

PROTOCOL FOR COMPETENCY EVALUATIONS

I. POLICY:

- A. It is the policy in San Diego County to evaluate a youth's competency as early as possible and, when indicated, to provide services to help the youth attain competency in a timely manner.
- A youth is considered mentally incompetent if, as a result of mental illness, mental disorder, developmental disability, developmental immaturity, or any similar condition, they lack sufficient present ability to consult with counsel and assist in preparing their defense with a reasonable degree of rational understanding, or lack a rational as well as factual understanding of the nature of the charges or proceedings against them. (Welf. & Inst. Code, § 709, subd. (a)(2).)
- B. Optum TERM will assist both the Juvenile Court and the Probation Department when a youth has been referred for a competency evaluation.
- C. In all cases, if the court or the youth's attorney has some reason to doubt the youth's competency, the issue will be raised at the earliest possible point in the proceedings.
- D. In all cases and at all stages of the proceedings, the court, the youth's attorney, the District Attorney, and the Probation Department will work together to obtain appropriate services for the youth. (See Subdivision VI G, below.)

II. PROCEDURE:

- A. When the issue of competency is raised with respect to any youth, the court shall suspend the juvenile justice proceedings and order the appointment of a qualified Optum TERM evaluator to assess the youth's competency if the court finds substantial evidence that raises a doubt as to the youth's competency.
1. If the youth is not in custody, the court will order the youth to participate in the evaluation and will order the youth's parent or guardian to cooperate with the Probation Department and the appointed evaluator in arranging for the evaluation and the youth's transportation to the evaluation.
 2. The court will set a 709 Hearing on the next 709 calendar that is at least ten court days later. The court order will advise the evaluator of the date and time of the 709 Hearing. Upon a showing of good cause, the court may continue the hearing or set it on a later date.
 3. The Court Officer will contact the Probation Aide at the conclusion of the court session to coordinate the appointment of an Optum TERM evaluator.
 4. The Probation Aide will appoint a qualified evaluator¹ and supply that evaluator with the youth's name and location. If the youth is not in custody, the Probation Aide will also give the evaluator the name of the youth's parent or guardian, and the youth's telephone

¹ The court clerk will not follow the standard referral process of choosing three evaluators and having the youth's attorney rank them. The Probation Aide will appoint the evaluator using the Optum TERM database and established procedures. To be qualified, an evaluator must have expertise in child and adolescent development and forensic evaluation of juveniles, be familiar with competency standards and accepted criteria used in evaluating juvenile competency, be trained in conducting juvenile competency evaluations, and be familiar with competency remediation services. (Welf. & Inst. Code, § 709, subd. (b)(2).)

number. If requested, the Probation Aide will also advise the youth's attorney and the District Attorney of the evaluator's name.

5. If the youth is in custody, the evaluator will contact the Probation Department to make arrangements for the evaluation.
6. If the youth is not in custody, the evaluator will contact the youth's parent or guardian to make arrangements for an appointment and then notify the designated Probation Officer of the appointment time and place.
 - The Probation Officer will inform the youth, the youth's parent or guardian, and the youth's attorney by phone and by mail of the appointment time and place and of the Probation Officer's ability to assist the family with arranging transportation to the appointment.

B. The Probation Department, the youth's attorney, County of San Diego Health Information Management Services, and the BHS – JFS/STAT Team Program Manager will work together to obtain and provide records to the evaluator.

1. The Probation Department will be responsible for obtaining relevant education, special education, probation, child welfare, and court records and providing them to the evaluator.
2. The youth's attorney will be responsible for obtaining relevant Regional Center records and providing them to the evaluator.
3. County of San Diego Health Information Management Services will provide the Behavioral Health Services Client Roster Report, if available, to the evaluator. The BHS – JFS/STAT Team Program

Manager will be responsible for releasing relevant JFS/STAT Team mental health records to the evaluator.

4. If a medical condition may impact the competency of a youth who is not in custody, the youth's attorney will be responsible for obtaining relevant medical records and providing them to the evaluator. If a medical condition may impact the competency of a youth who is in custody, the Probation Department will be responsible for obtaining relevant medical records and providing them to the evaluator.
 5. The court will order: "All records, including but not limited to medical, education, special education, probation, child welfare, behavioral health, regional center, and court records regarding the youth, shall be made available upon request to the evaluator assigned to the case. Use of these records is for the sole purpose of preparing the court-ordered evaluation and report. The records shall not be used for any other purpose."
- C. The evaluator will assess the youth for competency and prepare a report. The assessment must include a personal interview of the youth, review of all available records provided to the evaluator, consultation with the youth's attorney, a developmental history of the youth, and administration of age-appropriate and linguistically and culturally appropriate testing. (Welf. & Inst. Code, § 709, subd. (b)(3).)
- D. The evaluator will deliver the signed, written report to Optum TERM. Optum TERM will fax the report to the Administration Office of the court no later than 1:00 p.m. on the court day **preceding** the 709 Hearing.
- E. Upon receipt, the court will scan and email the report to the youth's attorney, the District Attorney, and the designated Probation Officer. The faxed report will be delivered to the judge assigned to conduct the 709 Hearing.

III. ISSUES FOR THE COURT:

- A. At the 709 Hearing, the court will use the evaluator's report to determine if the youth is mentally competent under California law. The District Attorney or the youth's attorney may contest the report, request a second opinion, or request an evidentiary hearing. (See Section IV, below.)

- B. A youth is incompetent to proceed "if the [youth] lacks sufficient present ability to consult with counsel and assist in preparing the [youth]'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." A youth may be incompetent as a result of "any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity." (Welf. & Inst. Code, § 709, subd. (a)(2).) A youth is presumed to be competent, unless it is proven by a preponderance of the evidence that the youth is incompetent. If a youth was under 14 years of age at the time the offense was allegedly committed, the court must make a determination as to the youth's capacity pursuant to Penal Code section 26 before deciding the issue of competency. (Welf. & Inst. Code, § 709, subd. (c).)

- C. Statements by the youth in the course of a competency evaluation or remediation proceedings, and any fruits of such statements, may not be used against the youth in any other hearing in juvenile or adult court. (Welf. & Inst. Code, § 709, subd. (b)(5).)

- D. In all competency evaluations, the questions that follow below must be addressed and answered for the court. The evaluator should answer "yes" or "no" and then provide a more detailed response for each question.

1. In the opinion of the evaluator, does the youth have a mental disorder?
2. In the opinion of the evaluator, does the youth have a developmental disability?²
3. In the opinion of the evaluator, is the youth developmentally immature?
4. Is the youth able to understand the nature of the proceedings?
5. Is the youth able to assist their attorney in the conduct of a defense in a rational manner?
6. In the opinion of the evaluator, is the youth competent to stand trial? If no, is the youth likely to benefit from attempts at remediation?
7. Does the evaluator have any information to suggest the youth is a danger to self or to others or is gravely disabled?

IV. **EVALUATION TO BE USED IF COMPETENCY IS CONTESTED**

- A. If the District Attorney or the youth's attorney contests the report, requests a second opinion, or requests an evidentiary hearing, the court may order the appointment of a qualified Optum TERM evaluator to complete a comprehensive evaluation that addresses competency. If there is a

² "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. The term includes intellectual disability, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability. (Welf. & Inst. Code, § 4512.)

conflict between the two evaluations, the court may order the appointment of a qualified Optum TERM evaluator to complete a third evaluation.

- B. If requested by the District Attorney or the youth's attorney, the court may set a contested evidentiary hearing to address the youth's competency. The court order will advise the evaluator of the date and time of the hearing.
- C. The procedure in Section II, above, governs timing, completion, and distribution of the report.

V. **IF THE COURT FINDS THE YOUTH TO BE COMPETENT TO STAND TRIAL:**

- A. The court will reinstate the juvenile justice proceedings and proceed with the case.
 - 1. If the youth is in custody, the youth will continue to receive the level of care determined to be clinically indicated by the BHS JFS/STAT Team.
 - 2. If the youth is not in custody, the Probation Department will make appropriate referrals, if indicated.
- B. Even if the court finds the youth to be competent, the court may order a mental health evaluation if the court suspects that the youth may be a danger to self, a danger to others, or gravely disabled.
- C. If the court suspects that the youth may have a developmental disability, the court will refer the youth to the Regional Center for an evaluation. For a youth who is in custody, Regional Center staff will be allowed to evaluate the youth in Juvenile Hall. For a youth who is not in custody, the youth's parent or guardian is responsible for arranging the evaluation with

the Regional Center. If the parent or guardian is unable or unwilling to make the arrangements, the court will order the evaluation and designate the youth's attorney or the Probation Department to facilitate the arrangements.

VI. **IF THE COURT FINDS THE YOUTH TO BE INCOMPETENT TO STAND TRIAL:**

- A. If the petition contains only misdemeanor offenses, the petition will be dismissed. (Welf. & Inst. Code, § 709, subd. (f).)
- B. If the petition contains at least one felony offense and is not dismissed, the court will order a mental health evaluation, if appropriate.
 - 1. If it appears to the court that the youth may require psychiatric hospitalization through the behavioral health system, the youth will be referred to the Emergency Screening Unit (ESU) or to another Lanterman-Petris-Short (LPS) facility for an evaluation pursuant to Welfare and Institutions Code sections 705 and 6550 for wards, or pursuant to Welfare and Institutions Code section 705 and Penal Code section 4011.6 for non-wards.
 - 2. In all other cases the youth may be referred to an Optum TERM evaluator for a psychological or psychiatric evaluation, if deemed appropriate by the court. If ordered, the evaluation must be completed within 10 court days. The court will authorize county treasurer funds for the evaluation at the standard rate for a psychological or psychiatric evaluation, depending upon the type of evaluation deemed necessary by the court. If the court orders a psychological evaluation, it should include all of the elements of the psychological evaluation identified in the Optum TERM Provider Handbook. In addition, the evaluation should include, but not be

limited to: recommended treatment; potential for success of that treatment; any cited risks if treatment is not provided; anticipated length of treatment; other treatment options to be considered; availability of the recommended treatment in San Diego County or elsewhere; whether the youth can be safely returned home; whether the youth can be safely released from Juvenile Hall; and whether there is a need for a psychiatric evaluation.

- C. A Probation Officer will be designated to begin immediate coordination of a remediation and/or placement and services plan for the youth. The Probation Officer will communicate with the youth's attorney about the plan.³ All services will be provided in the least restrictive environment consistent with public safety, as ordered by the court.
1. The Court Officer will contact the Probation Aide at the conclusion of the court session to coordinate the initiation of the remediation program.
 2. For a youth who is in custody, Behavioral Health Services will provide a competency remediation program. The youth may be released from custody at any time it is deemed appropriate by the court. Behavioral Health Services will continue to provide the competency remediation program for a youth released from custody, unless otherwise ordered by the court. For an offense not listed in section 707(b) of the Welfare and Institutions Code, secure confinement shall not exceed six months from the finding of incompetency. For an offense listed in section 707(b), secure confinement shall not exceed eighteen months from the finding of incompetency. (Welf. & Inst. Code, § 709, subd. (h)(5).)

³ The court, the youth's attorney, the District Attorney, and the Probation Department will work together to obtain appropriate services for the youth.

3. For a youth who is not in custody, Behavioral Health Services or the Probation Department's contracted provider will provide a competency remediation program.

D. Initial Competency Review Hearing

1. An initial Competency Review Hearing will be set to review any mental health evaluation, the information provided by the Probation Officer, and the status of the remediation process. The hearing will take place within 30 days after the 709 Hearing. The date may be advanced if the evaluation and report are completed earlier.
 - a. The Optum TERM evaluator assigned to do a psychological or psychiatric evaluation will submit the completed evaluation to Optum TERM within 10 court days after the 709 Hearing. Optum TERM will review the evaluation and provide it to the designated Probation Officer. The Probation Officer will use the evaluation to complete a report and will attach the evaluation to the report.
 - b. The Probation Department will submit the original and three copies of the informational report, which will include the status of the remediation process and a plan for placement and treatment, to the court, the youth's attorney, and the District Attorney no later than 1:00 p.m. on the court day **preceding** the Competency Review Hearing.
2. At the initial Competency Review Hearing the court will review the status of the remediation process and determine detention and treatment of the youth.

- a. The court will decide whether "it is a matter of immediate and urgent necessity for the protection of the [youth] or reasonably necessary for the protection of the person or property of another that he or she be detained or that the [youth] is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the child's welfare." (Welf. & Inst. Code, § 636.)
- b. If necessary, the youth may be detained in Juvenile Hall. If secure detention is not necessary, the youth may be placed on home supervision or electronic surveillance. The court may make any further orders necessary for the protection of the youth and the community.
- c. If the court determines that the youth may benefit from further efforts at remediation, the court will set a subsequent Competency Review Hearing.

E. Subsequent Competency Review Hearings

1. The court will review the youth's progress at least every 30 calendar days if the youth is detained or every 45 calendar days if the youth is not detained. One court day before each Competency Review Hearing, the Probation Officer will submit an update to the court, the youth's attorney, and the District Attorney.
2. At the conclusion of the remediation program, the person or team that provided the remediation program ("remediation team") will submit a report that includes a summary of services offered, a summary of the youth's participation in the remediation program, and whether or not the remediation program has been completed. The remediation team will deliver the report to the designated

Probation Officer at least three court days before the next scheduled hearing.

3. The Probation Department will submit the original and three copies of its report, which will include information about possible placement and treatment options for the youth and which will have attached the report from the remediation team, to the court, the youth's attorney, and the District Attorney no later than 1:00 p.m. on the court day **preceding** the Competency Review Hearing.
4. The District Attorney or the youth's attorney can request the appointment of an independent Optum TERM evaluator to assess the youth's competency. The procedure in Section II, above, governs the timing, completion, and distribution of the report.
5. The parties may stipulate to whether the youth is competent or remains incompetent. If there is no stipulation, the court will hold an evidentiary hearing to determine if the youth is competent or remains incompetent. If the opinion of the independent Optum TERM evaluator is that the youth has attained competency, and if the youth disputes that opinion, the burden is on the youth to prove by a preponderance of evidence that they remain incompetent. If the opinion of the independent Optum TERM evaluator is that the youth is unable to be remediated and if the prosecutor disputes that opinion, the burden is on the prosecutor to prove by a preponderance of evidence that the youth is remediable. If the prosecution contests the evaluation of continued incompetency, the youth shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the youth is competent. (Welf. & Inst. Code, § 709, subd. (h)(1).)

- a. If the youth is found competent, the court will reinstate the juvenile justice proceedings and proceed with the case.
 - b. If the youth is found incompetent and the court finds that the youth is likely to be remediated within six months, the court will order the youth to return to the remediation program and will set the next Competency Review Hearing. The total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed the limit specified in subdivision C. (Welf. & Inst. Code, § 709, subd. (h)(3).)
- F. If the court finds, by a preponderance of evidence, that the youth 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 youth will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed. If the court finds that the youth will not achieve competency within six months, the court shall dismiss the petition. Prior to a dismissal, the court may make orders that it deems appropriate for services. (Welf. & Inst. Code, § 709, subd. (e).)
- G. At all stages of the proceedings, the court, the youth's attorney, the District Attorney, and the Probation Department will work together to obtain appropriate services for the youth.
 1. When the youth suffers from a developmental disability the court will refer the youth to the Regional Center for an evaluation. The youth's attorney and the designated Probation Officer will take all necessary steps to obtain Regional Center services for the youth.

- a. If the youth is already a Regional Center client, the Probation Department will submit a plan to work collaboratively with Regional Center staff to obtain appropriate community supports and services.
 - b. If the youth is not already a Regional Center client, the Probation Department will work with the youth's family to facilitate the completion of a Regional Center evaluation within the 120 days allowed. If the youth's parent or guardian is unable or unwilling to make the arrangements, the court will order the evaluation and designate the youth's attorney or the Probation Department to facilitate the arrangements. The Regional Center will give priority to evaluations for youths in custody.
 - c. The court will order 15-day status review hearings until completion of the Regional Center evaluation and submission of a plan for placement and treatment by the Probation Department. The Regional Center will submit an update for each status review hearing regarding the status of the evaluation.
2. When the youth is alleged to have committed an offense involving physical violence or danger to others, the court may direct the filing in any other court of a petition for the commitment of a developmentally disabled individual to the State Department of Developmental Services. (Welf. & Inst. Code, §§ 6500 et seq., 6512, 6551; Cal. Rules of Court, rule 5.645.)
 3. The court may direct that a team meeting be convened to determine whether a referral to the Office of the Public Conservator would be appropriate for the youth. (See Protocol for

Conservatorship of a Child Who is the Subject of Proceedings in the Juvenile Court.)

4. The youth and his/her family will be referred to programs in the community that will address the behavior that led to the petition, including programs available through Behavioral Health Services and the youth's school.

- H. Where appropriate, the youth may be offered any other relevant information, counseling, and/or services to assist them in understanding the proceedings and assisting counsel.

- I. At the conclusion of the appropriate course of treatment, the youth will be reassessed for competency, per the procedures delineated above.

- J. In all cases, the youth will continue to receive the level of care determined appropriate by the treating/evaluating behavioral health provider and permitted by law, including medications and outpatient treatment.

- K. During the time the youth is not competent, the court may rule on motions that do not require the participation of the youth. These motions include, but are not limited to: motions to dismiss, motions by the defense regarding a change in the placement of the youth, detention hearings, demurrers, motions to continue, and time waivers. (Welf. & Inst. Code, § 709, subd. (e).)

VII. **CONTINUED SERVICES:**

- A. The Probation Department will monitor the youth and all services provided to them.

- B. The Probation Department will attempt to obtain the consent of the youth's parent or guardian for all necessary treatment and will assist the treating psychiatrist in obtaining consent for medications. If the Probation Officer is not able to obtain such consent, the Probation Officer will seek the assistance of the youth's attorney. If the family still fails to cooperate, the Probation Officer will apply ex parte for a court order allowing the treatment and medications.

VIII. **JURISDICTION:**

- A. The Juvenile Court will maintain jurisdiction while the youth is being evaluated for competency and while the youth is attempting to attain competency, subject to the time limits specified in Welfare and Institutions Code section 709.

- B. The Juvenile Court may dismiss the petition and terminate its jurisdiction when it finds that there is not a substantial probability that the youth will attain competency in the foreseeable future and that the interests of justice and the welfare of the youth require that dismissal. (Welf. & Inst. Code, §§ 709, 782.)