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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 439                      **Hearing Date:** June 11, 2019  
**Author:** Mark Stone  
**Version:** February 11, 2019  
**Urgency:** Yes                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Juveniles: Competency*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 1214 (Stone), Ch. 991, Stats. 2018  
AB 935 (Stone), vetoed in 2017  
AB 689 (Oberholte), held in Assembly Appropriations 2017  
AB 2695 (Oberholte), held in Assembly Appropriations 2016  
SB 82 (Com. on Budget and Fiscal Review), Ch. 23, Stats. 2015  
AB 1472 (Budget Committee), Ch. 25, Stats. 2012  
AB 2212 (Fuentes), Ch. 671, Stats. 2010

**Support:** California State PTA

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

### PURPOSE

***The purpose of this bill is to remove references to developmental centers in the juvenile competency statute to make the statute consistent with current law regarding the use of developmental centers.***

*Existing law* establishes the Lanterman Developmental Disabilities Services Act which declares the state's responsibility for providing an array of services and supports to meet the needs of each person with developmental disabilities in the least restrictive environment, regardless of age or degree of disability, and to support their integration into the mainstream life of the community. (Welf. & Inst. Code, § 4500 et seq.)

*Existing law* establishes the jurisdiction of the State Department of Developmental Services (DDS) over state developmental centers, including Sonoma, Fairview, and Porterville Developmental Centers, as specified. (Welf. & Inst. Code, § 4440 et seq.)

*Existing law* establishes a system of regional centers throughout the state to identify needs and coordinate services for eligible individuals with developmental disabilities and requires DDS to contract with regional centers to provide case management services and arrange for or purchase

services that meet the needs of individuals with developmental disabilities, as defined. (Welf. & Inst. Code, § 4620 et seq.)

*Existing law* prohibits, notwithstanding any other law, DDS from admitting anyone to a developmental center unless the person has been determined eligible for services, as specified, and the person is any of the following:

- An adult committed by a court to Porterville Developmental Center's secure treatment program when found mentally incompetent and the action against that adult is on a complaint charging a felony offense, as specified;
- An individual committed by a court to the acute crisis center at Fairview or Sonoma Developmental Centers due to an acute crisis, as specified;
- An adult committed by a court to Porterville Developmental Center's secure treatment program because the person is a danger to self or others a result of involvement with the criminal justice system and the court has determined the person is mentally incompetent to stand trial;
- A person committed by a court, on or before June 30, 2021, to Canyon Springs Community Facility who otherwise meets the criteria for admission due to an acute crisis; or,
- An individual provisionally released from a developmental center who maintains the right to return, as specified. (Welf. & Inst. Code, § 7505, subd. (a).)

*Existing law* provides that under no circumstances shall DSS admit a person to a developmental center after July 1, 2012, as a result of a criminal conviction or when the person is competent to stand trial for the criminal offense and the admission is ordered in lieu of trial. (Welf. & Inst. Code, § 7505, subd. (b).)

*Existing law* requires the court to suspend all proceedings if the court has a doubt that a minor who is subject to any juvenile proceedings is competent. (Welf. & Inst. Code, § 709, subd. (a)(1).)

*Existing law* provides that a minor is 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. (Welf. & Inst. Code, § 709, subd. (a)(2).)

*Existing law* provides that 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. (Welf. & Inst. Code, § 709, subd. (b)(1).)

*Existing law* provides that if the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals, or his or

her designee, to evaluate the minor. Requires the director of the regional center, or his or her designee, 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. (b)(7).)

*Existing law* 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. (Welf. & Inst. Code, § 709, subd. (b)(8).)

*Existing law* provides that the statute governing juvenile competency proceedings shall not be interpreted to authorize or require either of the following:

- 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; and
- Determinations regarding the competency of a minor by the director of the regional center or his or her designee. (Welf. & Inst. Code, § 709, subd. (b)(9).)

*Existing law* provides that 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. Authorizes the court to 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. (Welf. & Inst. Code, § 709, subd. (g)(1).)

*Existing law* requires that services be provided in the least restrictive environment consistent with public safety, as determined by the court. Provides that a finding of incompetency alone shall not be the basis for secure confinement. Requires the minor to be returned to court at the earliest possible date. Requires 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, as specified. (Welf. & Inst. Code, § 709, subd. (g)(1).)

*Existing law* requires, if the minor is in custody, the county mental health department to 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:

- Developmental centers;
- Placement through regional centers;
- Short-term residential therapeutic programs;

- Crisis residential programs;
- Civil commitment;
- Foster care, relative placement, or other nonsecure placement; or
- Other residential treatment programs. (Welf. & Inst. Code, § 709, subd. (g)(1).)

*Existing law* requires the court to 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, within six months of the initial receipt of a recommendation by the designated person or entity. (Welf. & Inst. Code, § 709, subd. (h)(1).)

*Existing law* provides 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. Provides that the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed specified limits. (Welf. & Inst. Code, § 709, subd. (h)(3).)

*Existing law* provides that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. Authorizes 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. (Welf. & Inst. Code, § 709, subd. (h)(4).)

*This bill* removes developmental centers from the list of alternatives to juvenile hall that the court is directed to consider when the court finds a minor incompetent to stand trial.

*This bill* deletes language which states that existing law does not authorize or require the placement of a minor who is incompetent in a developmental center or community facility operated by DDS 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.

*This bill* contains an urgency clause.

## COMMENTS

### 1. Need for This Bill

According to the author:

In 2012, there was a statutory moratorium placed on developmental center admissions, and there are currently no provisions for the admission of a minor to a developmental center or to a state-operated community facility. AB 439 removes language from Welfare & Institutions Code section 709 to clarify that

Developmental Centers are not a potential placement option for juveniles with developmental disabilities.

## **2. Juvenile Competency 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. (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847.) The current statute governing juvenile competency procedures was amended by AB 1214 (Stone), Chapter 991, Statutes of 2018.

## **3. State Developmental Centers**

Developmental disabilities are defined to be those disabilities that: originate before a person turns 18 years old, are anticipated to continue indefinitely, and that constitute a substantial disability for that individual. They include intellectual disabilities, cerebral palsy, epilepsy, and autism spectrum disorders. The state, pursuant to the Lanterman Act, has a responsibility to provide an array of services and supports to meet the needs of each person with developmental disabilities in the least restrictive environment, regardless of age or degree of disability, and to support their integration into the mainstream life of the community.

DDS and 21 regional centers share responsibility for the implementation of the Lanterman Act. These regional centers are private, nonprofit entities that contract with DDS to carry out many of the state’s obligations under the Lanterman Act. Additionally, DDS operates two developmental centers, as well as Canyon Springs, a state-operated, specialized community facility. These facilities provide 24-hour habilitation and medical and social treatment services to individuals with developmental disabilities. Both of the developmental centers are scheduled to close in the near future, with the exception of the forensic portion of the Porterville Developmental Center.

In 2012, a moratorium on new admissions to developmental centers, with limited exceptions, was enacted.

## **4. What This Bill Does**

AB 1214 (Stone), Chapter 991, Statutes of 2018, revised the procedures for determining the mental competence of a juvenile charged with a crime. AB 1214 included provisions referencing developmental centers and community care facilities that could create confusion, given that these are not placement options for minors. This bill provides clean-up to remove those references.

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