



SACRAMENTO COUNTY SUPERIOR COURT

JUVENILE DIVISION

COMPETENCY PROTOCOL

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Superior Court of California, County of Sacramento
Sitting as the Juvenile Court

The Juvenile Court thanks the following participants for their collaboration in developing this protocol.

Alta California Regional Center

Conflict Criminal Defenders

Department of Health Services, Behavioral Health

Sacramento County District Attorney's Office

Sacramento County Office of Education

Sacramento Office of the Public Defender

Sacramento Probation Department

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INTRODUCTION

This protocol applies to minors who are alleged to come within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code sections 601 or 602.¹

“A minor who is the subject of a wardship petition under...section 601 or section 602 has, like an adult facing criminal prosecution, a due process right not to be tried while mentally incompetent.” (*In re R.V.* (2015) 61 Cal.4th 181, 185.) Also, “[l]ike adults, juveniles have a due process right to be free from indefinite commitment if found incompetent to stand trial.” (*In re Albert C.* (2017) 3 Cal.5th 483, 486.)

Section 709 sets forth the general procedures that must be followed when, at any point in a juvenile justice case, a doubt arises regarding the minor’s competence to stand trial or to participate in the proceedings. For purposes of Section 709, a minor is incompetent to proceed “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.” (§ 709(a)(2).) Incompetency may result from the presence of any condition(s), including, but not limited to: mental illness, mental disorder, developmental disability, or developmental immaturity. (§ 709(a)(2).)

This protocol implements Section 709. In accordance with the statute and Rule 5.645 of the California Rules of Court,² this protocol describes the competency process, and sets forth procedures to ensure that minors who are found incompetent receive appropriate remediation services. (§ 709(i).)

INFORMAL RESOLUTION OF CASES

This protocol describes the court’s formal competency procedures. Formal proceedings may not always be the best way to serve the minor’s rehabilitative needs or protect the community’s interest in public safety. Therefore, in cases where a doubt is expressed regarding the minor’s competency, the court and the parties may wish to consider, prior to pursuing formal competency proceedings, whether informal resolution of the case may better promote the interests of justice. Informal resolution may include the voluntary participation by the minor and their family in community-based services and programs and dismissal of the case.

¹ Subsequent statutory references are to the Welfare and Institutions Code unless stated otherwise.

² Subsequent rule references are to the California Rules of Court.

COMPETENCY PROCEDURES

I. DOUBT DECLARED AS TO MINOR'S COMPETENCY

At any point in a juvenile justice case, the court or minor's counsel may express a doubt as to the minor's competency. (§ 709(a)(1), (a)(3).) At any point, the court may receive information from any source regarding the minor's ability to understand the proceedings. (§ 709(a)(3).)

Once a doubt is declared regarding the minor's competency, the court must determine whether substantial evidence exists to substantiate that doubt. (§ 709(a)(3).) Evidence is "substantial" if it raises a reasonable doubt about the minor's competence to stand trial. (*In re John Z.* (2014) 223 Cal.App.4th 1046, 1057 fn. 5.)

If the court finds that substantial evidence does not exist to support a doubt as to the minor's competency, the juvenile justice case shall proceed.

If the court finds that substantial evidence raises a doubt as to the minor's competency, it shall suspend the juvenile justice proceedings. (§ 709(a)(3).)

II. EXPERT EVALUATION

Once proceedings are suspended, the court shall appoint an expert to evaluate the minor. The expert shall 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 within the meaning of Section 709. (§ 709(b)(1).)

A minor is incompetent for purposes of Section 709 "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." (§ 709(a)(2).)

A. Recruitment and selection of experts

Section 709 and Rule 5.645 set forth the qualifications for experts tasked with evaluating a minor's competency. In particular, "[t]he 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." (§ 709(b)(2).)

The court has in place policies and procedures for selecting experts who wish to be placed on the Court-Appointed Juvenile Justice Expert Panel ("Expert Panel"). (See

Court-Appointed Juvenile Justice Expert Panel, Policies and Procedures for Experts, effective July 1, 2010, amended July 1, 2020 [“Court’s Policies and Procedures for Experts”].) In addition to meeting the general qualifications set forth in the Court’s Policies and Procedures for Experts, experts on the Expert Panel who are designated to evaluate minors pursuant to Section 709 shall meet the qualifications set forth in Section 709 and Rule 5.645. The Advisory Review Committee, whose members are appointed to assist in the selection of experts who comprise the Expert Panel, shall be responsible for ensuring that any experts on the Expert Panel who are designated to perform competency evaluations meet the requisite qualifications.

B. Appointment of experts

When an expert evaluation is required, the judicial officer shall appoint an expert from the court’s list of approved experts. A list of minors for whom a competency evaluation is necessary will be maintained by the court. Minors in custody shall have preference for appointment.

The courtroom clerk shall record the court’s order in the minutes and place the minor on the appropriate log. The court polls the approved expert panelists monthly with respect to their availability to conduct an evaluation. Once an expert notifies the court that they can accept the appointment, the courtroom clerk will create an order appointing the doctor to evaluate the minor. If counsel objects to the appointment of a specific expert, counsel shall communicate its objection to the court in writing, including the legal basis for the objection, as soon as possible and in no event later than three court days following the issuance of the appointment order. Minor’s counsel shall be primarily responsible, working in cooperation with the Probation Department, for scheduling the evaluation.

The Probation Department shall provide the expert with all probation and other court records in the Probation Department’s possession, including a list of all records provided. The Probation Department and parties, including the minor’s parent or guardian, shall provide any collateral information to the assigned doctor to conduct the competency evaluation. Use of the records is for the sole purpose of preparing the court ordered evaluation and report. The records shall not be used for any other purpose.

If applicable, Behavioral Health Services (BHS), shall provide the expert with pertinent records regarding the minor. BHS will then send a list of all records provided to the expert for court and counsel’s review.

Experts appointed to perform competency evaluations shall comply with the terms of this protocol, the provisions of Section 709, Rule 5.645, and the Court’s Policies and Procedures for Experts.

C. Expert's evaluation of the minor

In evaluating the minor, the expert shall perform the tasks specified in Section 709(b)(3).

If a prescheduled meeting between the expert doctor and the minor does not occur for any reason, the doctor shall contact the court, minor's counsel, the District Attorney and the Probation Department via e-mail and advise regarding the circumstances. The minor's counsel will attempt to contact the minor and/or the minor's parent(s) to help facilitate the necessary appointments.³

D. Expert's written report

The expert shall prepare a written report that includes the items specified in Section 709(b)(1) and (b)(3) and in Rule 5.645(g), including a list of all sources of information considered.

The expert's written report shall be completed no later than 21 court days from the date of appointment. The expert shall advise the court, the District Attorney, and minor's counsel by e-mail should they not be able to complete the report as ordered.

Upon its completion, the report shall be mailed or electronically transmitted to the court department that ordered the evaluation, the District Attorney, minor's counsel, and the Probation Department.

Upon submission of the report/notification to the court, the expert may submit the proper claim to the court for payment in accordance with the Court's Policies and Procedures for Experts.

E. Retention of additional experts

The District Attorney or minor's counsel may retain or seek the appointment of additional qualified experts. Prior to the District Attorney hiring an independent expert to evaluate a minor, the District Attorney must obtain a court order by petitioning the court pursuant to the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure). (§ 709(b)(6).)

The additional expert's report and qualifications shall be disclosed in accordance with Section 709(b)(6), including disclosure no later than five court days before the hearing. If disclosure is not made in accordance with Section 709(b)(6), the court may enter orders necessary to enforce its provisions, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the report upon a showing of good cause, finding good cause for a continuance or other lawful order. (§ 709(b)(6).)

³ References to "parent(s)" shall include guardian(s) and caregiver(s).

The court does not pay for additional experts that are independently retained by the defense or prosecution.

F. Use of minor's statements in subsequent proceedings

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. (§ 709(b)(5).)

III. INITIAL COMPETENCY HEARING

Upon receiving the written report prepared by the court-appointed expert or other experts, 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. (§ 709(c).)

The following may occur at this initial competency hearing:

A. Parties stipulate that minor is competent

The parties may stipulate to an expert's findings that the minor is competent. If the court accepts the stipulation, based on the expert's finding of competency, the suspension of the proceedings is lifted and the juvenile justice case resumes.

B. Parties stipulate that minor is incompetent

The parties may stipulate to an expert's findings that the minor is incompetent to proceed. If the court accepts the stipulation, juvenile justice proceedings shall remain suspended and the court will enter an order accepting the stipulation of the parties, based on the findings of the expert evaluator. In preparing its order, the court must take into account the rules and procedures that apply upon a finding of incompetency. For example, the court must ascertain whether the circumstances mandate dismissal of the case and, if not, it must order preparation of a remediation plan and remediation services and hold timely review hearings. If the court rejects the stipulation, it shall set a contested competency hearing.

C. Parties submit on the expert's findings

The parties may submit the issue of the minor's competency to the court for determination, based on the expert's report and findings.

D. Parties contest the expert's findings

If the parties contest the expert's findings, the court shall set a date for the contested hearing and follow the procedures detailed below.

If the expert has concluded the minor is developmentally disabled:

If the expert believes the minor is developmentally disabled, the court shall appoint the Director of Alta California Regional Center (“ACRC”), or their designee, to evaluate the minor. The Director, or their designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and shall provide the court with a written report informing the court of their determination. (§ 709(b)(7).) ACRC’s determination regarding a minor’s eligibility for services is separate from a determination of competency. (§ 709(b)(8), (b)(9).) Therefore, the court does not need to wait for the expert’s report to refer a minor to ACRC.

IV. CONTESTED COMPETENCY HEARING

The contested competency hearing need not be held before the same judge who initiated the competency proceedings by declaring a doubt as to the minor’s competence. (*People v. Lawley* (2002) 27 Cal.4th 102, 133-134.)

A. Timing

The court shall set a date for the contested hearing based on the availability of the court, counsel, and expert(s), and also schedule a trial readiness conference (regarding contested competency) prior to the date of the hearing to confirm that the parties are ready to proceed.

B. Determination regarding minor’s capacity

If the minor was under 14 years of age at the time of the commission of the alleged offense, then prior to deciding the issue of competency, the court shall determine the minor’s capacity pursuant to Section 26 of the Penal Code. (§ 709(c).)

C. Admissibility of expert’s report

The parties may stipulate to the admissibility of the expert’s report, reserving the right to argue to the court that its conclusions should or should not be adopted or carry little or no weight. If the District Attorney or minor’s counsel objects to the admissibility of an expert’s report, the report shall not be admissible unless an appropriate evidentiary showing in support of admission is made at the contested competency hearing. The party who bears the burden of proof is responsible for securing the expert’s report and testimony as admissible, and paying for that expert’s appearance, if required. The court does not pay for the expert’s testimony.

D. Presumption of competency

It shall be presumed that the minor is competent, unless it is proven by a preponderance of the evidence that the minor is incompetent. (§ 709(c).) The party

asserting the minor's incompetency bears the burden of proof as to the minor's incompetency at the initial contested hearing. (*In re R.V.* (2015) 61 Cal.4th 181, 197.)

E. If the court finds the minor to be competent

If the court finds the minor to be competent, the court shall reinstate the juvenile justice proceedings and shall proceed commensurate with the court's jurisdiction. (§ 709(d).)

F. If the court finds the minor to be incompetent and:

1. The petition contains only misdemeanor offenses

If the court finds the minor to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed. (§ 709(f).)

2. The petition alleges at least one felony

If the court finds, by a preponderance of evidence, that the minor is incompetent and the petition alleges at least one felony, 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." (§ 709(e).)

During the suspension, the court may rule on motions that do not require the minor's participation. For example, the court may rule on the following: motions to dismiss, motions regarding a change in the minor's placement, detention hearings, and demurrers. (§ 709(e).)

A court order finding the minor not competent triggers the statutory time limits on competency restoration, as well as the statutory time limits for secure confinement, described in detail below. (§709(h)(3), (h)(5)(A).)

3. The court finds that competency cannot be achieved within the foreseeable future

If, at any time, the court finds that competency cannot be achieved within the foreseeable future, the petition shall be dismissed. (§ 709(e), (g)(1).)

The court may invite to the dismissal hearing persons and agencies with information about the minor, including, but not limited to, the minor and their 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 discuss any services that may be available to the minor after jurisdiction is terminated.

(§ 709(h)(4).) If appropriate, the court shall refer the minor for evaluation pursuant to Section 5300 et seq. (Lanterman-Petris-Short Act; procedures for imminently dangerous persons) or Section 6550 et seq. (judicial commitments). (§ 709(h)(4).)

V. SERVICES AND SERVICE PLAN

If the court determines the minor can reasonably attain competency within the relevant statutory timeframes, the court shall refer the minor to services. These services shall be determined by a multidisciplinary team (MDT). The Probation Department shall organize a meeting of the MDT. The MDT meeting shall include the minor's parent(s), the minor's counsel, and the Probation Department. The MDT meeting may include, as appropriate, the District Attorney, minor's education provider (i.e., minor's school district and/or Sacramento County Office of Education), Behavioral Health Services (BHS), Alta California Regional Center (ACRC), the minor's Court Appointed Special Advocate (CASA), County Counsel, and involved community support persons or programs.

The MDT shall develop an appropriate, individualized service plan for the minor. The purpose of the MDT is to utilize the combined knowledge and experience of the MDT members to design a service plan of available interventions and services to help the minor attain competency. The MDT shall evaluate:

- Interventions and services that exist in the county, state, or country;
- The requirements and eligibility of the youth for such services;
- The funding mechanisms for providing such services to the youth;
- The time frame for providing services; and
- A plan to overcome logistical, administrative, financial, and other barriers to providing such services.

The court shall receive the service plan developed by the MDT at the first progress review hearing following the court's finding of incompetency. The Probation Department shall file the service plan with the court and serve the District Attorney at least three court days before the hearing.

The service plan may be modified, as appropriate, at any progress review hearing.

The court shall order the minor's parent(s) to sign all necessary release or consent forms to facilitate completion of any required assessments, authorize reporting of the evaluations, treatments or services to the court, and participate in IEP and other meetings as appropriate. (See § 245.5.)

A. Minors out of custody

The court shall order the minor's parent(s) to schedule appointments for services, ensure the child attends services in the plan and any necessary assessments, and

facilitate school enrollment and attendance in a timely manner. (See § 245.5.) If the parent is unable or unwilling to make the appointments or to arrange for the minor's attendance at services or assessments, the court may order and designate the minor's attorney or the Probation Department to facilitate the arrangements.

B. Minors in custody

If the minor is in custody, the court shall order the Probation Department to arrange appointments for services, and ensure the child attends services in the plan and any necessary assessments.

Services shall be provided in the least restrictive environment consistent with public safety, as determined by the court as part of the plan. A finding of incompetency alone shall not be the basis for secure confinement. (§ 709(g)(1).)

If the minor is in custody, the court shall consider appropriate alternatives to YDF confinement, such as: (1) placement through regional centers, (2) short-term residential therapeutic programs, (3) crisis residential programs, (4) civil commitment, (5) foster care, relative placement, or other non-secure placement, or (6) other residential treatment programs. (§ 709(g)(1).)

The court may make any orders necessary to assist with the delivery of remediation services or treatment in an alternative setting to secure confinement. (§ 709(g)(2).)

C. Progress review hearings

Once the court has ordered remediation services, the court must review the remediation services at least every 30 calendar days for minors in custody, and at least every 45 calendar days for minors out of custody, for the duration of the remediation period. (§ 709(g)(1).)

1. Service provider reports

Prior to each review hearing, the identified service provider will forward its report to the Probation Department. At least three court days before the hearing, the Probation Department shall submit the report to the court, the District Attorney, and the minor's counsel. The report shall address specific services the minor has received to date and detail the minor's progress.

2. Minors in custody

Where a minor is in secure custody, the court shall consider at each review hearing whether the minor shall remain in secure custody or if there are other appropriate alternatives to YDF confinement, including, but not limited to: (1) placement through regional centers, (2) short-term residential therapeutic programs, (3) crisis residential programs, (4) civil commitment, (5) foster care,

relative placement, or other non-secure placement, or (6) other residential treatment programs. (§ 709(g)(1).)

The Probation Department shall provide an update on the detention adjustment. The report shall be submitted to the court, the District Attorney, and minor's counsel at least three court days before each review hearing.

The county mental health department shall provide the court with suitable alternatives for the continued delivery of remediation services upon the minor's release from custody as part of the court's review of remediation services. (§ 709(g)(1).)

The court may make any orders necessary to assist with the delivery of remediation services or treatment in an alternative setting to secure confinement. (§ 709(g)(2).)

3. Inability to attain competency in the foreseeable future

If at any point in the proceedings the court determines that the minor is unable to attain competency in the foreseeable future and/or within the statutory timeframes, the petition shall be dismissed after conducting a dismissal hearing. (§709(e), (g)(1), and (h)(4).)

At the dismissal hearing, the court may make orders that it deems appropriate for other services. (§ 709(e).) The court may invite to the dismissal hearing persons and agencies with information about the minor, including, but not limited to, the minor and their 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 discuss any services that may be available to the minor after jurisdiction is terminated. (§ 709(h)(4).) If appropriate, the court shall refer the minor for evaluation pursuant to Section 5300 et seq. (Lanterman-Petris-Short Act; procedures for imminently dangerous persons) or Section 6550 et seq. (judicial commitments). (§ 709(h)(4).)

VI. STATUTORY TIME LIMITS AND RELATED EVIDENTIARY HEARINGS

Section 709 limits the time period during which a minor who was found incompetent may be ordered to participate in remediation services and remain in secure confinement. The court's finding of incompetence starts the statutory timeline for remediation services and hearings, with statutory time limits on the total remediation period and secure confinement.

The time limits and hearing requirements for competency remediation imposed by Section 709 are as follows:

A. Six months

The initial available remediation period for petitions alleging at least one felony shall be six months from the finding of incompetence, unless the court finds at an earlier date that competency cannot be achieved within the foreseeable future. (§ 709(g)(1); see § 709(e).)

Prior to the expiration of six months, and unless the parties stipulate to continuing competency remediation under the existing plan, the court shall hold an evidentiary hearing, admitting the most recent report prepared by the minor's service provider(s), in order to determine whether the minor has in fact been remediated to competency or is able to be remediated within the relevant remaining statutory time frames. (§ 709(h)(1).)

On its own motion or upon the recommendation of counsel or the minor's service provider, the court may appoint an expert from the court's Expert Panel to conduct a follow-up competency evaluation of the minor, ordering remediation services to continue in the interim. If the parties agree, the court may appoint the same expert who performed the minor's initial competency evaluation. The procedures set forth above for the initial appointment of an expert evaluator, and their qualifications, shall apply.

If the court orders a follow-up competency evaluation, the court shall continue the evidentiary hearing until it receives the report and shall order competency restoration programs to continue in the interim. The expert's written report shall be electronically transmitted to the court, the District Attorney, minor's counsel, and the Probation Department at least three court days before the continued hearing.

If the recommendation is that the minor has attained competency and the minor disputes the recommendation, then the burden is on the minor to prove by a preponderance of the evidence that they remain incompetent to proceed. (§709(h)(1).)

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 the evidence that the minor is competent. (§ 709(h)(1).)

If the recommendation is that the minor is unable to be remediated to competency, and the prosecutor disputes the recommendation, then the burden is on the prosecutor to prove by a preponderance of the evidence that the minor is remediable. (§ 709(h)(1).)

If the court finds that the minor has been remediated to competency, it shall reinstate the proceedings. (§ 709(h)(2).)

If the court finds that the minor has not yet been remediated to competency, but is likely to be remediated within the next six months, i.e., within a total of 12 months from the finding of incompetency, then the court shall order the minor to return to the remediation program. (§ 709(h)(3).) Secure confinement shall not extend beyond six months from the initial finding of incompetence, except when the petition includes an offense listed in Section 707(b). When the petition includes a Section 707(b) offense, the court shall decide whether it is in the best interests of the minor and the public's safety for the minor to remain in secure confinement based upon consideration of all of the factors identified in Section 709(h)(5)(A). If the court decides to keep the minor in secure confinement, it must state the reasons on the record. (§ 709(h)(5)(B).)

If the court finds that the minor will not attain competency within the next six months, that is within a total of 12 months from the finding of incompetency, the court shall conduct a dismissal hearing prior to dismissing the petition. (§ 709(h)(4).) Prior to dismissal, the court may make orders that it deems appropriate for services. (§ 709(e).) The court may invite to the dismissal hearing persons and agencies with information about the minor, including, but not limited to, the minor and their 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 discuss any services that may be available to the minor after jurisdiction is terminated. (§ 709(h)(4).) If appropriate, the court shall refer the minor for evaluation pursuant to Section 5300 et seq. (Lanterman-Petris-Short Act; procedures for imminently dangerous persons) or Section 6550 et seq. (judicial commitments). (§ 709(h)(4).)

B. Twelve months

The maximum remediation period shall be one year from the finding of incompetence.⁴ (§ 709(h)(3).)

Within 12 months of the court's finding of incompetence, the court shall hold another evidentiary hearing to determine the competency status of minors whose services were continued at the six-month evidentiary hearing.

The procedures that apply at the six-month evidentiary hearing, regarding follow-up competency evaluations, reporting requirements, secure confinement and burdens of proof, shall apply at the 12-month evidentiary hearing.

If the court finds that the minor has been remediated to competency, it shall reinstate the proceedings. (§709(h)(2).)

⁴ “[A]lthough section 709 establishes a maximum period of one year of remediation, the juvenile court’s jurisdiction continues for a reasonable period afterward for the court to resolve any dispute still existing at the end of that period over whether the minor has attained competency.” (*K.R. v. Superior Court* (2023) 89 Cal.App.5th 1193, 1197.)

If the court finds the minor has not been remediated to competency, the court shall conduct a dismissal hearing and thereafter order dismissal. (§ 709(h)(3), (h)(4).) Prior to dismissal, the court may invite to the dismissal hearing persons and agencies with information about the minor, including, but not limited to, the minor and their 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 discuss any services that may be available to the minor after jurisdiction is terminated. (§ 709(h)(4).) Prior to dismissal, the court may make orders that it deems appropriate for services. (§ 709(e).) If appropriate, the court shall refer the minor for evaluation pursuant to Section 5300 et seq. (Lanterman-Petris-Short Act; procedures for imminently dangerous persons) or Section 6550 et seq. (judicial commitments). (§ 709(h)(4).)

If the petition includes a Section 707(b) offense, the minor may be held in secure confinement pending, for example, completion of the 12-month progress review hearing, provided the requirements of Section 709(h)(5) are satisfied. A minor may not be confined beyond 18 months from the finding of incompetency. (§ 709(h)(5)(C).)