

Juvenile Forensic Evaluators Policies and Procedures (Revised 2023)

It is the policy of the Santa Clara County Superior Court that the appointment of juvenile forensic evaluators and receipt of reports shall include and be limited to the following:

1. JUVENILE FORENSIC EVALUATOR INFORMATION AND RESOURCES

Immediately upon appointment of a psychiatrist or psychologist to the Court's list, the Court Juvenile Forensic Evaluator Program Coordinator will provide the evaluator with the following:

- a. A letter confirming the evaluator's appointment to the Santa Clara County Superior Court Juvenile Justice Division Forensic Evaluator Panel.

The evaluator should be familiar with the following documents located on the Court's Forensic Evaluator Resources website:

- a. Juvenile Competency Protocol
- b. California Rule of Court 5.645
- c. Welfare & Institutions Code § 709

The Court Juvenile Forensic Evaluator Program Coordinator will request a username and password to be assigned to the evaluator for online report submission.

2. THE JUVENILE ADVISORY REVIEW PANEL

- a. The Presiding Judge of the Superior Court, upon recommendation of the Supervising Judge of the Juvenile Division, shall appoint a Juvenile Advisory Review Panel to monitor and measure report quality and timeliness.
- b. The panel shall be comprised of:
 - (1) The Supervising Judge of the Juvenile Justice Division of the Superior Court of California, County of Santa Clara
 - (2) A psychologist-representative of the Santa Clara County Psychological Association;
 - (3) A representative from the Court's Juvenile Justice Division;
 - (4) A representative from the Office of the District Attorney;
 - (5) A representative from the Office of the Public Defender;
 - (6) A representative from the Alternate Defender Office;

- (7) A representative from the Independent Defense Office;
 - (8) A representative from the Juvenile Probation Department; adult and/or juvenile; and
 - (9) A representative from the Behavioral Health Department.
- c. The panel will meet semi-annually.
- d. The panel shall be responsible for making recommendations concerning the following:
- (1) Appointment of Juvenile Forensic Evaluators to the Court's List. Such recommendations shall be based on credentials, experience, and the minimum standards for Juvenile Forensic Evaluators defined at Section 4 herein;
 - (2) Semi-annual reports on the quality and timeliness of reports being received;
 - (3) Terminations from the list due to consistently late reports or deficiency in report quality;
 - (4) Review and recommend for updates to policy and procedure documents; and
 - (5) Review and recommend for updates to the online content for the forensic evaluator page on the court's website.
- e. The Court Juvenile Forensic Evaluator Program Coordinator shall provide staff support for the Juvenile Advisory Review Panel.
- (1) Support staff shall maintain a file on each court appointed evaluator that shall include the evaluator's application package, timeliness tracking, any late report memorandum and any complaints concerning the evaluator's performance and/or timeliness.
 - (2) The supervisor of the Juvenile Justice Division's Clerk's Office will ensure that all relevant information is included in the file provided to the Juvenile Advisory Review Panel at the time and place scheduled for the annual review of the Forensic Panel Evaluators.

3. APPLICATION, APPOINTMENT AND TERMINATION FROM THE LIST

Application for appointment to the Court's List shall be by the following procedure:

- a. Any applicant wishing appointment to the Court's List of Juvenile Forensic Evaluators shall submit his/her resume, a complete application form (provided by the Court), redacted sample reports, and other supporting documentation listed in Section 4 to the Court Juvenile Forensic Evaluator Program Coordinator.

- b. If a personal appearance of the applicant before the Review Panel is desired by the Panel, arrangements will be made by the Court Juvenile Forensic Evaluator Program Coordinator.
- c. After thorough review, the Juvenile Advisory Review Panel shall make its recommendation in writing to the Supervising Judge of the Juvenile Justice Division.
- d. Based on these recommendations, the Supervising Judge will make his/her recommendation to the Presiding Judge who will make the appointment in his/her discretion.
- e. If the recommendation is negative, and the applicant is not appointed to the List, he/she shall be provided with a written response outlining the reasons for negative recommendation and non-appointment.

Termination from the list may occur for consistently late reports; consistent and/or substantive report deficiencies, or at the discretion of the Presiding Judge based on the needs of the Court.

4. MINIMUM STANDARDS FOR FORENSIC EVALUATORS

The minimum qualification requirements for appointment of Juvenile Forensic Evaluators to the Court's Appointed List is as set forth in CA Rule of Court 5.645(b), set forth below. In addition, all evaluators appointed to the list must adhere to the policies set forth by the Boards of Psychology and Medicine, the Ethical Principles of Psychologists and Code of Conduct set forth by the American Psychological Association, and the Ethics Guidelines for the Practice of Forensic Psychiatry from the American Academy of Psychiatry and the Law.

5. TIME STANDARDS FOR RECEIPT OF EVALUATOR'S REPORT

a. Competency Reports

- (1) The competency report shall be delivered to the Court as soon as possible, but not later than 25 calendar days from the date of the order appointing the evaluator if the minor is in custody (including CRP, EMP, or GPS), and 40 calendar days if the minor is out of custody.
- (2) When a doubt as to competency is declared, the court should appoint a separate Court-Appointed Competency Evaluator to render an opinion on the issue of competency, even if the §1017 evaluator was previously appointed by the Court. An evaluator may only prepare one report per minor.
- (3) An evaluator submitting a late report shall fax or email a memorandum to the Juvenile Division supervisor or lead specifying the reason(s) for the

delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court's file for that evaluator.

- (4) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame, has previously prepared a report for the minor, or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be called.
- (5) Date of evaluator appointments, date appointment packet mailed, requests for additional time, and receipt of report dates will be tracked by the supervisor or lead and made available to court staff as needed

b. EC1017

Defense Counsel will submit to the Court a Declaration and Order re Appointment of Evaluator pursuant to EC 1017. If the evaluation is so ordered, Counsel will carry the order to the Clerk's Office where the next evaluator on the list will be assigned. This name will be entered on the Court Order. Appointment of evaluators shall be made on a rotational basis.

- (1) Upon receipt of the letter and appointment packet, the evaluator shall contact the defense attorney to determine the timeline for receipt of report. The time for receipt of report shall not exceed 10 court days.
- (2) Upon receipt from a defense attorney of an order granting a motion for appointment of a forensic evaluator under 1017 of the Evidence Code, the Clerk's Office shall file/retain the original order; assign the next evaluator on the Court's list, and enter the name of the appointed evaluator on the order.
- (3) Counsel will mail a certified copy of the order of appointment along with copy of the police report to the evaluator.
- (4) If the appointed evaluator does not believe he/she can complete the evaluation and report within the Court's fee structure, the following steps shall be taken:
 - i The evaluator shall contact counsel and advise why the report cannot be completed within the standard fee structure, and provide an estimate of the amount required to complete the evaluation and report;
 - ii If the defense attorney agrees that the additional work is necessary, the evaluator must submit the Request for Additional

Funds form to the Judge.

- (5) If the appointed evaluator has previously prepared a report for the minor, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be appointed.

c. Not guilty by Reason of Insanity (WIC 702.3 (d))

- (1) The procedures set forth in section 1026, 1026.1, 1026.2, 1026.3, 1026.4, 1026.5, and 1027 of the penal code shall be applicable to minors joining a general denial of the conduct alleged of the petition with a plea of not guilty by reason of insanity.
- (2) Evaluators shall be appointed by the Supervising Judge of the Juvenile Justice Division.
- (3) Seventeen calendar days from the date of the order appointing the evaluator, the competency report will be delivered to the court. The report will be circulated to the parties via an “Ex Parte Review - Receipt of Psychiatric Report” which will be on calendar 18 calendar days from the date of the order appointing the evaluator. The matter will be calendared twenty calendar days from the date of the order appointing the evaluator for a “Parte Competency Review.”
- (4) An evaluator submitting a late report shall fax or email a memorandum to the Juvenile Division supervisor or lead specifying the reason(s) for the delay and indicating the date the Court can expect receipt of the report. A copy of the memorandum shall be maintained in the Court’s file for that evaluator.
- (5) At the time of appointment, if an evaluator does not believe he/she can meet this deadline due to unavailability during the specified time frame, has previously prepared a report for the minor, or if for any reason the evaluator does not accept the appointment, the evaluator shall inform the supervisor or lead immediately. The supervisor or lead will vacate the appointment and another evaluator on the list will be called
- (6) Date of evaluator appointments, date appointment packet mailed, requests for additional time, and receipt of report dates will be tracked by supervisor or lead and made available to court staff as needed.

d. All Other Code Sections

- (1) For all other statutory reports, refer to the language in the code section for information that must be addressed and timeline for report submission.

6. STANDARDS FOR REPORT CONTENT

- a. All reports, except EC 1017 reports, may be faxed to 408-808-6290. Original reports must be filed with the Court. Mailing instructions are included in the appointment letter. The court is in the process of creating an online reporting system, once operational, all reports, except EC 1017 reports, shall be submitted through the online reporting system. These reports will follow the Standard Report Format (See court's website) for use in this Court, and shall, at a minimum, contain the information required by CA Rule of Court 5.645(g)(1), set forth below.

7. TESTING STANDARDS

The juvenile competency evaluator shall conduct the evaluation using tests that are designed to evaluate the minor's functional competency. The Juvenile Adjudicative Competence Interview (JACI) may be used unless the evaluator believes it is inappropriate. If the evaluator determines that more extensive testing is required, the report shall state the reasons for additional testing and whether the evaluator is qualified to administer the additional tests.

8. ELECTRONIC SUBMISSION OF REPORTS

- a. The Court is in the process of creating an electronic report submission system.
- b. EC 1017 reports will be directly submitted to the appropriate attorney, and will not be submitted through the court's reporting system.
- c. The evaluator will complete the report in the reporting system, and a final report will be automatically generated and submitted to the court upon the Evaluator's completion of the submission process.
- d. Court staff will confirm the case and defendant information prior to allowing County access to the final report.
- e. Santa Clara County legal agencies will be provided one account to retrieve reports, and will be provided a username and password from the Court.

9. REMUNERATION

The fee schedule for Forensic Evaluators shall be as follows:

Reports		Total Fee
Basic Evaluation and Report Fee:	Juvenile Competency Report WIC 709	\$2,500
	Juvenile EC 1017	\$2,500
	Juvenile WIC 702.3(d)	\$2,500
Review/Testing (two hours maximum)		
	Applies to all reports	\$125/hour
	Juvenile Half Day	\$400
	Juvenile Full Day	\$800

For unusual evaluations, in which the Evaluator wishes to request additional payment, the Evaluator must submit the Request for Additional Funds form, which must be approved by the Judicial Officer prior to submission of invoice.

10. SUBMISSION OF CLAIMS TO THE COURT FOR SERVICES RENDERED

- a. The evaluator shall submit invoices within 30 days of submission of report. For reports submitted in June, invoices must be submitted by July 7th.
- b. The evaluator shall submit invoices using the Evaluator Claim Form and provide any additional forms or documentation as applicable.
- b. Invoices should be sent to:

Superior Court
Attn: Juvenile Justice
191 North First Street
San Jose, CA 95113
Email: JuvClaims@scscourt.org

CA Rule of Court 5.645. Mental health or condition of child; competency evaluations

(a) Doubt as to child's competency (§§ 601, 602, 709)

(1) If the court finds that there is substantial evidence regarding a child who is the subject of a petition filed under section 601 or 602 that raises a doubt as to the child's competency as defined in section 709, the court must suspend the proceedings and conduct a hearing regarding the child's competency.

(2) Unless the parties have stipulated to a finding of incompetency, the court must appoint an expert to evaluate the child and determine whether the child suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the child is incompetent as defined in section 709(a)(2).

(3) Following the hearing on competency, the court must proceed as directed in section 709.

(b) Expert qualifications

(1) To be appointed as an expert, an individual must be a:

(A) Licensed psychiatrist who has successfully completed four years of medical school and either four years of general psychiatry residency, including one year of internship and two years of child and adolescent fellowship training, or three years of general psychiatry residency, including one year of internship and one year of residency that focus on children and adolescents and one year of child and adolescent fellowship training; or

(B) Clinical, counseling, or school psychologist who has received a doctoral degree in psychology from an educational institution accredited by an organization recognized by the Council for Higher Education Accreditation and who is licensed as a psychologist.

(2) The expert, whether a licensed psychiatrist or psychologist, must:

(A) Possess demonstrable professional experience addressing child and adolescent developmental issues, including the emotional, behavioral, and cognitive impairments of children and adolescents;

(B) Have expertise in the cultural and social characteristics of children and adolescents;

(C) Possess a curriculum vitae reflecting training and experience in the forensic evaluation of children and adolescents;

(D) Be familiar with juvenile competency standards and accepted criteria used in evaluating juvenile competence;

(E) Be familiar with effective interventions, as well as treatment, training, and programs for the attainment of competency available to children and adolescents;

(F) Be proficient in the language preferred by the child, or if that is not feasible, employ the services of a certified interpreter and use assessment tools that are linguistically and

culturally appropriate for the child; and

(G) Be familiar with juvenile competency remediation services available to the child.

(3) Nothing in this rule precludes involvement of clinicians with other professional qualifications from participation as consultants or witnesses or in other capacities relevant to the case.

(c) Interview of child The expert must attempt to interview the child face-to-face. If an in-person interview is not possible because the child refuses an interview, the expert must try to observe and make direct contact with the child to attempt to gain clinical observations that may inform the expert's opinion regarding the child's competency.

(d) Review of records

(1) The expert must review all the records provided as required by section 709.

(2) The written protocol required under section 709(i) must include a description of the process for obtaining and providing the records to the expert to review, including who will obtain and provide the records to the expert.

(e) Consult with the child's counsel

(1) The expert must consult with the child's counsel as required by section 709. This consultation must include, but is not limited to, asking the child's counsel the following:

(A) If the child's counsel raised the question of competency, why the child's counsel doubts that the child is competent;

(B) What has the child's counsel observed regarding the child's behavior; and

(C) A description of how the child interacts with the child's counsel.

(2) No waiver of the attorney-client privilege will be deemed to have occurred from the child's counsel report of the child's statements to the expert, and all such statements are subject to the protections in (g)(2) of this rule.

(f) Developmental history The expert must gather a developmental history of the child as required by section 709. This history must be documented in the report and must include the following:

(1) Whether there were complications or drug use during pregnancy that could have caused medical issues for the child;

(2) When the child achieved developmental milestones such as talking, walking, and reading;

(3) Psychosocial factors such as abuse, neglect, or drug exposure;

(4) Adverse childhood experiences, including early disruption in the parent-child relationship;

(5) Mental health services received during childhood and adolescence;

(6) School performance, including an Individualized Education Plan, testing, achievement scores,

and retention;

(7) Acculturation issues;

(8) Biological and neurological factors such as neurological deficits and head trauma; and

(9) Medical history including significant diagnoses, hospitalizations, or head trauma.

(g) Written report

(1) Any court-appointed expert must examine the child and advise the court on the child's competency to stand trial. The expert's report must be submitted to the court, to the counsel for the child, to the probation department, and to the prosecution. The report must include the following:

(A) A statement identifying the court referring the case, the purpose of the evaluation, and the definition of competency in the state of California.

(B) A brief statement of the expert's training and previous experience as it relates to evaluating the competence of a child to stand trial.

(C) A statement of the procedure used by the expert, including:

(i) A list of all sources of information considered by the expert including those required by section 709(b)(3);

(ii) A list of all sources of information the expert tried or wanted to obtain but, for reasons described in the report, could not be obtained;

(iii) A detailed summary of the attempts made to meet the child face-to-face and a detailed account of any accommodations made to make direct contact with the child; and

(iv) All diagnostic and psychological tests administered, if any.

(D) A summary of the developmental history of the child as required by this rule.

(E) A summary of the evaluation conducted by the expert on the child, including the current diagnosis or diagnoses that meet criteria under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, when applicable, and a summary of the child's mental or developmental status.

(F) A detailed analysis of the competence of the child to stand trial under section 709, including the child's ability or inability to understand the nature of the proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental or developmental impairment.

(G) An analysis of whether and how the child's mental or developmental status is related to any deficits in abilities related to competency.

(H) If the child has significant deficits in abilities related to competency, an opinion with

explanation as to whether treatment is needed to restore or attain competency, the nature of that treatment, its availability, and whether restoration is likely to be accomplished within the statutory time limit.

(I) A recommendation, as appropriate, for a placement or type of placement, services, and treatment that would be most appropriate for the child to attain or restore competence. The recommendation must be guided by the principle of section 709 that services must be provided in the least restrictive environment consistent with public safety.

(J) If the expert is of the opinion that a referral to a psychiatrist is appropriate, the expert must inform the court of this opinion and recommend that a psychiatrist examine the child.

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

CA W&I § 709. Competency of minor subject to juvenile proceeding

(a)

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

(2) A minor is incompetent for purposes of this section if the minor lacks sufficient present ability to consult with counsel and assist in preparing the minor's 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 them. 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) Notwithstanding paragraph (1), 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. If the court finds substantial evidence that raises a doubt as to the minor's competency, the proceedings shall be suspended.

(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 incompetent as defined in paragraph (2) of subdivision (a).

(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, shall have received training in conducting juvenile competency evaluations, and shall be familiar with competency remediation for the condition or conditions affecting competence in the particular case.

(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, the expert 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. The expert shall be proficient in the language preferred by the minor, or, if that is not feasible, the expert shall employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with the minor's counsel with a reasonable degree of rational understanding and whether the minor has a rational and factual understanding of the proceedings against them. The

expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, the expert shall give their opinion on whether the minor is likely to attain competency in the foreseeable future, and, if so, make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency.

(4) The Judicial Council, in conjunction with groups or individuals representing judges, defense counsel, district attorneys, chief probation officers, counties, advocates for people with developmental and mental disabilities, experts in special education testing, psychologists and psychiatrists specializing in adolescents, 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 and statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of these 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 court may make any order necessary to enforce the provisions of this paragraph, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the expert's report upon a showing of good cause, or any other lawful order. 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. This paragraph does not allow a qualified expert retained or appointed by the district attorney to perform a competency evaluation on a minor without an order from the juvenile court after petitioning the court for an order pursuant to the Civil Discovery Act (Title 4 (commencing with [Section 2016.010](#)) of [Part 4 of the Code of Civil Procedure](#)).

(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 the director's designee, to evaluate the minor. The director of the regional center, or the director's 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 whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(9) This section does not authorize or require determinations regarding the competency of a minor by the director of the regional center or the director's 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 that the minor 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. 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 and the case must be dismissed. Prior to a dismissal, 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) If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

(g)

(1) Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor attain competency, unless the court finds that competency cannot be achieved within the foreseeable future. The court may also refer the minor to treatment services to assist in remediation that may include, but are not limited to, mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent. 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, as determined by the court. A finding of incompetency alone shall not be the basis for secure confinement. 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 prior to the expiration of the total remediation period specified in paragraph (3) of subdivision (h). If the minor is in custody, the county mental health department shall provide the court with suitable alternatives for the continued delivery of remediation services upon release from custody as part of the court's review of remediation services. The court shall consider appropriate alternatives to juvenile hall confinement, including, but not limited to, all of the following:

- (A) Placement through regional centers.
- (B) Short-term residential therapeutic programs.
- (C) Crisis residential programs.
- (D) Civil commitment.

- (E) Foster care, relative placement, or other nonsecure placement.
- (F) Other residential treatment programs.

(2) The court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.

(h)

(1) Within six months of the initial receipt of a recommendation by the designated person or entity, 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 six months, the court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed the limit specified in subparagraph (A) of paragraph (5).

(4) If the court finds that the minor will not achieve competency within six months, 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 the minor's 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.

(5)

(A) Secure confinement shall not extend beyond six months from the finding of incompetency, except as provided in this section. In making that determination, the court shall consider all of the following:

- (i) Where the minor will have the best chance of obtaining competency.
- (ii) Whether the placement is the least restrictive setting appropriate for the minor.
- (iii) Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate.
- (iv) Whether the placement is necessary for the safety of the minor or others.

(B) If the court determines, upon consideration of these factors, that it is in the best

interests of the minor and the public's safety for the minor to remain in secure confinement, the court shall state the reasons on the record.

(C) Only in cases where the petition involves an offense listed in subdivision (b) of Section 707 may the court consider whether it is necessary and in the best interests of the minor and the public's safety to order secure confinement of a minor for up to an additional year, not to exceed 18 months from the finding of incompetence.

(i) The presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and any 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.