



California Rules of Court

(Revised January 1, 2022)

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Rule 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.

Rule 5.645 adopted effective January 1, 2020.