

**Santa Clara County  
Juvenile Justice Commission  
Competency Restoration Program Report  
October 2013**



I. INTRODUCTION

In the spring of 2013, the Juvenile Justice Commission formed a four person sub-committee to look at the issues youth and courts were facing regarding the implementation of the Competency Restoration Process, including the length of the waiting period to start receiving services.

California Welfare and institutions Code 709 had been enacted in September 2010 in an attempt to address the competency issue in Juvenile Court. Key players in Juvenile Court in Santa Clara County developed a Competency Protocol to address this change in legislation. Prior to the Protocol's implementation, in April of 2010, County Mental Health Department personnel attended a six day training on Competency Restoration in the state of Virginia. Santa Clara County decided to use the Virginia Juvenile Competency Program (VJCP) developed by the University of Virginia and the Virginia Department of Behavioral Health and Development Services. VJCP was selected to help design and train Santa Clara County in the process. That relationship remains intact.

A county Mental Health employee was selected to become the Restoration Counselor and was sent to Virginia for a three day training program. It took 18 months to complete the contract with Virginia. The Mental Health Department staff tried to use that time to further their expertise and set up timelines for the implementation of the Competency Protocol. Court systems began to identify and track cases where a 1017 Mental Health evaluation was court ordered and competency might be considered an issue. All of these activities were accomplished before the establishment of a formal agreement with the State of Virginia.

The VJCP is education based. Educational techniques such as role playing were developed to assist the identified youth better understand the court process and their role in assisting their attorney in their defense. Another educational technique was actually visiting a courtroom and/or using courtroom simulation videos to play out scenes the youth might experience such as testifying, answering questions, or interacting with courtroom personnel. A third series of tools was utilized including CD-Roms, flash cards, individualized workbooks, board games and other youth oriented interactive processes. It was this third set of competency restoration tools that were not available to county staff until the contract was signed.

The Competency Restoration Program (the program) officially started on January 3, 2012. The Mental Health Department, now the lead agency in the process, received 4 referrals during 2011 and 16 more during 2012. As of December 31, 2012, one year into the process there was a waiting list of five youth to receive restoration services. It is this waiting list that has been the most troublesome aspect of the program's implementation. All of the Departments interviewed complained about this issue.

In June of 2013, now 18 months later, the program was serving eight youth but there was a waiting list of 164 days (approximately 5 ½ months) to start receiving services for an out of custody youth as in-custody youth are given priority. A restoration services supervisor was allocated to the project unofficially and started to take on some cases. As a result of the backlog and funding issue, the Juvenile Probation Department developed an agreement with County Mental Health to hire an additional Restoration Services Counselor but that remains unfilled as of the date of this report. January 2014 appears to be the first date when such an additional staff person could be on board.

In August of 2013, Mental Health reported currently serving eight youth with four more on the waiting list. The average waiting time to receive services had dropped to 101 days for out of custody youth. In September, the wait list was five youth and the wait to receive services had increased to 157 days.

The VJCP was selected because it was one of the few existing programs in the country to have a rigorous evaluation process. In a 2009 published report entitled "Forensic Services for Incompetent Juveniles," written by Janet Warren, 563 completed competency cases were analyzed. Case management services were provided for every youth involved in the process including medication management. The Virginia evaluation states that "psychiatric diagnosis was robustly correlated with restoration efforts. Of those youth with Mental Retardation only 44% were found to be unrestorably incompetent, as were 42% in the category of Mental Retardation and Mentally Ill." Youth there receive services 3 days a week while Santa Clara youth receive services 2 days a week. VJCP continues to provide oversight and training as appropriate.

## II. BACKGROUND

Beginning in 2013 the Commission had been receiving regular monthly reports from the Mental Health Manager at our Commission meetings. The major concern voiced at that juncture was the waiting list for minors receiving restoration services had grown too long. A backlog of 5-6 youth had been continuing for about one year.

In May 2013, the subcommittee developed a case review checklist to use as each sub-committee member read the court files of each youth identified as Competency related. A team of four readers from the

Juvenile Justice Commission read 65 cases earmarked by the Juvenile Probation Court unit as having been identified as a case with a competency issue. (This project would not have been possible but for the extra work of the Court unit staff in retrieving all the files.) The earliest petitioned case was June 12, 2006 and the latest was April 9, 2013. The Juvenile Probation court unit began to document cases in which the court had requested a 1017 or psychological evaluation in 2009. It was this list that was used by the sub-committee.

A review of Probation's data revealed that in 2009, before the competency protocol was in place, there were 28 cases identified for tracking. In 14 (50%) of those cases the youth was found to be competent. In 13 of the 28 cases the youth was eventually found incompetent and 14 of the total cases were dismissed. The Juvenile Justice team did not read these cases.

In 2010, again before the competency protocol was in place, 21 cases were identified through the 1017 request. The Competency protocol team consisting of professionals from all of the related departments started meeting to discuss the development of a protocol. Of the 21 cases, 10 (48%) youth were found to be competent. 6 youth were found incompetent and 9 (43%) out of the 21 cases were eventually dismissed. We read all of the identified cases beginning with those petitioned in 2010.

In 2011, 46 cases were identified; 11 (23.9%) youth were found competent; 11 (23.9%) were found incompetent. At the end of 2011, 60.8% of the cases were still pending. This is the first year where cases were actually referred for restoration services, although only 2 cases were accepted in the pilot program. In 2012, 23 cases were identified and in 10 (43.5%) of those cases youth were found to be incompetent and 13 youth (56.5%) were found competent; 6 youth were ordered into restoration services. In 2013, 6 additional youth were identified; 3 (50%) were found incompetent and the other cases were pending. It should be noted that there are limitations to using the year end data provided by Probation, because many of these cases spill over into subsequent years. Some cases move from incompetency to competency through the use of competency services and others are dismissed. The Juvenile Justice team decided that to truly look at these cases we would have to read each one to assess the impact of the competency protocol and the Competency Restoration Program implemented by the Mental Health Department.

Of the 65 cases read, 61 (93.8%) were male and 4 (6.2%) were female. Ages ranged from 9 to 17 with 17 (24.6%) being the most frequent age. The data showed 41 (63%) were identified as Hispanic; 5 (7.7%) were Asian; 5 (7.7%) were Caucasian; 6 (9.2%) were African American and 2 (3%) were identified as American Indian. Others were listed as mixed race as well as one each Samoan, Eskimo, Somali and Brazilian. Out of the 65 cases read, 21 youth (32%) had documented contact with the dependency system; 46 (70.7%) were identified as having major learning

issues such as being enrolled in Special Education classes, failing grades, non-attendance, SARC clients and or low IQ. 51 (78.5%) were found to have major mental health issues such as bi-polar disorder, depression, schizophrenia, Asperger's, developmental delays, PTSD, mood disorders as well as numerous cognitive disorders.

Of the 65 cases, 27 (41.5%) were found to be incompetent; 26 (40%) were found to be competent; 11 cases (16.9%) were dismissed and 5 of the competent cases were accepted in CITA court as of our last reading. Other outcomes for competent youth included DEJ, ward ship, Ranch, and CYA. A few cases were transferred to another county and one youth remained a dependent of the court.

Offenses charged also varied considerably. Offenses included: burglary, vandalism, trespassing, robbery, use of a deadly weapon, accessory to murder, possession of stolen goods, and lewd conduct with a minor or assault on a family member. At the same time the subcommittee was reading case files, they were also interviewing key stakeholders: Judges, Restoration Counselor, Restoration Manager, Restoration Supervisor, and Mental Health Program Manager responsible for the program. Additionally we interviewed or received written statements from four Public Defenders and the Alternate Defenders Office. We interviewed the District Attorney responsible for the Juvenile unit. We also interviewed the Court Unit Administrator, as well as the Probation Deputy Chief, and the Probation Program Manager. Each interview was conducted by 2 or more Commissioners and recorded on an Interview checklist. We experienced a competency restoration lesson plan and participated in a Competency Team meeting setting court dates and detailing youth progress. The last interview was conducted on August 28, 2013.

### III STRUCTURAL ISSUES

There were some structural issues identified in the footnotes of the Juvenile Competency Manual and Protocol.

In reviewing the Juvenile Competency Manual and Protocol (JCMP) there were a number of structural issues raised which continue today to be problematic in developing the competency restoration process.

1. There is no statute that provides for a county run restoration of competency program. Three entities ; the Juvenile Justice Court, the Department of Mental Health and the Probation Department agreed to create a program for providing such service (p. 3 of the JCMP).
2. The ideal of a six months suspension of the underlying court proceedings to date has not proved attainable as very few cases have met this standard. (p.3, JCMP).

3. Even with the enactment of Welfare and Institutions Code 709, there was no funding attached to the implementation of Competency services. (p.4, JCMP).
4. The minor should be evaluated and receive services in the least restrictive setting. The home should be considered the first alternative (p.11, JCMP). This is challenging because of the seriousness of some of the offenses.
5. Talking to the minor is only rarely necessary (p.18, JCMP).
6. Securing information from the State Regional Center may help to determine whether the minor is currently incompetent (p.20, JCMP). All interviewees have acknowledged the difficulty in securing the Regional Center as a partner.
7. Once proceedings are suspended, the Court and the Probation Department have an obligation to provide basic services as defined in the Protocol (p.28, JCMP). That continues to be challenging.
8. The Pre-Trial Competency Evaluator receives instructions from the Court about the importance of returning the evaluation within 17 calendar days from the time of the order (p.33, JCMP). A delay of 4 to 6 weeks is the reality time frame.
9. When a youth is found incompetent a MDT is strongly recommended to insure that the youth is receiving appropriate services (p.45, JCMP). Up until recently that has rarely happened.
10. The Mental Health Department will have a Competency Restoration Program Director, a Competency Restoration Supervisor and a Competency Restoration Counselor for each minor referred to the program (p.52, JCMP). Staffing continues to be a major issue in the implementation of the Competency Protocol.
11. If there is a substantial probability that a minor will not attain competency in the foreseeable future the Competency Restoration program should end and the underlying delinquency charge should be dismissed. (p.64, JCMP). A concern was expressed about dismissing cases without providing needed mental health services.

These issues outlined in the Protocol itself revealed some inconsistencies that have led to some of the systemic problems in the implementation of our Restoration system.

#### IV FINDINGS

a. The Commission found there was a consensus among stakeholders that the new Juvenile Competency Manual and Protocol process, starting officially in January 2012, represented an improvement over the previous competency process.

b. The time lines in the new protocol are generally being met until the minor is referred for restoration services.

c. There is no statutory scheme in California that provides for a county run competency restoration program. As a result, the competency restoration program currently relies on an informal partnership of stakeholders. The Virginia statute lays the foundation for their protocol. California lacks a statewide standard and funding.

d. The new competency process was established with initial formal training. However, there has been no ongoing formal training since the program was established.

e. A Multi-Disciplinary Team (MDT) is strongly recommended by the protocol; however, until recently, this part of the protocol has not been followed. The VJCP also requires mental health counseling and case management services from the beginning of the restoration process. This has not been the practice in our county.

f. The Mental Health Department has agreed to manage the restoration process, but is not able to meet the timelines, due to a lack of staffing and services, directly related to a lack of funding.

g. There is no existing measurement of the competency process outcomes to use as a tool to improve the process.

h. By design, stakeholders in the juvenile justice system represent differing roles and interests, and thus view the purpose of the competency process from different perspectives.

i. The Commission found that there is not a significant disparity between the Santa Clara County and Virginia outcomes.

## V RECOMMENDATIONS

- a. The Commission recommends that a clearly defined leadership team should be established led by the Presiding Judge of the Juvenile Justice Court.
- b. The Commission recommends that the partnership currently in place be formalized through the use of memoranda of understanding. We also recommend that the Competency Restoration Leadership Team meet quarterly to review data, identify and remedy any emerging problems.
- c. The Commission recommends that a training manual and training protocol be established for partners in the restoration process under the leadership of the Mental Health Department so that all new stakeholders to the process are trained in a timely manner.
- d. A budget for this vital program should be established to include manpower, training and materials required to fulfill the program goals.
- e. The Commission recommends an MDT be convened in all cases, and that the Protocol be amended to require an MDT in every case.

Committee Chair,  
Nora Manchester

Chair, Juvenile Justice Commission  
Penelope M. Blake

October 1, 2013