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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 1214                      **Hearing Date:** June 26, 2018  
**Author:** Mark Stone  
**Version:** June 20, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Juvenile Proceedings: Competency*

### HISTORY

**Source:** Chief Probation Officers of California

**Prior Legislation:** AB 935 (Stone), vetoed in 2017  
AB 689 (Obernolte), held in Assembly Appropriations 2017  
AB 2695 (Obernolte), held in Assembly Appropriations 2016  
SB 368 (Liu), Ch. 471, Stats. of 2011  
AB 2212 (Fuentes), Ch. 671, Stats. of 2010

**Support:** California Public Defenders Association

**Opposition:** California District Attorneys Association

**Assembly Floor Vote:** Not relevant

### PURPOSE

*The purpose of this bill is to revise the procedure used to determine the mental competence of a juvenile charged with a crime.*

*Existing law* provides that during any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. (Welf. & Inst. Code, § 709, subd. (a).)

*Existing law* specifies that 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 that raises a doubt as to the minor's competency, the proceedings shall be suspended. (Welf. & Inst. Code, § 709, subd. (a).)

*Existing law* provides that upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. (Welf. & Inst. Code, § 709, subd. (b).)

*Existing law* requires the court to 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 is required to have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and to be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council is required to develop and adopt rules for the implementation of these requirements. (Welf. & Inst. Code, § 709, subd. (b).)

*Existing law* requires that if the minor is found to be incompetent by a preponderance of the evidence, all proceedings are to 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. (Welf. & Inst. Code, § 709, subd. (c).)

*Existing law* provides that during the time proceedings are suspended, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. The court may rule on motions that do not require the participation of the minor in the preparation of specified motions. (Welf. & Inst. Code, § 709, subd. (c).)

*Existing law* provides that if the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction. (Welf. & Inst. Code, § 709, subd. (d).)

*Existing law* requires the court to appoint the director of a regional center for developmentally disabled individuals to evaluate the minor if the expert believes the minor is developmentally disabled. The director of the regional center, or his or her designee, is required to determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and to provide the court with a written report informing the court of his or her determination. (Welf. & Inst. Code, § 709, subd. (f).)

*Existing law* states that 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. (Welf. & Inst. Code, § 709, subd. (g).)

*This bill* requires the court to suspend all proceedings and make a determination of competence whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent.

*This bill* provides that a minor is mentally incompetent 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. Specifies that 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. Provides that the juvenile competency statute applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Welfare and Institutions Code Section 601 or 602.

*This bill* allows the court to 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. Requires the proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency.

*This bill* requires the court, 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, to 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.

*This bill* requires the expert to have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, to be familiar with competency standards and accepted criteria used in evaluating juvenile competency, and to be familiar with competency remediation for the condition or conditions affecting competency in the particular case.

*This bill* requires the expert to personally interview the minor and review all of the available records provided, as specified. Requires the expert to consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency, to gather a developmental history of the minor, to administer age-appropriate testing specific to the issue of competency, unless the facts of the particular case render testing unnecessary or inappropriate. Requires the expert to be proficient in the language preferred by the minor, or, if that is not feasible, the expert must employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor.

*This bill* requires the expert to submit a written report that provides an opinion on 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. Requires the expert to state the basis for these conclusions.

*This bill* provides that if the expert concludes that the minor lacks competency, the expert is required to give his or her opinion on whether the minor is likely to attain competency in the foreseeable future, and if so, make recommendations regarding the type of services that would be effective in assisting the minor in attaining competency.

*This bill* requires the Judicial Council, in conjunction with specified stakeholders, to adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles. Requires the Judicial Council to develop and adopt rules for the implementation of the other requirements involving the minor's competency.

*This bill* prohibits the use of 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, in any other hearing against the minor in either juvenile or adult court.

*This bill* allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing. Requires the expert's report and qualifications to be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing.

*This bill* provides that if disclosure is not made, the court is authorized to make any order necessary for enforcement, 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.

*This bill* provides that 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. Provides that nothing in this subsection allows a privately retained or appointed district attorney qualified expert to perform a competency evaluation on a minor without an order from the juvenile court after petitioning the court for such purpose in accord with the Civil Discovery Act.

*This bill* requires the court to appoint the director of a regional center for developmentally disabled individuals, as described, or his or her designee, to evaluate the minor if the expert believes the minor is developmentally disabled. The director of the regional center, or his or her designee, is required to determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and to 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.

*This bill* provides that 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.

*This bill* provides that this section shall not be interpreted to authorize or require either of the following:

- 1) The 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.
- 2) Determinations regarding the competency of a minor by the director of the regional center or his or her designee.

*This bill* requires that the question of the minor's competency be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert the the minor is incompetent. Requires that it is presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. If the minor is 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 prior to deciding the issue of competency.

*This bill* requires the court to reinstate proceedings and proceed commensurate with the court's jurisdiction if the court finds the minor to be competent.

*This bill* provides that if the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings are to 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 has jurisdiction and the case must be dismissed.

*This bill* provides that if the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

*This bill* requires the court, upon a finding of incompetency, to 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. Authorizes the court to refer the minor to treatment services to assist in remediation which 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. Requires that service providers and evaluators adhere to the standards stated in this section and the California Rules of Court. Requires that services be provided in the least restrictive environment consistent with public safety, as determined by the court.

*This bill* provides that a finding of incompetency alone shall not be the basis for secure confinement.

*This bill* requires that the minor be returned to court at the earliest possible date. Requires the court to 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, as specified.

*This bill* provides that if the minor is in custody, the county mental health department must 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. Requires the court to consider appropriate alternatives to juvenile hall confinement, including, but not limited to, all of the following:

- 1) Developmental centers.
- 2) Placement through regional centers.
- 3) Short-term residential therapeutic programs.
- 4) Crisis residential programs.
- 5) Civil commitment.
- 6) Foster care, relative placement, or other nonsecure placement.
- 7) Other residential treatment programs.

*This bill* provides that the court may make any orders necessary to assist with the delivery of remediation services in an alternative setting to secure confinement.

*This bill* requires the court, upon receipt of the recommendation by the designated person or entity, to hold a 6-month 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.

*This bill* provides that 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.

*This bill* provides that 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. Provides that 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.

*This bill* provides that if the court finds that the minor has been remediated, the court shall reinstate the proceedings.

*This bill* specifies that 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. The total remediation period shall not exceed one year from the finding of incompetency. Provides that secure confinement shall not exceed the limit specified below.

*This bill* states that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. Permits the court to 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. Requires the court refer the minor for evaluation as an imminently dangerous person or person with other mental health disorder, if appropriate.

*This bill* prohibits secure confinement beyond six months from the finding of incompetence, except as provided below. Requires the court to consider all of the following in making the determination:

- 1) Where the minor will have the best chance of obtaining competence.
- 2) Whether the placement is the least restrictive setting appropriate for the minor.
- 3) Whether alternatives to secure confinement have been identified and pursued and why alternatives are not available or appropriate.
- 4) Whether the placement is necessary for the safety of the minor or others.

*This bill* requires the court, 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, to state the reasons on the record.

*This bill* authorizes the court to 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, only in cases where the petition involves an offense listed in Section 707 (b).

*This bill* provides that 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.

## COMMENTS

### 1. Need for This Bill

According to the author:

AB 1214 would establish timelines and processes relating to the determination of competency in court proceedings and the evaluation and delivery of remediation services. While existing law establishes juvenile competency and sets forth guidelines for these proceedings, there remain some operational ambiguities among practitioners relative to the types of remediation services to be delivered, who is the appropriate entity to deliver them, and where a youth will receive those services and for how long. This bill seeks to provide additional guidance around these questions.

The practical impact is that there are times in which juveniles are remaining in the hall without clear timelines governing the length of remediation services. It is important that not only do these vulnerable kids receive appropriate services, but that they do so within a reasonable time frame in order to get them out of the hall and in proper placement and care going forward.

### 2. Current Juvenile Competency Standards and Procedures

The Due Process Clause of the U.S. Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. An adult is mentally incompetent if “as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (Pen. Code, § 1367, subd. (a).) While those same factors are considered in evaluating the competency of a minor, a minor’s developmental maturity is also considered when determining whether he or she is competent. Unlike an adult, a minor may be found to be incompetent based on developmental immaturity alone. (See *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847.)

In 2010, California enacted AB 2212 (Fuentes, Chapter 671) which created the existing procedure and standards for handling incompetent minors before the juvenile court. The language of that statute created some procedural gaps regarding how a juvenile should be treated if they are found to be incompetent.

### 3. Differences Between Adults and Juveniles With Respect to Cognitive Abilities

Researchers in the science of human development generally agree that adolescents differ from adults. “The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable . . . Indeed, age 21 or

22 would be closer to the ‘biological’ age of maturity.” (Adolescent Brain Development and Legal Culpability, American Bar Assn. Criminal Justice Section, Juvenile Justice Center (Winter 2003).)

The difference between juveniles and adults with respect to cognitive ability is at the heart of the *Timothy J.* decision, *supra*. In that case, the Court stated:

As a matter of law and logic, an adult’s incompetence to stand trial must arise from a mental disorder or developmental disability that limits his or her ability to understand the nature of the proceedings and to assist counsel. (internal citation omitted.) The same may not be said of a young child whose developmental immaturity may result in trial incompetence despite the absence of any underlying mental or developmental abnormality.

Dr. Edwards testified that minors are different from adults because their brains are still developing and as myelination occurs during puberty, the minor develops the ability to think logically and abstractly. Both experts concluded that because of his age, [the minor’s] brain has not fully developed and he was unable to think in those ways.

Their conclusions are supported by the literature, which indicates that there is a relationship between age and competency to stand trial and that an adolescent’s cognitive, psychological, social, and moral development has a significant biological basis. (Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question* (2003) 18 *Crim. Just. supra*, 20, 21.) While many factors affect a minor’s competency to stand trial, “the younger the juvenile defendant, the less likely he or she will be to manifest the type of cognitive understanding sufficient to satisfy the requirements of the *Dusky* standard.” (internal citation omitted.)

#### **4. Governor’s Veto**

AB 1214 is substantially similar to a bill that was vetoed last year. AB 935 (Stone) would have revised the existing juvenile competency procedures. In his veto message, Governor Brown wrote:

I applaud the author for addressing a subject that is in need of review, and I support finding a solution to address any gaps in the procedures for juveniles who are found not to be competent to face court proceedings.

I am concerned, however, with the rare instances in which youth are accused of very serious crimes. I encourage further review as to how these situations may be accounted for while preserving the author’s underlying intent.

#### **5. Argument in Support**

According to the bill’s sponsor, the Chief Probation Officers of California:

The California Legislature enacted juvenile competency proceedings in 2010 by the passage of AB 2212 (Fuentes, Statutes of 2010, Chapter 671). Prior to the

passage of this bill, the only guidance for determining legal competency for juveniles was found in California Rules of Court and case law. Currently, there are no specific timelines for juveniles who are found incompetent whereas there are clear and structured processes in the adult system.

Under existing law, youth may be deemed incompetent to participate in their court proceedings as a result of a mental disorder, developmental disability, developmental immaturity, or other conditions that result in the inability to meaningfully understand the proceedings, the charges against them, or work with counsel in their defense. The law also set forth processes for the provision of remediation services upon a determination of incompetency.

Although the prior legislation represented a giant step forward, clear timelines and processes are necessary to balance public safety with the treatment needs of the accused. AB 1214 will start the process to give mentally ill youth in the juvenile justice system the same rights we afford adults in our criminal justice system.

Absent clear timelines governing the process, youth deemed incompetent can be housed in juvenile halls for longer than they would have served as a sentence for their original offense.

We have experienced cases where youth have remained in the hall for periods well exceeding a year and sometimes up to two years or more pending the delivery of remediation services. This length of time in a juvenile hall for a youth that has not yet been adjudicated, and may not become competent to continue in their proceedings, does not appropriately address the mental health or developmental needs of the youth. . . .

. . . AB 1214 sets forth a six month minimum time in custody and one year for the provision of remediation services. Research on remediation services suggests a majority of youth can be remediated prior [to] a year if they are able to be remediated. The bill also establishes a process...to identify alternatives to custody so the youth may continue to receive remediation services in a setting that best addresses their specific needs. . . . Although very rare, the bill does recognize there may be circumstances which necessitate a custodial setting and addresses this issue by allowing a petition to the court for a civil commitment pursuant to WIC 5300 et seq., or WIC 6550 et seq. if it's determined a youth's offense pertains to a serious or violent crime or has a mental health condition or intellectual disability. Further, in cases involving 707b petitions, a youth may remain in the hall up to 18 months upon the finding of incompetency...We believe these provisions strike the balance between the safety of the youth and community and ensures the youth do not remain in a custodial setting longer than they would if they had been adjudicated.

. . . [I]t is imperative we look to alternatives to custody where appropriate and are providing remediation services in the most suitable, least restrictive setting for the safety of the youth and the community. . . .

AB 1214 builds upon existing juvenile competency statute by identifying the types of remediation services provided to juveniles, the delivery system protocols,

and sets forth clear timelines for the delivery of restoration and remediation services. This is a vital piece of legislation in order for California to move forward and appropriately serve vulnerable youth in the juvenile justice system.

## 6. Argument in Opposition

According to the California District Attorneys Association:

Assembly Bill 1214...is largely identical to...Assembly Bill 935 from this session, which was vetoed last year. This bill changes the procedure by which a court determines the mental incompetence of juveniles charged with crimes, and the consequences if the court determines that the minor was not competent. While we share your goal of helping mentally ill minors avoid long stints in juvenile hall, we must object to the breadth of your proposal.

Under AB 1214, a court would be required to dismiss any petition in which only misdemeanors are alleged, simply upon an initial determination of incompetence. There are already counties within the state that typically do not detain such individuals and, in fact, several counties have established Restoration of Competency programs for out-of-custody minors accused of misdemeanors. Although we understand the desire to release such individuals from custody, we believe that mandatory dismissal of the charges goes too far.

Further, the court is required to dismiss felony charges if a service provider opines that a minor is unlikely to be restored within six months. We do not believe that this is in the interest of public safety, as nothing in the bill limits the types of felonies to which this would apply. While there is a provision for an additional year of secure confinement, an individual who is charged with a violent felony like rape or murder could still have his or her charges dropped in a relatively short time. This does not give adequate consideration to victims, the defendant's family, or public safety in general.

...AB 1214 requires that an incompetent minor accused of murder, and who has undergone only 18 months of treatment, immediately be placed somewhere besides juvenile hall. However, there is no Murphy Conservatorship available to juveniles who are pending felony charges and are determined to be dangerous to others, as there are for similarly situated adults. Where and under what authority, once criminal charges are dismissed, will this dangerous juvenile be placed? What happens if a bed is not available (especially a bed in a secure facility for a dangerous and violent minor)? . . .

...AB 1214 provides no funding mechanism for probation, county mental health, or Regional Centers to ensure that treatment and facilities are available to chronically mentally ill minors after their cases are dismissed. . . .

-- END --