establish a presumption of mental competency unless proven by a preponderance of the evidence otherwise, and upon a finding of incompetency, require the court to immediately refer the minor to services designed to help the minor attain competency.

Location: Assembly Committee on Appropriations

Status: 04/26/2017 In committee: Set, first hearing. Referred to Assembly Committee on Appropriations Suspense File.

Votes: 03/21/2017 Assembly Committee on Public Safety (7-0-0)

Action Requested:

No action is required at this time. Staff will continue to watch AB 689 (Oberholte) due to the potential impact on psychologists that perform evaluations for the courts and psychologists that provide services to help minors attain competency.

Attachment A: AB 689 (Oberholte) Text

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SECTION 1. Section 709 of the Welfare and Institutions Code is repealed.

~~709.~~ (a) ~~During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed 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. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.~~

~~(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert 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. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.~~

~~(c) If the minor is found to be incompetent by a preponderance of the evidence, 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, subject to subdivision (h), 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, the following:~~

~~(1) Motions to dismiss.~~

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

~~(3) Detention hearings.~~

~~(4) Demurrers.~~

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

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

~~(f) 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.~~

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

~~(h) Nothing in this section shall be interpreted to authorize or require the following:~~

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

~~(2) The director of the regional center, or his or her designee, to make determinations regarding the competency of a minor.~~

SEC. 2. *Section 709 is added to the Welfare and Institutions Code, to read:*

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

(2) A minor is mentally incompetent for purposes of this section if he or she is unable to understand the nature of the proceedings, including his or her role in the proceedings, or unable to assist counsel in conducting a defense in a rational manner, including a lack of a rational and factual understanding of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

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

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

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

(3) The expert shall personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available. The expert shall consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency. The expert shall gather a developmental history of the minor. If any information is unavailable to the expert, he or she shall note in the report the efforts to obtain that information. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her. The expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, the expert shall make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency, and, if possible, the expert shall address the likelihood of the minor attaining competency within a reasonable period of time.

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

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

(6) The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The expert's report and qualifications shall be disclosed to the

opposing party within a reasonable time before, but no later than five court days before, the hearing. If disclosure is not made in accordance with this paragraph, the expert shall not be allowed to testify, and the expert's report shall not be considered by the court unless the court finds good cause to consider the expert's report and testimony. If, after disclosure of the report, the opposing party requests a continuance in order to further prepare for the hearing and shows good cause for the continuance, the court shall grant a continuance 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. 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. With respect to a minor under 14 years of age at the time of the commission of the alleged offense, the court shall make a determination as to the minor's capacity, pursuant to Section 26 of the Penal Code prior to deciding the issue of competency.

(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 immediately 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 cases every 15 days until remediation services begin. After remediation services have commenced, the court shall review cases every 30 days.

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

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

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

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

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

SEC. 3. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

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