

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 116

**JUVENILE DELINQUENCY
INITIAL OR DETENTION HEARING**

[REVISED 2011]



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
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JUVENILE DELINQUENCY INITIAL OR DETENTION HEARING

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I. [§116.1] SCOPE OF BENCHGUIDE

This benchguide covers delinquency detention hearings, held generally under Welf & I C §§625–641 and Cal Rules of Ct 5.752–5.764 for juveniles who are alleged to have committed an offense under Welf & I C §602(a). Status offenders under Welf & I C §601 are not covered, nor are juveniles who are subject to direct filing in criminal court under Welf & I C §602(b). This benchguide includes a procedural checklist, a brief summary of the applicable law, and spoken and written forms.

II. [§116.2] PROCEDURAL CHECKLIST

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties under Cal Rules of Ct 2.816.* If desired, referees should also obtain a written stipulation from the parties to serve as temporary judges. See discussion in §116.34.

(2) *The case is called by the bailiff, court clerk, or probation officer.*

(3) *Determine who is present and their interest in the case before the court.* Welf & I C §§656(e), 658, 676, 676.5, 679; Cal Rules of Ct 5.530(b). The judge may be asked to rule on the presence of the following people in the courtroom:

- Interpreters for parent and/or child (see §116.19)
- Crime victims and their family members (see §116.20)
- Support persons for prosecuting witnesses (see §116.19)
- Child's family members (see §116.19)
- Media (see §116.29)

- Public (see §116.20)
- Court-appointed special advocate (CASA) if the child is also a dependent child (see §116.19). There may also be agency workers from the mental health agency, department of health services, or other agencies.

(4) *Inquire as to whether the factual information (names, dates, addresses, ages, etc.) on the petition is correct; order that the petition be corrected by interlineation if, on inquiry, any of the participants provides corrections to the names, addresses, ages, or other factual information in the petition.*

(5) *Advise the child, parents, and guardians of the right to counsel.* Often there will be preappointed counsel for the child, and this attorney will have interviewed the child after obtaining the detention reports and the petition. See discussion in §§116.22–116.27.

(6) *Advise the child of his or her rights (see §116.21) or have preappointed counsel do so, unless counsel waives the reading of the petition and advice of rights.* If counsel has taken responsibility for this, the court should verify that the child has been advised of his or her constitutional rights and waives any further advisement. In some counties, the child is given a written waiver form and then asked if he or she has any questions; in others, it is the attorney's job to explain the child's rights to the child and the judge will ask counsel if reading of the petition and the statement of rights is waived.

Many judges explain at this point what to expect of the juvenile court process; some do it after grounds for detention have been found (see step 16).

- **JUDICIAL TIP:** If the child wishes to make an admission (see step 7), the judge should make sure the child has waived rights verbally on the record, as well as by agreeing to the statements made by the attorney or on a written form. See sample written form in §116.61.

(7) *If the child wishes to make an admission or enter a plea of no contest, ask whether the child understands the nature of the allegations and consequences of this action and also understands and waives the rights set out in Cal Rules of Ct 5.778(b) (See §116.27). If there is a plea, go to step 8; otherwise, go to step 10.*

- **JUDICIAL TIP:** Even when the district attorney or the child's attorney advises the child and obtains waivers, many judges also

question the child as to the child's understanding of his or her rights and the waiver of those rights.

(8) *After accepting an admission or a plea of no contest, review the detention reports (see Cal Rules of Ct 5.760(a)) and any attachments, schedule a disposition hearing (Cal Rules of Ct 5.788(g)), and go to step 10.*

☛ JUDICIAL TIP: If the judge has read the police reports, the judge should acknowledge on the record that he or she has read and considered them.

(9) *Consider deferred entry of judgment request, if appropriate. See discussion in §116.36.*

(10) *If there is no admission, plea of no contest, denial, or request not to act on the petition at this time, review the detention reports. See Cal Rules of Ct 5.760(a).*

(11) *Inquire whether the child's counsel wishes to comment on the detention recommendation.*

(12) *Inquire whether the prosecutor wishes to comment on the detention recommendation.*

(13) *Ask the parents for their comments on the probation department's recommendation and whether they have any questions.*

☛ JUDICIAL TIP: Many judges feel that it is important that the parents be involved in a discussion with the court about the child. Such a discussion may assist the court in making findings and orders.

(14) *With counsel's consent, ask the child if he or she has anything to add or wishes to address the court.*

(15) *Order the child's release unless a prima facie case has been made that the child comes within Welf & I C §602(a) and that one or more of the grounds for detention exists. Welf & I C §§635, 636(a); Cal Rules of Ct 5.758(a)(1), (3).*

(16) *Determine whether continuation in the home would be contrary to the child's welfare and order reasonable services if provision of these services would permit the child to be returned to the custody of the parent or guardian. Welf & I C §636(d); see Cal Rules of Ct 5.758(a)(2). This determination must be made before the court detains the child. Welf & I C §636(d); see Cal Rules of Ct 5.758(a)(2). See discussion in §116.42 on the consequences of this determination.*

(17) *In order to detain the child, make the following findings on the record. See §§116.41–116.48.*

- Continuation in the home is contrary to the child’s welfare. Welf & I C §636(d); Cal Rules of Ct 5.758(a)(2). Unless the court finds that continuance in the home would be contrary to the child’s welfare, it must release the child to the home of his or her parent or legal guardian. Welf & I C §636(d); Cal Rules of Ct 5.760(c).
- A prima facie showing has been made that the child is described by Welf & I C §602. Welf & I C §635; Cal Rules of Ct 5.758(a)(1).
- JUDICIAL TIP: If the finding of a prima facie case has been contested, the judge should either resolve it immediately or set a later hearing to establish this finding. See *In re Dennis H.* (1971) 19 CA3d 350, 355, 96 CR 791; Cal Rules of Ct 5.764 (time limits for hearing). See also discussion in §116.39.
- One or more of the grounds for detention is found to exist. The judge must make findings on the record. The grounds for detention include the finding that continuing in the home would be contrary to the child’s welfare and one or more of the following (Welf & I C §§635, 636(a); Cal Rules of Ct 5.760(c)):
 - The child has violated a court order.
 - The child has escaped from a commitment.
 - The child is likely to flee and continuing in the home would be contrary to the child’s welfare.
 - Detention is needed for immediate and urgent protection of the child.
 - Detention is reasonably necessary for the protection of the person or property of another.

(18) *If ordering detention, state the facts on which the detention is based, refer to the probation officer’s report or other evidence relied on and order services to be provided as soon as possible if appropriate. Welf & I C §636(d); see Cal Rules of Ct 5.760(b), (e)–(f).*

(19) *If ordering detention, also make the following findings on the record and in the written minute orders (Welf & I C §636(d); 42 USC §§671–672; Cal Rules of Ct 5.760(d), (e); see the Appendix):*

- The child’s temporary placement and care is the responsibility of the probation officer pending disposition or further court order (Welf & I C §636(d)(3)(B)); and

- Reasonable efforts have been made to maintain the child in the home and to prevent or eliminate the need for removal (Welf & I C §636(d)(2)(B)).

See §116.48 for a discussion of the importance of these findings.

(20) *Order the parent or guardian to cooperate with the probation officer in obtaining services.* See Welf & I C §636(e).

(21) *If ordering release on home supervision, specify the criteria for detention, explain why confinement does not appear to be necessary, and set conditions that the child must meet.* See Welf & I C §636(b). The judge should obtain agreement to the conditions from the child and the parents, if that is appropriate, and explain what will happen if the conditions are not met. See §116.50.

(22) *Inform the parties of the reason for the detention and what to expect of this and other juvenile court proceedings.*

(23) *Authorize a psychological or other evaluation if appropriate and specify the funding source.* The court may order it at the detention hearing if the child and child's attorney agree. Welf & I C §§635.1, 741.

- **JUDICIAL TIP:** Although it is usually premature to order an evaluation at the detention hearing, it is sometimes done at this point so that it may be ready in time for the disposition hearing.

(24) *If the prosecutor has requested a fitness hearing, explain the procedure to the parents and child and set the hearing date; otherwise, go to step 22.*

(25) *Set a jurisdiction hearing.* In some counties, there is a “readiness or settlement” hearing preceding the jurisdiction hearing to determine the status of the case (including discovery and witness lists) and to set the jurisdiction hearing or the disposition hearing if there is an admission or no-contest plea.

- **JUDICIAL TIP:** The judge may wish to combine the jurisdiction and disposition hearings if the issue of jurisdiction is uncontested.

(26) *Order parties to return to the next hearing.*

III. APPLICABLE LAW

A. [§116.3] Overview of Delinquency Proceedings

When a child is taken into custody, the judicial process begins with a detention hearing. Welf & I C §§632, 635, 636. If the detention hearing cannot be held within 72 hours of the time the child is taken into custody, there should have been an earlier probable cause determination (often by

phone or fax) under *Alfredo A. v Superior Court* (1994) 6 C4th 1212, 1232, 26 CR2d 623.) A jurisdiction hearing must be held within 15 days of the order directing detention. Welf & I C §657(a)(1); Cal Rules of Ct 5.774(b). If the allegations in the petition are sustained at the jurisdiction hearing, a disposition hearing must be held within ten court days in order to determine the best disposition for the child. Welf & I C §702; Cal Rules of Ct 5.782(a).

When a child is not in custody, a hearing on the petition must be held within 30 days of the filing of the petition. Welf & I C §657(a)(1); Cal Rules of Ct 5.774(a). However, if the child was not in custody and an arrest warrant was issued, the jurisdiction hearing must be stayed until the child is brought before the court on an arrest warrant and then it is held within 30 days of the minor's initial appearance on the petition, or within 15 judicial days of the detention hearing if the minor is detained in custody. Welf & I C §657(a)(2); see also Cal Rules of Ct 5.774(a).

If a person who is brought before a judge of the adult criminal court appears to have been under 18 years old at the time of the offense, the judge must make an examination into the child's age. Welf & I C §604(a). If the person is under 18 years old, under §604(a), the judge must certify to the juvenile court that:

- The person is charged with a crime (specifying the name and the offense).
- The person appears to have been under 18 years old at the time the offense was committed (specifying the birth date if known).
- Proceedings have been suspended because of the person's age.

Once there has been a certification to juvenile court, the case must remain there unless the child is later found unfit for juvenile court proceedings or new evidence comes before the court that the person was over 18 at the time he or she committed the alleged offense. Welf & I C §604(a). Jeopardy will not have attached because of any proceedings that were held before certification. Welf & I C §604(b).

A delinquency proceeding is a civil rather than a criminal action. *Rinaker v Superior Court* (1998) 62 CA4th 155, 164, 74 CR2d 464 (case discusses confidentiality required by Evid C §1119 concerning statements made during mediation).

B. [§116.4] Comparison Between Delinquency and Criminal Systems

	Criminal Court	Juvenile Court
<i>Purposes of proceedings generally</i>	To ascertain guilt or innocence. To punish the guilty and protect society.	To ascertain truth of allegations in petition; an order of wardship is not a conviction of a crime. Welf & I C §203. To preserve and promote the welfare of the child. <i>Santosky v Kramer</i> (1982) 455 US 745, 766, 102 S Ct 1388, 71 L Ed 2d 599. To provide care, treatment, and guidance consistent with the best interest of the child and of the public. Welf & I C §202(b).
<i>Person who is the subject of the proceeding</i>	Defendant.	Minor or child.
<i>Document initiating the proceeding</i>	Complaint or information.	Petition.
<i>Initial hearing</i>	Arraignment (for defendants who are in or out of custody).	Detention hearing (for children who are in custody); first appearance hearing for those not in custody. See Welf & I C §657(a)(2); Cal Rules of Ct 5.572(a).
<i>Bail</i>	May be applicable.	Not applicable.
<i>Plea bargaining</i>	Often done.	Often done.
<i>Fact-finding</i>	Trial.	Jurisdiction hearing.
<i>Right to jury trial</i>	Yes, in many instances.	No. <i>In re Myresheia W.</i> (1998) 61 CA4th 734, 741, 72 CR2d 65.
<i>Right to appointed counsel</i>	Yes, for indigent defendant.	Yes, for indigent juvenile or those whose parents refuse to pay.
<i>Judgment</i>	Guilty or not guilty verdict.	Petition is sustained or not sustained.
<i>Outcome</i>	Sentence.	Disposition.
<i>Incarceration</i>	Few resources directed toward rehabilitation.	Many more resources directed toward rehabilitation.
<i>Credit for time served in nonsecure or home detention</i>	Yes, under Pen C §2900.5.	No. <i>In re Randy J.</i> (1994) 22 CA4th 1497, 1506, 28 CR2d 152.

A juvenile offender is not entitled to bail. *Aubry v Gadbois* (1975) 50 CA3d 470, 473, 123 CR 365; *In re Talbott* (1988) 206 CA3d 1290, 1293, 254 CR 421 (redetention after initial release). Only if the child is found unfit for juvenile court (after a fitness hearing) may bail be applicable. Welf & I C §207.1(c).

A great difference between the juvenile and criminal court system is that, unless the juvenile is found unfit for juvenile court under Welf & I C §707 or the district attorney files the case directly in adult court under Welf & I C §707(d), he or she is not charged with crimes; in some respects, California treats the juvenile as a sociological problem, placing resources at the disposal of the juvenile court in an attempt to rehabilitate rather than punish. See *In re Hector R.* (1984) 152 CA3d 1146, 1154–1155, 200 CR 110. Because of this distinction, a juvenile is not entitled to a jury trial. *In re Hector R., supra*. However, in other respects, there is severe punishment for a juvenile who has committed an offense that would be a felony if committed by an adult. See, e.g., *People v Davis* (1997) 15 C4th 1096, 1101–1102, 64 CR2d 879; Pen C §667(d)(3) (juvenile adjudication as strike); 8 USC §1225a (alien juvenile who has committed a felony is not entitled to benefits). See also Welf & I C §202(b) (noting that punishment, but not retribution, and accountability are important purposes of juvenile court law).

C. [§116.5] Purpose of Detention Hearing; When Required

The purpose of a detention hearing in juvenile court is to ascertain whether the child needs to be detained in custody pending the jurisdiction hearing; detention is the exception and not the rule. *In re Robin M.* (1978) 21 C3d 337, 340 n2, 146 CR 352. “Detention” means that the child is removed from the person entitled to custody. See Cal Rules of Ct 5.502(11). When a child is detained, a formal, adversarial “detention hearing” must be held once a petition to declare the child a ward has been filed. Welf & I C §632(a); *Alfredo A. v Superior Court* (1994) 6 C4th 1212, 1220, 26 CR2d 623 (describing a contested detention hearing as formal and adversarial, although generally *uncontested* juvenile court hearings are required to be conducted informally and nonadversarially—see Welf & I C §680; §116.18). This hearing may serve to fulfill the constitutional requirement that there be a determination of probable cause for postarrest detention within 72 hours of the arrest. 6 C4th at 1232.

- **JUDICIAL TIP:** In many counties, the practice is not to wait for the detention hearing for the determination of probable cause, but to have the probation (or police) officer speak with an on-call judge to obtain this determination within 24 hours of the deten-

tion. Some courts use fax communication or make other arrangements for judicial determination of probable cause. See §116.12.

A detention hearing must be held for any juvenile who is in custody. See generally Welf & I C §630; Cal Rules of Ct 5.752(e)–(h). If the child is before the court but not in custody, the court may order detention only after a finding of new or previously undiscovered facts, and notification to the child of the right to counsel and the possibility of detention. *In re Ryan B.* (1989) 216 CA3d 1519, 1527, 265 CR 629.

A detention hearing must also be held if the child is 14 years old or older and is taken into custody for use of a firearm during commission or attempted commission of a felony or any offense listed in Welf & I C §707(b). See Welf & I C §625.3 (child may not be released until he or she is brought before a judicial officer).

In addition, a detention hearing must be held when a child has been released and then is redetained for new offenses after the jurisdiction hearing has been held. *In re Talbott* (1988) 206 CA3d 1290, 1295, 254 CR 421. In addition, a detention hearing is required for a child who is not in custody if the child is in a program of home supervision. See Welf & I C §628.1. See also Cal Rules of Ct 5.502(11) (a child released on home supervision is detained). See §116.50. If the child violates conditions of home supervision that he or she had promised to obey in writing, a new detention hearing must be held. Welf & I C §628.1; Cal Rules of Ct 5.752(h).

The United States Supreme Court has held that brief pretrial detention based on a finding of a serious risk that the juvenile might commit another crime before his or her court date does not violate due process as long as a formal probable cause hearing is held within a short time thereafter. *Schall v Martin* (1984) 467 US 253, 266–272, 274–280, 104 S Ct 2403, 81 L Ed 2d 207.

D. [§116.6] When Child Not Detained/Initial Hearing

When a child is not detained, a hearing on the petition must be held within 30 days of the filing of the petition. Welf & I C §657(a); Cal Rules of Ct 5.774(a). The clerk must ensure that the petition or notice of probation violation hearing and notice of initial hearing are served personally or by first class mail on the child, each parent or guardian, and any attorney of record at least ten days before this initial hearing. Welf & I C §660(c); see Cal Rules of Ct 5.524(f)(2). The clerk must also notify any foster or preadoptive parents, any legal guardian, and any relatives who are providing care whose residence addresses become known. See Welf & I C §658(a).

If the child does not appear at this hearing, the court may not detain the child solely because of the failure to appear. See Welf & I C §660(c). If the child or the parent or guardian does not appear, the court must order personal service and notice. Welf & I C §660(c). Service may be waived (Welf & I C §660(c); Cal Rules of Ct 5.524(g)) and service on the attorney is equivalent to service on the parent or guardian (Welf & I C §660(d)).

Under Welf & I C §660(c), amended as part of Proposition 21, an arrest warrant may be issued for a nondetained child under Welf & I C §663 solely on a showing that the child's whereabouts are unknown. If the child's whereabouts are unknown, personal service of the notice and a copy of the petition will not be required. Welf & I C §660(c).

Under a case decided before the passage of Proposition 21 and the change to Welf & I C §660, the court has held that a cite-in procedure (issuance of an arrest warrant when a child fails to appear after agreeing to appear) may not be used as the basis for an arrest warrant when a child fails to appear unless a petition had been prepared and advisements were given. *Ruben V. v Superior Court* (1997) 56 CA4th 723, 728, 65 CR2d 716. Moreover, although Welf & I C §661 might authorize a cite-in procedure, it does not authorize issuance of an arrest warrant. *Ruben V. v Superior Court, supra*, 56 CA4th at 730.

Under Proposition 21, Welf & I C §629(b) was amended to prohibit the release of a child 14 years or older who is arrested for a felony or attempted felony until the child has signed a written promise to appear before the probation officer or the court on a specified date. The police may also require a parent, guardian, or relative to sign the promise. Welf & I C §629(b). This section does not authorize the issuance of an arrest warrant.

- **JUDICIAL TIP:** Some judges find that Welf & I C §660(c), as amended, permits issuance of an arrest warrant when there is no response to a cite-in.

See also discussion in [§116.41](#).

At this hearing, the court must inform the child and the parent or guardian, if present, of each of the following:

- The contents of the petition,
- The reasons why the child was taken into custody,
- The nature and possible consequences of juvenile court proceedings, and
- The purpose and scope of the detention hearing.

See Welf & I C §633; Cal Rules of Ct 5.754(a).

In addition, the court must advise the child and parent or guardian of the following hearing rights at the initial hearing (Welf & I C §§630(b), 633; Cal Rules of Ct 5.534(g), (k), 5.754(a)):

- The right to counsel at each stage of the proceedings;
- The right to assert the privilege against self-incrimination;
- The right to confront and cross-examine those who prepared police or probation reports or other documents considered by the court, as well as any witness;
- The right to use the court's process to compel the attendance of witnesses on the child's behalf; and
- The right to present relevant evidence.

E. Time Limitations for Detention Hearing

1. [§116.7] Before Petition Is Filed

Generally, a child must be released within 48 hours, excluding non-judicial days, after being taken into custody unless a petition for wardship is filed within that time. Welf & I C §631(a)–(b); Cal Rules of Ct 5.752(b). See also Cal Rules of Ct 5.752(d) (requirement for filing petition when case is certified to juvenile court from other court). There must be written review by the supervisory probation officer of any decision to detain the child more than 24 hours unless that decision had been made by a supervisory probation officer. Welf & I C §631(b). When a child has been held for more than 24 hours and no petition has been filed, the probation officer must prepare a written explanation that is given to the child's parent or guardian and filed in the case records. Welf & I C §631(c).

The time for filing a petition is extended when the child has willfully misrepresented his or her age to be 18 or older and this misrepresentation causes a material delay in investigation. Welf & I C §631.1; Cal Rules of Ct 5.752(c) (extension until 48 hours from the time the child's true age is determined). If the age of the person before the juvenile court is in issue, the court may order a test for age if it finds that such a test would be of assistance. Welf & I C §608. The burden of proving that an adult defendant was a juvenile at the time the offense was committed is on the party who seeks to establish that fact (Welf & I C §602(a)). *People v Quiroz* (2007) 155 CA4th 1420, 1427, 66 CR3d 767.

The 48-hour rule is in effect whether the child enters the juvenile probation system directly (see Cal Rules of Ct 5.516(d)) or through certification to the juvenile court after criminal proceedings have been attempted in some other court (Cal Rules of Ct 4.116). Welf & I C §604; Cal Rules of Ct 5.752(d). However, the procedures are not applicable

when a criminal complaint has been filed against a juvenile after a determination of unfitness. See Welf & I C §§604(d), 707.01.

If a petition is not filed within the time limits, the child must be released. Welf & I C §§631(a), 631.1; Cal Rules of Ct 5.752(b)–(d); see also *In re Tan T.* (1997) 55 CA4th 1398, 1401, 64 CR2d 758 (Welf & I C §631 requires release when petition not filed within 48 hours; when child arrested at 1 a.m. on Monday, petition must be filed by 5 p.m. on Tuesday—9 a.m. on Wednesday is too late).

However, generally a petition that is dismissed may be refiled unless jeopardy has attached or the child can meet the burden of showing prejudice because of the delay. *People v Superior Court (Jorge C.)* (1990) 224 CA3d 1114, 1118–1119, 274 CR 439.

2. After Petition Is Filed—Setting Detention Hearing

a. [§116.8] Felony or Violent Misdemeanor

The detention hearing must begin as soon as possible but no later than the expiration of the next judicial day *after the petition is filed* if the child has been taken into custody in cases in which he or she has been alleged to have committed a felony or a misdemeanor involving violence or when the child is currently on probation or parole for reasons other than a nonviolent misdemeanor. Welf & I C §632(a); Cal Rules of Ct 5.752(f).

b. [§116.9] Nonviolent Misdemeanor; Arrest on Warrant or by Probation Officer

The detention hearing must be held as soon as possible but no later than 48 hours *from the time of detention* (excluding nonjudicial days) when the child was arrested without a warrant for a nonviolent misdemeanor not involving weapons and is not on probation or parole or when the child has been taken into custody on a warrant or by the authority of the probation officer. Welf & I C §632(b); Cal Rules of Ct 5.752(e). Any decision not to bring the child before a juvenile court within 24 hours must be subject to written review and approval by supervisory probation department personnel unless that decision is made by a probation officer who is a supervisor. Welf & I C §632(b).

c. [§116.10] Out-of-County Transfer or Violation of Home Supervision

When the child has been transported to a detention facility from another county or is a ward who has temporarily been placed in a secure facility, the detention hearing must begin no later than 48 hours *after the child arrives at the facility*. See Welf & I C §641; Cal Rules of Ct

5.752(g). A child taken into custody for violation of a written home supervision condition that the child has promised to obey (see Welf & I C §§628.1, 636(a)) must also be given a detention hearing within 48 hours. Cal Rules of Ct 5.752(h).

3. [§116.11] Failure To Meet Time Limits

The time limits on detentions must be strictly followed. See *In re Daniel M.* (1996) 47 CA4th 1151, 1156, 55 CR2d 17 (dealing with time limitations for supplemental petitions). Strict adherence to these limitations will minimize excessive and unwarranted detention of children who may eventually be determined not to be wards. *In re Robin M.* (1978) 21 C3d 337, 342–344, 146 CR 352. If a detention hearing is not held within the prescribed period, the child must be released (Welf & I C §632(c); Cal Rules of Ct 5.752(i)) or, if the child is a ward who has been placed in a secure facility awaiting changes of placement, he or she must be moved to a suitable nonsecure facility (Cal Rules of Ct 5.752(i)). See also *In re Angel M.* (1997) 58 CA4th 1498, 68 CR2d 825 (child who is the subject of a supplemental petition for violating probation conditions must be released if detention hearing not held in a timely manner; if there is no parent or guardian who can retain custody of the child, the court or the child's counsel should contact the department of social services (DSS) or another suitable agency to arrange for custody).

4. [§116.12] Determination of Probable Cause

A determination of probable cause must be made within 72 hours (including nonjudicial days) of the juvenile's arrest. *Alfredo A. v Superior Court* (1994) 6 C4th 1212, 1232, 26 CR2d 623. This determination may occur at the detention hearing or, if the detention hearing is delayed past 72 hours, it may occur separately. See §116.5. If there is a separate determination, it is usually made by an on-call judge after reviewing the relevant reports.

F. The Petition

1. [§116.13] Filing the Petition

It is the district attorney who files the petition to declare a child a ward of the court under Welf & I C §602 after receiving an affidavit from the probation officer who recommends that proceedings should be started. Welf & I C §§630(a), 650(c), 653.5(b). The probation officer will have received an affidavit or report from the person who alleges that the child has committed the stated offense. Welf & I C §653.5(a). In certain situations, such as the mandatory referral to the district attorney for one of

the serious or violent offenses listed in Welf & I C §707(b), the affidavit must be given to the prosecutor within 48 hours from the time it was received. Welf & I C §653.5(c). Once a petition has been filed, the prosecutor may file an affidavit requesting an arrest warrant for the child. Welf & I C §663; Cal Rules of Ct 5.526(c). The statute of limitations for the offense alleged is suspended on the filing of the petition for as long as the case is before the juvenile court. Welf & I C §605.

Prosecutorial discretion to file charges directly against a juvenile in criminal court under Welf & I C §707(d) as authorized by Proposition 21 is well within the prosecutor's charging authority. *Manduley v Superior Court* (2002) 27 C4th 537, 556, 33 CR2d 10.

On receipt of the petition, the clerk must set the hearing on the detention calendar. Welf & I C §630(a).

2. [§116.14] Contents of Petition

The petition is the equivalent of a complaint in adult court. *People v Davis* (1997) 15 C4th 1096, 1101, 64 CR2d 879. Under Welf & I C §656, the petition filed by the district attorney to declare a child a ward of the court must be verified and contain the information specified in Welf & I C §§656, 656.1, 656.5, 661, and 726, including:

- The name of the court.
- The title of the proceeding.
- The statute and subsection under which the proceedings are initiated.
- The child's name, age, and address.
- The names and addresses of the child's parents and/or guardians. If the parent or guardian lives outside the state or his or her address is not known, the petition must contain the name and address of an adult relative living in the county or, in any case, near the court.
- A concise statement of facts.
- Whether the child is in custody, and, if so, from what time.
- The intent to aggregate other offenses (see Welf & I C §726(c)).
- A notice to the parent or other person responsible for the child's support that that person may be responsible for the cost of:
 - The child's support and maintenance (Welf & I C §903).
 - Legal services for the child (Welf & I C §903.1).
 - Probation supervision of the child (Welf & I C §903.2).

- Notice to the parents or guardians regarding their possible involvement in community service, restitution, fines, or penalty assessments, if applicable.

The petition must specify whether each count of the crime charged is a felony or a misdemeanor. Welf & I C §656.1. If not verified, the petition is subject to dismissal without prejudice. Cal Rules of Ct 5.524(b). Approved Judicial Council forms JV-600, 610, and 620 should be used.

G. [§116.15] Service and Notice

Immediately on filing the petition or notice of probation violation hearing, the district attorney or probation officer must notify the child and each parent or legal guardian (if the whereabouts can be determined using due diligence) of the time and place of the detention hearing. Welf & I C §§630(a), 658(a); Cal Rules of Ct 5.524(f)(1). See also Welf & I C §679 (child entitled to notice). Notification may be either oral or in writing. Welf & I C §630(a); see Cal Rules of Ct 5.524(h). If an attorney is representing the child and has notified the clerk of this fact, the clerk must provide notice to that attorney in the same manner as notification to the parent or guardian. Welf & I C §630.1; see Cal Rules of Ct 5.524(f)(3).

If the court had previously ordered custody to be under the supervision of the probation officer for foster care placement (see Welf & I C §727(a)), the clerk must also provide notice to any foster or preadoptive parents, any legal guardian, any relatives who are providing care whose residence addresses become known to the clerk, and any court-appointed special advocate. Welf & I C §658(a).

The petition must be served at least 24 hours before the detention hearing. Welf & I C §660(b). Service on the child's attorney is equivalent to service on the child. Welf & I C §660(d).

The court may also issue a citation directing the parent or guardian to appear and may direct the child's current caregiver to bring the child with him or her. Welf & I C §661; Cal Rules of Ct 5.526(a). The notice must state that the parent or guardian or foster parent may be required to participate in a counseling or education program with the child. Welf & I C §661; Cal Rules of Ct 5.526(a)(1). The citation must be personally served at least 24 hours before the time scheduled for the next appearance. Welf & I C §661; Cal Rules of Ct 5.526(a)(2).

Notice may be waived by a voluntary appearance, noted in the minutes, or by written waiver filed with the clerk. Welf & I C §660(c); Cal Rules of Ct 5.524(g).

H. [§116.16] Venue

Proceedings may be initiated in the juvenile court for the county in which the child lives or in which he or she is found. Welf & I C §651. Venue also exists in the county in which circumstances exist or acts occur that bring the child under Welf & I C §602. Welf & I C §651.

I. [§116.17] Discovery

The child, the parent or guardian, and counsel may inspect police and probation reports and all other documents that are filed with the court or that were made available to the probation officer in preparing the probation recommendation. Welf & I C §827(a); Cal Rules of Ct 5.756(a). Once a petition is filed, the child is entitled to discovery of these reports and any other favorable evidence or information. *In re Jesse P.* (1992) 3 CA4th 1177, 1183, 5 CR2d 321; see Cal Rules of Ct 5.546(a)–(c).

Under Cal Rules of Ct 5.546(d), the probation department is required to disclose:

- Probation reports prepared in connection with the current case.
- Records of statements, admissions, or conversations by the child, parent, guardian, or alleged coparticipant.
- Names and addresses of witnesses interviewed by the investigating authority.
- Records of statements or conversations of witnesses or other persons interviewed by the investigating authority.
- Reports or statements of experts.
- Photographs or physical evidence.
- Records of prior felony convictions of any potential witness.

The court may order disclosure on a motion that clearly designates the items sought, specifies relevancy, and states that a timely request had been made and refused. Cal Rules of Ct 5.546(f).

- **JUDICIAL TIP:** Many courts encourage informal discovery and, in counties in which there is cooperation between the prosecution and the defense bar, formal discovery motions are rarely necessary.

The disclosure may be restricted on a showing of privilege or other good cause (Cal Rules of Ct 5.546(g)), including by order excising the nondiscoverable material (Cal Rules of Ct 5.546(h)). The court may specify conditions for the time, place, and manner of discovery, with a goal towards completion in a timely manner (Cal Rules of Ct 5.546(i)), and may issue sanctions for noncompliance (Cal Rules of Ct 5.546(j)).

Juvenile courts have discretion to permit discovery in delinquency cases in order to assist them in the expeditious and informal adjudication of cases. *Joe Z. v Superior Court* (1970) 3 C3d 797, 800–801, 91 CR 594. Because the goals of Proposition 115 are similar to those of juvenile courts (determination of truth, savings in court time, avoidance of interruption), juvenile courts have discretion to order reciprocal discovery even though Proposition 115 does not apply to juvenile courts. *Robert S. v Superior Court* (1992) 9 CA4th 1417, 1424, 12 CR2d 489.

A court may order discovery by the prosecution before a fitness hearing without any justification if the request is only for items listed in Pen C §1054.3. *Clinton K. v Superior Court* (1995) 37 CA4th 1244, 1246, 44 CR2d 140.

J. [§116.18] Conducting the Detention Hearing

The detention hearing, as with any delinquency hearing, must generally be closed to the public and heard at a separate session of the court. Welf & I C §675(a); Cal Rules of Ct 5.530(a). However, when the petition alleges that the child has committed one of the crimes listed in Welf & I C §676, the hearing must be open to the same extent, and on the same basis, as an adult criminal trial. Welf & I C §676(a).

The hearing must be conducted in an informal, nonadversarial manner unless there is a contested issue of law or fact. See Welf & I C §680; Cal Rules of Ct 5.534(b). The court must control the proceedings with a view to expeditious determination of the facts and to obtaining maximum cooperation of the child and persons interested in the child's welfare. Welf & I C §680; Cal Rules of Ct 5.534(a). The court must also provide accommodations for persons with disabilities. See Cal Rules of Ct 1.100 for procedural requirements.

The proceedings must be transcribed by a court reporter if the hearing is conducted by a judge or by a referee acting as a temporary judge. Welf & I C §677; Cal Rules of Ct 5.532(a). If the hearing is before a referee who is not acting as a temporary judge, the juvenile court judge may also direct that the proceedings be recorded. Welf & I C §677; Cal Rules of Ct 5.532(b). When directed by a judge or requested by a party, the official court reporter must prepare the transcript within a reasonable time as designated by the judge. Welf & I C §677; Cal Rules of Ct 5.532(c).

1. Who May Be Present

a. [§116.19] Generally

At the detention hearing, as with any juvenile delinquency hearing, the child who is the subject of the proceeding is a party and is therefore entitled to be present. Welf & I C §679. In addition, Welf & I C §§656(e),

658, 676, 676.5, and 679 and Cal Rules of Ct 5.530(b) permit the following persons to be present:

- Parents, or guardians or, if none can be found or none reside within the state, any adult relatives residing within the county or, if none, any adult relatives residing nearest the court.
- Counsel for child.
- Probation officer.
- Prosecuting attorney. See Welf & I C §681(a); Cal Rules of Ct 5.530(c).
- Up to two family members or support persons of a prosecuting witness's choosing (see Pen C §868.5). Welf & I C §§676(a), 676.5(a); Cal Rules of Ct 5.530(e)(2)(B), (D).
- Alleged crime victim, including the victim's family members. See Welf & I C §676.5; Cal Rules of Ct 5.530(e)(2)(B), (D).
- Court clerk.
- Court reporter.
- Bailiff, at the court's discretion.
- Court-appointed special advocate (CASA). See Cal Rules of Ct 5.530(b)(6).
- Interpreter (see Cal Rules of Ct 2.893(b), permitting appointment of noncertified interpreter to prevent delay on a finding of good cause; see also *In re Dung T.* (1984) 160 CA3d 697, 709, 206 CR 772, holding that it is a constitutional violation to deprive the child of the interpreter by borrowing the interpreter for witnesses unless the child has made a knowing and intelligent waiver of this right).
- Representative of Indian tribe or Bureau of Indian Affairs. See generally 25 USC §1912; Cal Rules of Ct 5.481.

➤ **JUDICIAL TIP:** The Indian Child Welfare Act (ICWA) (25 USC §§1901 et seq) may apply to delinquency proceedings when the child is at risk of entering foster care or is in foster care. See *In re Enrique O.* (2006) 137 CA4th 728, 734–735, 40 CR3d 570; Cal Rules of Ct 5.480. In addition, Welf & I C §§224–224.6 may apply as well. In this situation, the court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a 601 or 602 petition has been or may be filed, is or may be an Indian child, and in any wardship proceeding if the child is at risk of entering foster care or is in foster care. Welf & I C §224.3; Cal Rules of Ct 5.480(1), 5.481(a)(2), (b)(2), 5.482.

- The court may also permit any of the child’s relatives to be present at the detention hearing on a sufficient showing. See Cal Rules of Ct 5.534(f)(1). Relatives may submit information to the court at any time. Cal Rules of Ct 5.534(f)(2). The court may also admit anyone who it determines has a direct and legitimate interest in the case or in the work of the court (Welf & I C §676(a)) or the public if the parent or guardian requests that the public be admitted or the child requests an open hearing (Welf & I C §676(a); Cal Rules of Ct 5.530(e)(2)(A)). In certain situations, the public *must* be admitted. See §116.20.

No person who has been accused of a crime or is on trial or awaiting trial (other than a parent, guardian, or relative) may be present except as a witness. Welf & I C §675(a)–(b); Cal Rules of Ct 5.530(a).

b. [§116.20] Public and Crime Victims

If the petition alleges that the child has committed one of the crimes listed in Welf & I C §676, the public generally, as well as crime victims and their support persons in particular, may be admitted as in any criminal trial. Welf & I C §§676(a), 676.5(a); Cal Rules of Ct 5.530(e)(2)(C). However, even with crimes enumerated in Welf & I C §676, if the petition alleges certain sex crimes, the hearing must be closed if the prosecutor moves for closure on the victim’s request and, in any case, during the victim’s testimony if the victim is under 16 years old. Welf & I C §676(b); Cal Rules of Ct 5.530(e)(2)(C). Moreover, victims themselves and their support persons may be excluded, but only after a hearing at which the person sought to be excluded has an opportunity to be heard and all of the following conditions have been met (Welf & I C §676.5(b); see Cal Rules of Ct 5.530(e)(2)(E)):

- The moving party, who may be the child, shows that there is a substantial probability that overriding interests will be prejudiced by the victim’s presence;
- The court has considered reasonable alternatives to excluding the victim;
- Any limitation on a victim’s presence, including total exclusion, is narrowly tailored to serve the overriding interests that have been identified; and
- After the hearing, the court makes specific factual findings that support excluding the victim or limiting his or her presence.

For each day the court is in session, the court must post in an accessible, conspicuous place, a list of hearings that are open to the general public, as well as their location and time. Welf & I C §676(g).

For a discussion of media coverage and presence, see §116.29.

2. [§116.21] Advisements

At the outset of the detention hearing, the court must inform the child and the parent or guardian, if present, of each of the following:

- The contents of the petition,
- The reasons why the child was taken into custody,
- The nature and possible consequences of juvenile court proceedings, and
- The purpose and scope of the detention hearing.

See Welf & I C §633; Cal Rules of Ct 5.754(a).

☛ **JUDICIAL TIP:** In many cases, the reading of these rights by the court is waived by counsel who has explained them to the child. In this situation, judges may require counsel and the child to sign written waivers.

In addition, the court must advise the child and parent or guardian of the following hearing rights at the detention hearing (Welf & I C §§630(b), 633; Cal Rules of Ct 5.534(g), (k), 5.754(a)):

- The right of the child and his or her parent or guardian to counsel at each stage of the proceedings;
- The right to assert the privilege against self-incrimination;
- The right to confront and cross-examine those who prepared police or probation reports or other documents considered by the court, as well as any witness;
- The right to use the court's process to compel the attendance of witnesses on the child's behalf; and
- The right to present relevant evidence.

3. Right to Counsel

a. [§116.22] The Child

The child who is the subject of a §602 proceeding has an absolute right to an attorney (Welf & I C §§634, 658, 679; Cal Rules of Ct 5.534(h)(2)(A)) even if the charge is for a misdemeanor and the child appears before a traffic hearing officer (*In re Kevin G.* (1985) 40 C3d 644,

648, 221 CR 146). Right to counsel applies at each stage of the proceeding, including during police interrogations (see Welf & I C §625), hearings to determine age (*People v Malveaux* (1996) 50 CA4th 1425, 1437, 59 CR2d 371), and pretrial conferences (see *In re Ryan B.* (1989) 216 CA3d 1519, 1527, 265 CR 629). Cal Rules of Ct 5.563(c). The child's counsel is charged with defending the child and with advocating for the child's care and treatment. Cal Rules of Ct 5.563(b).

If the parents can afford counsel but do not retain one, the court must appoint one at the parents' expense, unless the child has intelligently waived the right to counsel. Welf & I C §634. In any case, the child has an absolute right to a court-appointed attorney, while a parent does not. *In re Robert W.* (1977) 68 CA3d 705, 716, 137 CR 558.

Once counsel enters an appearance on behalf of a child, he or she must continue to represent that child unless relieved by the court for cause or when there is substitution of other counsel. Welf & I C §634.6; Cal Rules of Ct 5.563(c).

Child's counsel is not required to:

- Assume probation officer's responsibilities or those of a parent or guardian,
- Provide nonlegal services, and
- Represent the child in proceedings other than delinquency proceedings.

b. [§116.23] Appointment of Counsel When No Court Proceedings

When a child is taken before a probation officer under Welf & I C §626 (temporary custody—no court proceedings required) and it is alleged that the child is described by Welf & I C §602, the probation officer must advise the child and the parents of the child's constitutional rights, including right to counsel. Welf & I C §627.5. If the child requests counsel, the probation officer must notify the juvenile court so that counsel may be appointed under Welf & I C §634. Welf & I C §627.5.

c. [§116.24] The Parent

Welfare & Institutions Code §634 does not require that the court appoint *separate* counsel for an indigent parent unless there is a conflict of interest between parent and child (see *In re Jesse V.* (1989) 214 CA3d 1619, 1624, 263 CR 369), although the parent has an absolute right to his or her own separate retained counsel (see *In re Robert W.* (1977) 68 CA3d 705, 716, 137 CR 558; Welf & I C §633). See also Cal Rules of Ct

5.534(h)(2)(B) (the court *may* appoint separate counsel for a parent or guardian who desires one and cannot afford one).

- JUDICIAL TIP: Most judicial officers will not appoint separate counsel for parents but will make clear to the parents that, if they disagree with the child’s counsel, they may retain counsel for themselves.

d. [§116.25] Conflict of Interest Between Parent and Child

If the parents have retained counsel for themselves and the child or if counsel has been appointed for the child and parents and it appears to the court that there is a conflict of interest between parent and child, the court must appoint additional counsel. Welf & I C §634. This additional attorney must be appointed at the parent’s expense unless they are indigent. *In re Jesse V.* (1989) 214 CA3d 1619, 1624, 263 CR 369.

- JUDICIAL TIP: If the parents seem at odds with the child or if their own interests are different from those of the child (*e.g.*, when there is the possibility that they may be liable for restitution), there may be a conflict of interest, and the court should consider appointment of a separate attorney for the child.

e. [§116.26] Compensation of Attorney

An attorney appointed to represent a juvenile who is charged with a violation of law must receive reasonable compensation to be determined by the court. Pen C §987.3. If the court does not intend to pay requested fees for legal services, it must state the reason for the reduction. *Trask v Superior Court* (1994) 22 CA4th 346, 353, 27 CR2d 425.

f. [§116.27] Waiver of Right to Counsel

The basic standard for competency to waive counsel (a rational, factual understanding of the proceedings) is the same for children as for adults; however, the fact that the party is a child and the age of the child are important in determining competency. *In re Shawnn F.* (1995) 34 CA4th 184, 195–196, 40 CR2d 263; see also *People v Poplawski* (1994) 25 CA4th 881, 893, 30 CR2d 760 (setting out the standard for adults). Indeed, courts should use great caution in permitting waiver of counsel. *In re Shawnn F., supra*, 34 CA4th at 196 (waiver of counsel properly denied; although child was 17 years old, his answer to questions were such gibberish that it was clear that he had no rational comprehension of the charges or understanding of the proceedings). Practically speaking, it is rare for a juvenile to seek self-representation in a delinquency case.

Once the child has waived right to counsel, he or she may not be assisted by a nonattorney parent in presenting the child's case. *In re Gordon J.* (1980) 108 CA3d 907, 914, 166 CR 809; see generally *In re Shawnn F.*, *supra*. Moreover, communications with the parent are not confidential because they are not protected under the sixth amendment right to counsel, although a child's request to speak with a parent during interrogation must be honored as part of Fifth and Sixth Amendment protections. *Ahmad A. v Superior Court* (1989) 215 CA3d 528, 537–538, 263 CR 747.

4. [§116.28] Admission or No-Contest Plea

With the consent of counsel, the child may admit the allegations of the petition or enter a plea of no contest at the detention hearing. See Welf & I C §657(b); Cal Rules of Ct 5.754(b). If the court accepts the admission or plea of no contest, it must proceed according to the procedures set out in Cal Rules of Ct 5.778(c)–(e) (requirements and procedures for accepting admissions or no-contest pleas at jurisdiction hearings). Cal Rules of Ct 5.754(b).

In taking a plea of a child who was under the age of 14 at the time of the alleged offense, the court must determine under Pen C §26 whether the child understood the wrongfulness of his or her act. See Pen C §26 (child under age 14 may not be convicted of a crime in absence of clear proof that he or she knew acts were wrong).

- **JUDICIAL TIP:** The court should consider questioning the child on this issue and may wish to receive information from the parents or others regarding the child's knowledge that the conduct was wrong.

If the child wishes to admit the allegations, the court must satisfy itself that the child understands the nature of these claims and the direct consequences of the admission, and also understands and waives the following rights (Cal Rules of Ct 5.788(b)–(c)):

- The right to a jurisdiction hearing,
- The right to assert the privilege against self-incrimination,
- The right to confront and to cross-examine any witness called to testify against the child, and
- The right to use the court's process to compel the attendance of witnesses on the child's behalf.

In addition, the court must satisfy itself that counsel for the child consents to the admission and that the child has personally made the admission. Cal Rules of Ct 5.788(d). In accepting an admission or a no-contest plea, the court must find and state on the record that it is satisfied

that the child understands the nature of the allegations and the direct consequences of the admission and also that the child understands and waives the rights set out in Cal Rules of Ct 5.788(b). Cal Rules of Ct 5.788(c).

Rule 5.788 codifies and extends the *Boykin-Tahl* rules that are applicable to delinquency cases. See *In re Regina N.* (1981) 117 CA3d 577, 582–583, 172 CR 810 (discussing the predecessor rule to Rule 5.788). The *Boykin-Tahl* requirements are satisfied if the record demonstrates that the accused had fair notice of what he or she has been asked to admit. *In re Ronald E.* (1977) 19 C3d 315, 324, 137 CR 781. Before an admission may be taken, the juvenile must be given notice of the maximum period of confinement (*In re Michael B.* (1980) 28 C3d 548, 554, 169 CR 723) as well as other possible consequences (*In re Richard W.* (1979) 91 CA3d 960, 978, 155 CR 11).

➤ JUDICIAL TIPS:

- It is important to obtain a personal waiver from the child of the rights set out in Cal Rules of Ct 5.788(b) as well as from the child’s attorney and to obtain these on the record. Many judges ask if the attorney joins the child in the waiver. Counsel for the child must consent to any admission; such admissions must be made by the child personally. Cal Rules of Ct 5.788(d).
- Many judges counsel the child that the offense admitted may count as a strike under the three-strikes law. See *People v Davis* (1997) 15 C4th 1096, 1101–1102, 64 CR2d 879 (juvenile adjudication is equivalent to an implied finding of fitness and therefore may be a strike under Pen C §667(d)(3)).

See [§116.61](#) for sample advisement and waiver form.

After accepting an admission or no-contest plea, the court must proceed to a disposition hearing. Cal Rules of Ct 5.788(g).

5. [§116.29] Media Coverage

When the child has been detained for an offense listed in Welf & I C §676(a), the court may not restrict the media from identifying the child without violating the constitutional prohibition against prior restraints. *KGTV Channel 10 v Superior Court* (1994) 26 CA4th 1673, 1684, 32 CR2d 181. Nor may the court preclude the press from attending an otherwise open hearing and reporting on the proceedings. 26 CA4th at 1685. However, the court may deny admittance altogether if the child shows a reasonable likelihood of impairment of the right to receive a fair trial. *Tribune Newspapers West, Inc. v Superior Court* (1985) 172 CA3d 443, 451, 218 CR 505 (fitness hearing); *KGTV Channel 10 v Superior*

Court, supra (detention hearing). Also the court may restrict the use of surnames in the courtroom (*KGTV Channel 10 v Superior Court, supra*) and limit the use of electronic media (Cal Rules of Ct 1.150).

6. Presentation of Evidence

a. [§116.30] Child's Right To Present Evidence

Although presentation of evidence by the child is rare at a detention hearing, the child has the right to confront and cross-examine preparers of reports considered by the court in deciding whether to detain the child, and anyone examined by the court under Welf & I C §635, as well as a privilege against self-incrimination. Welf & I C §630(b); Cal Rules of Ct 5.534(k)(1). The child also has a right to use the court's process to compel the attendance of witnesses on the child's behalf and to present relevant evidence at the detention hearing. See Cal Rules of Ct 5.534(k)(1).

However, there is no right to present an affirmative defense at the detention hearing. *In re Jesse P.* (1992) 3 CA4th 1177, 1183, 5 CR2d 321. Therefore, the child is not entitled to confront and examine percipient witnesses (*People v Superior Court (Ronald H.)* (1990) 219 CA3d 1475, 1477, 269 CR 4) or crime victims (*In re Luis M.* (1986) 180 CA3d 1090, 1094, 226 CR 39), although the child may present evidence showing that he or she is not a danger to the community as it bears on the issue of whether detention is appropriate, even though that evidence might be an affirmative defense at the jurisdiction hearing (*In re Jesse P., supra*, 3 CA4th at 1183). The fact that an issue is also an affirmative defense at the jurisdiction hearing will not require exclusion at the detention hearing if the issue is relevant to factors calling for detention. *In re Korry K.* (1981) 120 CA3d 967, 971, 175 CR 91.

☛ **JUDICIAL TIP:** In some counties, the judicial officer will review the probation report (which will often refer to the police reports) and then ask for statements from the child, counsel, and the parents. If the child requests a separate prima facie hearing, the judge may either resolve the issue immediately or set a hearing within three court days to establish this finding. See [§116.32](#) on requirements for admission of documentary evidence.

Juveniles are entitled to the basic due process considerations of the exclusionary rule and the *Miranda* warning. *People v Malveaux* (1996) 50 CA4th 1425, 1436, 59 CR2d 371. However, they are not entitled to a preliminary hearing. *In re Jesse P., supra*, 3 CA4th at 1182 (they may test the sufficiency of the petition by a demurrer or similar motion).

b. [§116.31] Court's Responsibilities

Subject to the child's privilege against self-incrimination, the court must examine the child, parents, guardian, or other person having knowledge relating to grounds for detention and must consider the probation report and any relevant evidence sought to be presented by the child, the parents or guardian, or their counsel. Welf & I C §635; Cal Rules of Ct 5.756(b), 5.760(a). After completion of the prosecution's case, the court may order whatever action the law permits either on its own motion or on the motion of a party if the burden of proof is not met. Welf & I C §701.1; Cal Rules of Ct 5.534(d)(1)(B). The court must release the child from custody unless certain findings have been made concerning the child's safety or propensity to do harm, as well as a prima facie showing that the child is described by Welf & I C §602. See Welf & I C §635; Cal Rules of Ct 5.760(c), (d). See discussion in [§116.42](#).

c. [§116.32] Documentary Evidence

The court may base its findings and orders solely on written police or probation reports or on other documents. Cal Rules of Ct 5.756(c). The child is entitled to confront and cross-examine preparers of reports that the court considers at this hearing. Welf & I C §§630, 635; *In re Dennis H.* (1971) 19 CA3d 350, 355, 96 CR 791. If the preparers are not available, the child may be entitled to a detention rehearing. See Cal Rules of Ct 5.762(c); see also Welf & I C §637 (rehearing may be required for other reasons; see [§116.36](#)). In deciding whether continuation in the home is against the child's interests (see [§116.42](#)), the court must refer to the probation officer's documentation or other evidence relied on and make a factual finding from the information supplied. See Welf & I C §636(d); Cal Rules of Ct 5.760(b)(6).

In some counties, preparers are routinely not made available at the detention hearing but are available at a separate hearing if the child requests it.

If the child appears to come within both Welf & I C §300 and §602, the court must determine which is the more appropriate status based on a report jointly filed by the child protective services department and the probation department. Welf & I C §241.1(a). The court may also consider the probation officer's report on the child's risk of entering foster care placement (see Welf & I C §11402), including (Welf & I C §635; Cal Rules of Ct 5.760(b)):

- The reasons the child was removed from parental custody,
- Prior referrals under Welf & I C §300,
- The need for continuing detention,

- Available services that could facilitate the child’s return,
- Relatives who are willing and able to care for the child,
- Documentation that continuing in the home would be contrary to the child’s welfare, and
- Documentation that reasonable efforts were made to prevent or eliminate the need for removal and documentation of the nature of the services and their results.

d. [§116.33] Prima Facie Case; Burden of Proof

In order to detain the child, in addition to finding one or more grounds for detention (see §116.41), the court must also find that there is a prima facie case that the child is described by Welf & I C §602. Cal Rules of Ct 5.758(a). The prima facie showing required at the detention hearing is equivalent to “sufficient cause” as defined in Pen C §§871 and 872. *In re Jesse P.* (1992) 3 CA4th 1177, 1182, 5 CR2d 321. Sufficient cause is equivalent to reasonable and probable cause as discussed in *Edsel P. v Superior Court* (1985) 165 CA3d 763, 780, 211 CR 869. *In re Jesse P., supra*, 3 CA4th at 1183.

☛ **JUDICIAL TIP:** If the attorneys know that there is going to be a fitness hearing, they will generally agree to stipulate to delay the prima facie hearing until the fitness hearing (or they may stipulate to detention and waive the prima facie hearing because of the evidence that will be presented at the fitness hearing).

Although Welf & I C §701 specifies that the finding that a child is described by Welf & I C §602 must be by proof beyond a reasonable doubt, there is no such requirement for any of the findings required in a detention hearing, and therefore proof by a preponderance of the evidence is sufficient. Some judges use a clear and convincing standard.

K. [§116.34] Judicial Officers

Detention hearings may be conducted by referees or by superior court commissioners who are assigned to sit as referees. See Cal Rules of Ct 5.536. Referees may perform subordinate judicial duties assigned by the presiding judge of the juvenile court. Cal Rules of Ct 5.536(a). They generally have the same power as judges (Welf & I C §248(a)), except that:

- The presiding judge of the juvenile court may require that certain of a referee’s orders must be approved by a juvenile court judge before becoming effective (Welf & I C §251), and

- A referee may not hear a jurisdiction hearing unless there is a written stipulation to his or her sitting as a pro tem judge (see *In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704).

No order of a referee removing a minor from his or her home becomes effective until expressly approved within two court days by a judge of the juvenile court. Welf & I C §249; Cal Rules of Ct 5.540(b)(1).

A commissioner is not the same as a referee. *In re Courtney H.* (1995) 38 CA4th 1221, 1224, 45 CR2d 560. While commissioners can only perform “subordinate judicial duties” without a stipulation, referees may perform the full range of duties as long as their decisions are approved by a juvenile court judge. *In re Courtney H., supra*, 38 CA4th at 1225. The superior court is not required to designate commissioners as juvenile court referees and, in some jurisdictions, commissioners are appointed as temporary judges and not as referees. As such, their decisions and orders are not subject to rehearing.

Once a referee receives a stipulation as a temporary judge under Cal Const art VI, §21, he or she will have all the powers of a juvenile court judge. Cal Rules of Ct 5.536(b); *In re Courtney H., supra*, 38 CA4th at 1224. But see Welf & I C §248(a); *In re Perrone C., supra*, 26 C3d at 57 (referee may not preside over a jurisdiction hearing without a stipulation). The procedures to follow in obtaining a stipulation are set out in Cal Rules of Ct 2.816 (which is applicable to referees and attorneys acting as pro tem judges under Cal Const art VI, §21, but not applicable to commissioners). Failure to follow the procedures exactly will not void the stipulation and deprive the court of jurisdiction. *In re Richard S.* (1991) 54 C3d 857, 865, 2 CR2d 2. A stipulation to a commissioner acting as a temporary judge need not be in writing or express; a “tantamount stipulation” may be implied from the conduct of the parties and attorneys. *In re Horton* (1991) 54 C3d 82, 98, 284 CR 305; *In re Courtney H., supra* 38 CA4th at 1228 (applies “tantamount stipulation” doctrine to delinquency proceedings).

A referee or commissioner assigned as a referee who is not acting as a temporary judge must inform the child and parent or guardian that review by a juvenile court judge may be sought. Welf & I C §248(b); Cal Rules of Ct 5.538(a)(2). A child or the parent or guardian may apply for a rehearing at any time up to ten days after the service of the referee’s order. Welf & I C §252; Cal Rules of Ct 5.542(a). After ten calendar days from the service of the referee’s order or 20 judicial days after the hearing (whichever is later), the referee’s order becomes final; the court may order a rehearing up until those time limits have passed. *In re Clifford C.* (1997) 15 C4th 1085, 1093, 64 CR2d 873.

Commissioners and referees, like judges, must disqualify themselves if they had been involved with the case as an attorney. See *In re Steven O.*

(1991) 229 CA3d 46, 51–53, 279 CR 868 (child may lose right to object on appeal if there was stipulation at trial).

L. [§116.35] Continuances

A detention hearing or rehearing must be continued for one court day if the child or parent requests it. See Welf & I C §638; Cal Rules of Ct 5.550(c)(1). A longer continuance may be granted on request of counsel for the parent, child, or prosecutor only for good cause and only for the period that is absolutely necessary. Cal Rules of Ct 5.550(b)(1). Neither stipulation between counsel and/or parties nor convenience of parties will constitute good cause in and of themselves. Cal Rules of Ct 5.550(b)(1).

If a party seeking a continuance fails to comply with the requirements of Welf & I C §682(a) (notice filed and served at least two days before the hearing to be continued), the court must deny the motion for the continuance unless that party has shown good cause for failing to meet the procedural requirements. Welf & I C §682(c); Cal Rules of Ct 5.550(b)(2). Unless there is a time waiver, the child may not be detained beyond the statutory time limits. Cal Rules of Ct 5.776(a)(1).

The order for the continuance must state the facts requiring the continuance. Welf & I C §682(b); Cal Rules of Ct 5.550(b)(3). If the child is represented by counsel and neither the child nor his or her counsel objects to an order continuing a hearing beyond the time limit, this non-objection is deemed to be a consent to the continuance. Cal Rules of Ct 5.550(b)(4).

☛ JUDICIAL TIPS:

- There is rarely time for written motions for continuance at a detention hearing. Most requests for continuances are based on oral motions.
- A detention hearing should seldom be continued, and a continuance for a rehearing should not exceed five judicial days. See Welf & I C §637. Because a detention hearing is one at which the court makes only temporary orders pending further investigation and adjudication, it is not expected that the investigation would be completed before a detention hearing can be held.

It may be reversible error to refuse to continue a detention hearing at the child's request in order to permit a parent to attend. See *In re Eric J.* (1988) 199 CA3d 624, 632, 244 CR 861 (jurisdiction hearing). If a detention hearing is continued, the child must remain in custody pending the continued hearing, unless the court orders otherwise. Cal Rules of Ct 5.550(c)(1). If the case is continued or set for rehearing and if the child is to remain in custody, the court must find that continuing the child in the

home is contrary to the child's welfare. Welf & I C §636(d)(4); Cal Rules of Ct 5.550(c)(2). The court may enter this finding on a temporary basis without prejudice and may review this finding at the time of the continued detention hearing. Cal Rules of Ct 5.550(c)(2).

M. [§116.36] Deferred Entry of Judgment

Under a procedure authorized by Proposition 21, the court may grant an order for the application of deferred entry of judgment (DEJ) to a particular child. See Welf & I C §§790–795. California Rules of Court 5.800 sets forth the procedures and requirements for granting, monitoring, and terminating deferred entries of judgment. Under these sections, the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory; the court, however, retains discretion to deny DEJ to an eligible minor. *In re Luis B.* (2006) 142 CA4th 1117, 1123, 48 CR3d 551.

Only juveniles to whom the following apply are eligible (Welf & I C §790(a)):

- The child has not previously been declared a ward for the commission of a felony,
- The offense is not one listed in Welf & I C §707(b),
- The child has not previously been committed to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ),
- There is no record that probation has ever been revoked without being completed,
- The child is at least 14 years old at the time of the hearing, and
- The child is eligible for probation under Pen C §1203.06.

The DEJ procedure is not available to misdemeanants. *In re Spencer S.* (2009) 176 CA4th 1315, 1329, 98 CR3d 377. But it may be available for a child who has violated probation, when the court does not revoke probation, but instead continues it with new terms and conditions. *In re T.P.* (2009) 178 CA4th 1, 4, 99 CR3d 893.

The court may order the child to pay restitution when granting DEJ, but must take into account the ability to pay under Welf & I C § 742.16. *G.C. v Superior Court* (2010) 183 CA4th 371, 378, 107 CR3d 514.

When the court has found that the child is a suitable candidate for DEJ and would benefit from education, treatment, and rehabilitation, the court may grant DEJ; if it does so, it must make findings on the record that the child is appropriate for DEJ. Welf & I C §790(b). When the child does not admit the allegations, but instead insists on a contested hearing, he or

she is not eligible for DEJ. *In re Kenneth J.* (2008) 158 CA4th 973, 979-980, 70 CR3d 352. In that situation, a court need not even hold a hearing to determine suitability for DEJ because it is clear that the child has no interest in the program. *In re Usef S.* (2008) 160 CA4th 276, 286, 72 CR3d 612.

A child is ineligible for DEJ for failure to admit allegations even when the reason for the nonadmission is that the child believes that the charge is excessive. *In re T.J.* (2010) 185 CA4th 1504, 1514, 111 CR3d 298. Moreover, a child who admits to a misdemeanor, rather than to the felony with which he or she was charged is not eligible for DEJ. *In re R.C.* (2010) 182 CA4th 1437, 1443, 106 CR3d 711.

The court may set a hearing to determine whether to order DEJ as early as the initial hearing. Welf & I C §790(b). If the court sets this hearing, it must issue a citation directing a custodial or foster parent or guardian to appear, explaining the provisions of CCP §170.6, and stating that this parent or guardian may be required to participate in a counseling or education program with the child. Welf & I C §792. Because a hearing on a suppression motion takes place before the jurisdiction hearing begins, a motion for a deferred entry of judgment may be heard after a suppression hearing is completed. *In re A.I.* (2009) 176 CA4th 1426, 1436, 98 CR3d 501.

Because the statutes empower, but do not compel, a judge to grant deferred entry of judgment, the court may deny this option even when the eligibility standards specified in Welf & I C §§790 and 791 and Cal Rules of Ct 5.788 have been met. *In re Sergio R.* (2003) 106 CA4th 597, 603, 605, 131 CR2d 160. But when the child meets the deferred entry of judgment requirements *and* would benefit from education, treatment, and rehabilitation, the court may not deny deferred entry of judgment for other reasons, such as to send a message to other potential juvenile drug smugglers. *Martha C. v Superior Court* (2003) 108 CA4th 556, 562, 133 CR2d 544.

In each case, the court must make an independent determination after weighing whether the child will benefit from education, treatment, and rehabilitation rather than from a more restrictive commitment. *In re Sergio R., supra*, 106 CA4th at 607.

N. [§116.37] Detention Rehearings

If the parent or guardian received notice of the original detention hearing and the preparers of reports relied on were available for cross-examination, there is no right to a detention rehearing. Cal Rules of Ct 5.762(c). However, there are three circumstances in which a detention rehearing may be required:

- (1) The parent or guardian is not present at the hearing and did not receive actual notice of the hearing (Welf & I C §637; Cal Rules of Ct 5.762(a));
- (2) The child has not had the opportunity to confront and cross-examine the preparers of reports (Welf & I C §637; see Cal Rules of Ct 5.762(c)); or
- (3) There is no transcript, and the child, parent, or guardian requests rehearing after proceeding before a referee who is not acting as a temporary judge (Welf & I C §252; Cal Rules of Ct 5.542(a), (b)).

If the case is set for rehearing, the court must order the child to be released from custody or find that continuing the child in the home is contrary to the child's welfare. Welf & I C §636(d)(4). At a rehearing, the court must proceed in the same manner as in the original hearing. Welf & I C §637.

1. [§116.38] Rehearing for Lack of Notice or When Preparers of Reports Are Unavailable

The clerk must set a rehearing within 24 hours (excluding nonjudicial days) of receipt of an affidavit stating that the parent or guardian did not receive actual notice of a detention hearing. Welf & I C §637; Cal Rules of Ct 5.762(a). If the court determines that the parent or guardian received adequate notice but nevertheless failed to appear, the court must deny a request for a rehearing unless it finds that there was good cause for the failure to appear. Cal Rules of Ct 5.762(b).

If the preparers of the reports considered by the court were not available to attend the detention hearing, the child or his or her counsel may request a rehearing in order to confront and cross-examine these witnesses. Welf & I C §637; see Cal Rules of Ct 5.762(c).

2. [§116.39] Prima Facie Hearing

If the court orders the child detained, and the child or the child's attorney requests that evidence of a prima facie case be presented, the court must set a prima facie hearing within three judicial days or, if witnesses are unavailable, within five judicial days. Welf & I C §637; Cal Rules of Ct 5.764. If, at the hearing, the court finds that no prima facie case has been made, the child must be released from custody. Cal Rules of Ct 5.764(b).

3. [§116.40] Proceedings Before Referees

Within ten calendar days after service of findings or orders that were made by a referee who was not acting as a temporary judge, the child,

parent, or guardian may apply for a rehearing. Welf & I C §252; Cal Rules of Ct 5.542(a). The application must contain a brief statement of the reasons for requesting the rehearing and may be directed to all or part of the findings or orders. Welf & I C §252; Cal Rules of Ct 5.542(a).

If there is a transcript, the judge has discretion to grant or deny the motion for rehearing after reviewing the transcript. Welf & I C §252; Cal Rules of Ct 5.542(c). If the proceedings were not recorded by a court reporter or by other authorized reporting procedure, the judge *must* grant the rehearing. Welf & I C §252; Cal Rules of Ct 5.542(b). The application for rehearing is deemed granted if not denied within 20 calendar days following receipt of the application, or within 45 calendar days if the court extends the time for good cause. Welf & I C §252; Cal Rules of Ct 5.542(c).

Judges may also order rehearsings on their own motion. Welf & I C §253; Cal Rules of Ct 5.542(d) (rehearsings must be ordered within 20 court days). See also *In re Clifford C.* (1997) 15 C4th 1085, 1093, 64 CR2d 873 (court may order a rehearing until ten calendar days from service of referee's order or 20 judicial days after hearing, whichever is later).

Detention rehearsings must be conducted de novo before a judge within two court days after the rehearing is granted. Welf & I C §254; Cal Rules of Ct 5.542(e).

- **JUDICIAL TIP:** It is important to set the rehearing in a timely manner because otherwise the jurisdiction hearing will have occurred before the detention rehearing takes place, and detention will no longer be an issue.

O. [§116.41] Arrest Warrants for Parents and Child

If the parents fail to appear at a scheduled detention hearing for which notice has been given, the court may issue an arrest warrant for either the parent or guardian or the child's current caregiver. See Welf & I C §662; Cal Rules of Ct 5.526(b). The court may also issue an arrest warrant for the child if the court finds that the child's conduct may endanger the child or others or that the home environment endangers the child, or if personal service has been unsuccessful and the child's whereabouts are unknown. Welf & I C §663; see Cal Rules of Ct 5.526(c). Welfare and Institutions Code §663 was amended in 2000 as part of Proposition 21 to eliminate the requirement that all reasonable efforts to locate the minor and personally serve him or her have failed; this raises the issue of what level of effort *is* required in order to find that personal service is unsuccessful or the child's whereabouts are unknown.

P. Findings

1. [§116.42] Generally

Before detaining the child, the court must consider whether continuation in the home would be contrary to the child’s welfare and whether there are services that would prevent the need for further detention. Welf & I C §636(d); see Cal Rules of Ct 5.760(d).

- **JUDICIAL TIP:** If grounds for detention are not found but the court finds that it would be detrimental for the child to remain in the home, the court must order the child to be placed outside the home in a nonsecure setting or facility. In such a case, the probation department might initiate an assessment under Welf & I C §241.1 (see discussion in §116.32) to determine whether the child should be part of the delinquency or the dependency system. Even without initiating such a process, however, the child’s counsel may contact DSS to ensure that the child is placed temporarily in the custody of an appropriate adult. See *In re Angel M.* (1997) 58 CA4th 1498, 1505 n8, 68 CR2d 825.

If the court finds that it would *not* be contrary to the child’s welfare to remain in the home, it must not detain even if grounds for detention have been found. See Welf & I C §636(d); Cal Rules of Ct 5.760(d).

In considering whether to detain, the court must look to the circumstances and gravity of the alleged offense, in conjunction with other factors (see §§116.43–116.47), to determine whether detention is an immediate and urgent necessity for the protection of the child or the person or property of another. Welf & I C §635. In ordering the child detained, the court must state facts on which the removal was based and order services as soon as possible if appropriate. Welf & I C §636(d)(2), (3)(A); see Cal Rules of Ct 5.760(d). If the child can be returned home at this hearing, by means of the provision of services, the court must order those services. Welf & I C §636(d)(1).

- **JUDICIAL TIP:** It is important for the judicial officer to know what services are available and to become familiar with both in-house services and those of community-based organizations.

To order the child detained, the court must find

(1) A prima facie showing that the child is described by Welf & I C §602 (see Welf & I C §635); and

(2) One or more of the grounds for detention exist, and that continuing in the home would be contrary to the child’s welfare. Welf & I C §§635, 636(a); see Cal Rules of Ct 5.758(a), 5.760(c). The grounds for

detention include the following (Welf & I C §636(a); Cal Rules of Ct 5.760(c)):

- The child has violated a court order.
- The child has escaped from commitment.
- The child is likely to flee and continuing in the home would be contrary to the child's welfare.
- Detention is needed for immediate and urgent protection of the child.
- Detention is reasonably necessary for the protection of the person or property of another.

A court may not establish a rule that all juveniles accused of a specified type of offense should automatically be detained. *In re William M.* (1970) 3 C3d 16, 30, 89 CR 33.

2. [§116.43] Violation of Court Order

In determining whether to detain the child because of violation of a court order (see Welf & I C §636(a); Cal Rules of Ct 5.760(c)(1)), the court must consider (Cal Rules of Ct 5.760(g)):

- How specific the court order violated was.
- Nature and circumstances of the violation.
- Severity and gravity of the violation.
- Whether the violation endangers the child or others.
- Prior history of disobedience of court or probation department orders.
- Whether the child's presence in court can be ensured without detention.
- Nature of the underlying offense.
- Likelihood that the child will be ordered removed from the physical custody of the parent or guardian.

3. [§116.44] Escape From Commitment

In determining whether to detain the child for escape from commitment (see Welf & I C §636(a); Cal Rules of Ct 5.760(c)(2)), the court must consider whether (Cal Rules of Ct 5.760(h)):

- The child has been committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) or to a county juvenile home, ranch, camp, or juvenile hall; and

- The child escaped from commitment or from the custody of a person in whose custody the child was placed during commitment.

4. [§116.45] Likelihood of Flight

In determining whether the child would be likely to flee and that continuing in the home would be contrary to the child's welfare (see Welf & I C §636(a); Cal Rules of Ct 5.760(c)(3)), the court must consider whether (Cal Rules of Ct 5.760(i)):

- The child has previously fled or failed to appear in court;
- The child's parent or guardian is willing and able to ensure the child's presence at court appearances;
- The child promises to appear at scheduled court appearances;
- The child has a prior history of disobedience of court or probation department orders;
- The child is a county resident;
- The nature of the offense increases likelihood of flight;
- There is an unstable home or school situation, making flight likely; and
- The child would probably be released on modest bail if there were no danger to the child and this were adult court.

5. [§116.46] Protection of Child

In determining whether to detain the child for his or her own protection (see Welf & I C §636(a); Cal Rules of Ct 5.760(c)(4)), the court must consider whether (Cal Rules of Ct 5.760(j)):

- There are means to ensure the child's care and protection until the next court appearance;
- The child is in danger from, or addicted to, a controlled substance or alcohol; and
- There are other compelling circumstances that make detention an immediate and urgent necessity.

➤ **JUDICIAL TIP:** When the child is detained because of his or her own protection (a ground that is often used when there is family dysfunction), it is important to give the removal decision the same thought as when removing the child from the family in a dependency situation. Sometimes it is as difficult returning a delinquent child to the home as it is a dependent child.

6. [§116.47] Protection of Other’s Person or Property

In determining whether to detain the child for the protection of another’s person or property (see Welf & I C §636(a); Cal Rules of Ct 5.760(c)(5)), the court must consider the following (Cal Rules of Ct 5.760(k)):

- The offense involved physical harm to another’s person or property,
- There was prior history of physical harm or the substantial threat of physical harm to another’s person or property, and
- Other compelling circumstances make detention reasonably necessary.

7. [§116.48] IV-E Removal Findings

In order to render a county eligible for federal funding when a child is placed in a group home or foster care, if the child has been ordered detained, federal law (known as Title IV-E because it is contained in title IV, part e of the Social Security Act), as well as Welf & I C §636(d) and Cal Rules of Ct 5.760(c)–(f), require the court to make the following findings both in the record and in the written minute orders:

- Continuance in the home of the parent or legal guardian would be contrary to the child’s welfare;
- The probation officer is given temporary placement and care pending disposition or further court order; and
- Reasonable efforts have been made to prevent or eliminate the need for removal; the probation officer must provide services as soon as possible to enable the parent or guardian to obtain the assistance necessary to allow the child to return home.

➡ **JUDICIAL TIP:** The reasonable efforts finding must be the result of a genuine inquiry. If no amount of efforts would help the child return home, then not providing services would be reasonable.

See Welf & I C §636(d); Cal Rules of Ct 5.760(c)–(f). See generally 42 USC §§671–672 (findings required when placing children in foster care or group homes); and the Appendix.

If the judge does not make these findings at the first possible opportunity, the county may never be eligible for Title IV-E federal foster care funding for that child. See 45 CFR §1356.21(b)(2)(ii).

☛ JUDICIAL TIPS:

- It is recommended that these three findings be made at detention. They are of paramount importance because if they are not made and the child is placed in a IV-E eligible placement, the court and the county would be required to reimburse the federal government for the total cost of the child's placement. This could amount to thousands of dollars (an average monthly cost for a typical group home placement is \$4000).
- If the child is detained at home on electronic monitoring or home supervision pending the probation department finding a suitable placement, it is recommended that all the removal findings be made as soon as possible after the child is removed and placed, but in no event later than one judicial day after placement. See Welf & I C §636(d); Cal Rules of Ct 5.760(d).
- A signed detention order by the judge showing the IV-E removal findings must be in the eligibility file maintained by the local social services eligibility worker. Although the judge's signature on the clerk's minutes may be sufficient, the better practice is to also state the findings on the record
- It is essential to make the "contrary to the child's welfare" finding the first time the court considers the case if the child has been removed, even if the court is just granting a short continuance. See Welf & I C §636(d); Cal Rules of Ct 5.550(c)(2). Failure to make this finding when granting a continuance may also result in permanent loss of foster care federal funding.

8. [§116.49] Taking an Admission or No-Contest Plea

On an admission or no-contest plea, the court must make all of the following findings noted in the minutes of the court (Cal Rules of Ct 5.788(f)):

- Notice has been given as required by law.
- The birth date and county of residence.
- The child has knowingly and intelligently waived the following rights:
 - To have a hearing on the issues,
 - To confront and cross-examine adverse witnesses,
 - To use the court's process to compel attendance of witnesses on the child's behalf, and

- To assert the privilege against self-incrimination.
- The child understands the nature of the conduct alleged in the petition and the consequences of an admission or no-contest plea.
- The admission or no-contest plea is freely and voluntarily made.
- There is a factual basis for the admission or no-contest plea.
- The allegations in the petition that are admitted are true.
- The child is described by Welf & I C §601 or §602.
- The degree of the offense and whether it would be a misdemeanor or felony had the offense been committed by an adult. These determinations may be deferred until the disposition hearing. See *In re Manzy W.* (1997) 14 C4th 1199, 1210–1211, 60 CR2d 889 (if an offense would be a wobbler if committed by an adult, the court must consider which description applies and state on the record both that it has made this consideration and the results of its determination).

The court must state on the record that it is satisfied that the child understands the allegations and the direct consequences of the admission and also understands and waives the rights set out in Cal Rules of Ct 5.788(b) (see §116.28). Cal Rules of Ct 5.788(c). Because there is no delinquency provision analogous to Pen C §859a, a juvenile cannot withdraw a plea made in a neighboring county after transfer under Welf & I C §750. *In re Brandon H.* (2002) 99 CA4th 1153, 1156, 121 CR2d 530.

- **JUDICIAL TIP:** Most judges recommend that the child must show that he or she understands the petition’s allegations, and that the court must explain those allegations in language most likely to be fully understood by the child.

Q. [§116.50] Orders

At the close of the detention hearing, the court may make the following orders:

- No detention; the court finds that continuance in the home would not be contrary to the child’s welfare (Welf & I C §636(d); Cal Rules of Ct 5.758(a)(2), 5.760(e)); the child returns to the custody of the parent or legal guardian (see Welf & I C §§635, 636(d); see Cal Rules of Ct 5.758). The court must also order reasonable services if provision of these services would permit the child to be returned to his parent or guardian. Welf & I C §636(d)(1).

- Release (detention) on home supervision for no more than 15 court days unless there is a time waiver. Welf & I C §636(b). Conditions of home supervision may include:
 - Electronic surveillance, and
 - Restraining orders as a condition of release on home supervision (see Cal Rules of Ct 5.760(l)).
- Detention if the court finds that continuance in the home would be contrary to the child’s welfare and that one or more grounds for detention applies (Welf & I C §636(a); Cal Rules of Ct 5.760(c):
 - The child has violated an order of the court;
 - The child has escaped from a commitment of the court;
 - The child is likely to flee the jurisdiction of the court;
 - It is a matter of immediate and urgent necessity for the protection of the child; or
 - It is reasonably necessary for the protection of the person or property of another.

➤ **JUDICIAL TIP:** When the court finds that it is contrary to the child’s welfare to remain in the home, the court will undoubtedly be able to find that detention is a matter of necessity for the protection of the minor (see Welf & I C §636(a)). If that is the only §636(a) ground, it is probably a situation in which the probation officer should work with DSS to place the child in a suitable home after a Welf & I C §241.1 investigation to determine whether the child will be best served in the delinquency or dependency system.

Orders for detention may be made only after notice and notification of the right to counsel. *In re Ryan B.* (1989) 216 CA3d 1519, 1527, 265 CR 629 (court may not order detention of unrepresented nondetained child who is before the court at a pretrial hearing when the court disagrees with the probation officer’s decision not to detain).

In addition to the orders mentioned above, the court may direct its orders to the parent or guardian as necessary for the best interests of the child, and these orders may concern the child’s care, supervision, custody, conduct, maintenance, education, medical treatment, and support. Welf & I C §245.5.

1. [§116.51] Home Supervision in Lieu of Detention

If the court finds that the child meets one or more of the criteria for detention but confinement is not necessary, the court must place the child

on home supervision for a period not to exceed 15 judicial days. Welf & I C §636(b). An order for home supervision must be placed on the record. Welf & I C §636(b). The court may also direct the probation department to determine the child's eligibility for informal supervision. *Paul D. v Superior Court* (1984) 158 CA3d 838, 843, 205 CR 77.

After detaining the child on home supervision, the court may continue, modify, or augment any conditions of release imposed by the probation officer or impose new conditions if the child is released for the first time. Welf & I C §636(b). If there are new or modified conditions, the child must sign a written promise to obey them under Welf & I C §628.1. Welf & I C §636(b). In addition, as a condition for release, the probation officer may require the child, the parent or guardian, or both to sign a written promise that either or both of them will appear at the juvenile hall or other suitable place at a designated time. Welf & I C §629(a). When a child is 14 years old or older and has been taken into custody for the commission or attempted commission of a felony, he or she may not be released until the child, the parent or guardian, or both have signed a written promise to appear or have been given an order to appear in court. Welf & I C §629(b).

➤ **JUDICIAL TIP:** Some standard conditions for home supervision are:

- Attend school,
- Participate in counseling,
- Seek a job,
- Observe curfew,
- Abstain from use of alcohol or other drugs,
- Agree to searches and seizures,
- Agree to periodic drug tests,
- Obey parents,
- Behave in school, and
- Commit no violations of law.

In reviewing a probation officer's decision *not* to place a child on home supervision, the judge must exercise independent discretion as to whether informal supervision is appropriate. *In re Armondo A.* (1992) 3 CA4th 1185, 1189, 5 CR2d 101. The refusal to admit the wrongdoing is not a basis for denying home supervision. *Paul D. v Superior Court, supra*, 158 CA3d at 842.

In placing conditions on home supervision, the court should consider restraining the following kinds of activities:

- Molesting, assaulting, or otherwise having contact with the alleged victim and his or her family;
- Being in a particular area or building; and
- Associating with or contacting (by phone, in writing, or in person) anyone alleged to have been a companion in the alleged offense.

There is no credit for time spent in home detention or detention in a nonsecure facility (see §116.51). *In re Randy J.* (1994) 22 CA4th 1497, 1506, 28 CR2d 152.

➤ JUDICIAL TIPS:

- Although allowing the child to return home on home supervision is a detention for purposes of the time requirements for setting a jurisdiction hearing, it is not considered detention for the purposes of funding.
- It is advisable to make the required findings set out in §116.48 when making a home supervision order, since failure to make them at a subsequent hearing for a violation of the home supervision conditions could result in no funding for detention or placement.
- If the child violates conditions of home supervision, the reasonable efforts findings set out in §116.48 *must* be made at the hearing at which the child *is* detained in a facility.

2. [§116.52] Nonsecure Facilities

Children who are not considered escape risks nor a danger to themselves or others or to property may be detained in a nonsecure facility. Welf & I C §636.2. Factors to be considered for detention in such facilities include (Welf & I C §636.2):

- The nature of the offense;
- The child's previous record, including escapes;
- The child's lack of criminal sophistication; and
- The child's age.

A child who leaves a nonsecure facility without permission may be housed in a secure facility after being apprehended, pending a detention hearing under Welf & I C §632. Welf & I C §636.2.

3. [§116.53] Placement With Dependent Children

When a child who is already a dependent is detained on a Welf & I C §602 petition, the court may not place the child in a facility in which dependent children are housed. *Los Angeles County Dep't of Children &*

Family Servs. v Superior Court (2001) 87 CA4th 320, 324, 104 CR2d 425; see Welf & I C §206 (requiring separate facilities for dependents and delinquents). Instead, the court must make a placement decision following the expeditious determination of the child's status under Welf & I C §241.1. *Los Angeles County Dep't of Children & Family Servs., supra*, 87 CA4th at 326.

4. [§116.54] Detention in Adult Facility

Under Welf & I C §207.1(a) and Cal Rules of Ct 5.758(b), the court may not consider detaining the child in a facility used to confine adults unless (Welf & I C §207.1(b)):

- The child is alleged to have committed an offense listed in Welf & I C §707(b) (generally serious or violent felonies), and
- The child's case has been transferred to criminal court under Welf & I C §707.1 after a finding of unfitness, or
- The child has been charged directly in or transferred to criminal court under Welf & I C §707.01.

A child who is eligible for detention in a facility used to confine adults may not be confined in such a facility unless all the following conditions are met (Welf & I C §207.1(b)):

- The juvenile or criminal court finds that the child's further detention in the juvenile hall would be dangerous to public safety or detrimental to the other children in the juvenile hall,
- Contact between the child and adults in the facility is restricted (see Welf & I C §208), and
- The child is adequately supervised.

The court may also confine a person in an adult facility who is no longer a minor although he or she was a minor when the offense was committed. See Welf & I C §208.5.

5. [§116.55] Psychological, Medical, and/or Rehabilitative Evaluation and Treatment

If the court believes a child needs specialized psychiatric treatment while unable to live in his or her home, the court shall refer the matter to the county mental health department. Welf & I C §635.1. In addition, the court may order that the probation department obtain the services of a psychiatrist, psychologist, physician, or other clinical expert regarding diagnosis and treatment of the child. Welf & I C §741. If drug or alcohol abuse seems to be involved, the cost should be borne by the county from state or federal funds designated for drug or alcohol treatment. Welf & I C §741.

In any county in which a mental health program has been established under Welf & I C §710, the court may order a child who appears to have a serious mental, emotional, or developmental problem to be evaluated under Welf & I C §712. Welf & I C §711(a). The child may, with the approval of counsel, decline the referral. Welf & I C §711(a). This referral may occur at any time, and the results of the evaluation may be used at the disposition stage. See Welf & I C §713.

6. [§116.56] Restraining Orders

Once a petition has been filed, the juvenile court may issue restraining orders under Welf & I C §213.5, using a Judicial Council form provided for this purpose. Welf & I C §213.5(i); Cal Rules of Ct 5.625(a), 5.630. The court may issue these orders ex parte, on application, as provided in CCP §527 Welf & I C §213.5(a); see Cal Rules of Ct 5.630(e). If issued ex parte without notice, an order to show cause must be made returnable on the earliest day the business of the court permits, but not later than 15 days from the issuance of the order, or 20 days if good cause appears to the court for the later date. Welf & I C §213.5(c). The court may shorten the time for service on its own motion or may reissue a previously issued order if the person to be restrained could not be served in a timely manner. Welf & I C §213.5(c). This hearing may be combined with any other regularly scheduled hearing regarding the child. Welf & I C §213.5(c).

The court may also issue restraining orders after notice and a hearing and, once issued, should state the time period for the order on its face. Welf & I C §213.5(d), (f) (not to exceed three years). Under Welf & I C §213.5(a), the juvenile court may issue the following orders during the pendency of a dependency proceeding:

Enjoining any person from child who is the subject of the proceedings or any other child the household

Excluding any person from the residence of the person having custody of the child

The showing necessary to exclude a person from the child's dwelling is that required for removal of a child from the parent's custody. See Welf & I C §361(c). Restraining orders may be issued excluding a person from the child's residence only when the evidence shows that the person seeking the order has a right under color of law to possession of the premises. Welf & I C §213.5(e)(2)(A).

Once the restraining order is issued, the court must order Welf & I C §213.5(g).

Unless there is good cause not to, the court must also order that any party enjoined under Welf & I C §213.5 be prohibited from doing anything

to obtain the address or location of a protected party, or the family or caretaker of that party. Welf & I C §213.7.

Willful and knowing violation of a restraining order issued under Welf & I C §213.5 is a misdemeanor punishable under Pen C §273.65. Welf & I C §213.5(h).

R. [§116.57] Service of Findings and Orders

Written findings and orders must be personally served by the clerk or served by first class mail within three judicial days of issuance on the petitioning agency (the probation department), the child or child's counsel, and the parent or guardian or the parent's or guardian's counsel. Welf & I C §248.5.

S. [§116.58] Setting Other Hearings

Any fitness hearing must be held, and the court must rule on the fitness issue before the jurisdiction hearing is held. Cal Rules of Ct 5.766(c). Notice of the fitness hearing must be given at least five judicial days before the hearing. Cal Rules of Ct 5.766(b). In these situations, the attorneys often waive time for the jurisdiction hearing, so that the fitness hearing may be set far enough in the future to permit the attorney to investigate and prepare for the hearing.

In all other cases, if the child is not detained, the jurisdiction hearing must begin within 30 calendar days from the date the petition was filed. Welf & I C §657; Cal Rules of Ct 5.774(a).

- **JUDICIAL TIP:** Judges will often obtain a time waiver when a nondetained child first appears.

If the child has been detained, the jurisdiction hearing must be held within 15 judicial days of the date of the detention order, and if, absent a time waiver, the jurisdiction hearing is not heard within that time, the court must dismiss the petition and release the child from custody. Cal Rules of Ct 5.774(d). Although the prosecutor may refile the petition, the child may not be detained again on these allegations. Cal Rules of Ct 5.774(b), (d). Indeed, the court must reset the jurisdiction hearing according to the time prescribed for nondetained juveniles. *In re Robin M.* (1978) 21 C3d 337, 346-347, 146 CR 352.

Some courts set an appearance between the detention and the jurisdiction hearings to either resolve the matter or ensure that both sides are prepared for the jurisdiction hearing. This pretrial, settlement, or readiness hearing must be held before the time set for the jurisdiction hearing (15 days if in custody, 30 if not).

T. [§116.59] Confidentiality

The probation officer or any party may petition the court to prohibit public disclosure of any file or record. Welf & I C §676(e). The court must prohibit disclosure if it finds that harm to the child, victims, witnesses, or public from the disclosure outweighs the benefit of public knowledge. Welf & I C §676(e).

Once the child has been found to have committed one of the offenses listed in Welf & I C §676(a), that child's name cannot be kept confidential, unless the court orders confidentiality for good cause. Welf & I C §676(c).

IV. FORMS

A. [§116.60] Spoken Form: Conduct of Detention Hearing

(1) Introduction

(2) Appointment of attorney for child and parent(s)

[If the child and parents are unrepresented by counsel:]

You [*name of child*] have a right to have an attorney represent you during this detention hearing, and during all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or:]

The court has reviewed the financial declaration of [*name of parent or guardian*] and finds that [*name of child*] is entitled to appointment of counsel. At this time, the court appoints [*the public defender/ _____*] to represent [*him/her*]. If it is later found that [*name of parent or guardian*] can afford to pay for the attorney's services, [*name of parent or guardian*] will have to reimburse the county for the cost of appointed counsel.

[If child attempts to waive right to counsel:]

This is a serious and important matter. If the court finds that grounds for detention exist, this hearing could result in your [*being held/continuing to be held*] in [*juvenile hall/other facility*]. Eventually, if the court finds that you have done the acts that are written in the petition, you may be sent to [*Division of Juvenile Justice (DJJ)/ranch/camp/other facility*]. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

Note: If the child still seeks self-representation, some judges might go to (3) below and explain the juvenile court process at this point. In addition, some judges might go further and have a *Faretta*-type dialogue with the child.

You would be better off with a lawyer. The lawyers in the Public Defender's Office are highly qualified to handle juvenile delinquency cases. They possess a good knowledge of juvenile court law, juvenile court procedure, and the workings of this court. Why don't you let me appoint one for you so that you can meet with him or her to discuss your case. After you discuss the case with the lawyer, you can evaluate your situation, see how you get along with the attorney, and then decide if you still want to act as your own lawyer.

[If the child agrees, appoint counsel and continue the case for a short period. If the child insists on self-representation, continue:]

Before I can allow you to represent yourself, you must convince me that you know what you are doing. I will go over with you the dangers and disadvantages of your proceeding without a lawyer and what could happen if I let you act as your own lawyer. You must convince me that you are knowingly and intelligently giving up your constitutional right to have this court appoint a lawyer to represent you.

Do you understand that you will be up against an experienced prosecuting attorney who will try your case and that neither *[he/she]* nor the court will assist you or otherwise provide special treatment to you?

Do you understand that you will have to follow all the technical rules of law, procedure, and evidence, just as a lawyer must?

Do you understand that, depending on the stage of the proceedings, should you decide that you no longer want to represent yourself, the court may deny you the opportunity to change your mind and to have a lawyer appointed?

The right to act as your own lawyer is not a license to abuse the dignity of this court. If the court determines that you are doing that by engaging in deliberate misbehavior that is causing disruption in the trial proceedings, the court will terminate your right to self-representation. Do you understand that?

Suppose that should happen. Do you understand how difficult it will be for a lawyer to be appointed in the middle of your case and represent you with any degree of success?

Do you still want to represent yourself?

[When applicable, add:]

The court now finds that *[name of child]* and *[his/her]* parents have intelligently waived the right to counsel at this hearing.

(3) Explanation of procedure

I am going to explain to you what happens at these juvenile court proceedings. There has been a petition filed by the district attorney's office, claiming that you *[explain the nature of the charges in simple terms]*. You were taken into custody because: *[Specify]*

☛ **JUDICIAL TIP:** Many judges ask counsel whether reading of the petition and rights are waived.

In determining what should happen, you will participate in juvenile court proceedings that are divided into several separate hearings.

First, there will be a detention hearing. This is what is happening here today. The purpose of this hearing is to decide whether you should [*remain/be placed*] in custody or [*remain/be placed*] on home supervision from today until the date of the jurisdiction hearing, which has been set for _____, 20__.

[If a fitness hearing is sought:]

After this hearing, there will be a fitness hearing in which the court will determine whether [*name of child*] will be fit for juvenile court. If the court finds that [*name of child*] is unfit, [*name of child*] will be tried in adult criminal court.

When you appear in court on _____, 20__, for the jurisdiction hearing, the court will decide whether the statements contained in the petition that has just been read are true. If the court finds them not true, the court will dismiss the case. If the court finds them to be true, the court will conduct a disposition hearing.

The purpose of a disposition hearing is to decide what placement action, if any, the court should make in view of what has been found to have happened.

(4) Waiver of advisement of rights

[To counsel:]

Does your client waive advisement of rights?

[Or:]

(5) Advisement of rights

The court will explain the additional constitutional rights (in addition to right to counsel) that [*name of child*] has.

These are:

- The right to remain silent. This means that [*name of child*] need not tell us anything about the offense charged in the petition. If [*name of child*] chooses to speak, anything [*he/she*] says can and will be used today by the court in deciding whether [*name of child*] should be detained. Do you understand this right? Do you have any questions about it?
- The right to see, hear, and question all witnesses who may be examined at this hearing.

- The right to cross-examine, which means ask questions of, any witness who may testify at this hearing.
- The right to present evidence and to use the court’s subpoena power to bring witnesses to court to testify on your behalf.

[Address the child and the parents:]

Do you understand these rights? Do you have any questions?

(6) Admission or no-contest plea

If you would like to enter a plea of no contest or admission, you must understand that you are giving up the following rights (Cal Rules of Ct 5.788(b)–(c)):

- The right to a jurisdiction hearing,
- The right to assert the privilege against self-incrimination,
- The right to confront and to cross-examine any witness called to testify against you, and
- The right to use the court’s process to compel the attendance of witnesses on your behalf.

Do you understand that the offense that you admit having committed may be considered a strike under the three strikes law, which means that you may be given a harsh sentence if you commit future offenses?

Is this your personal decision? Does child’s counsel consent?

(7) Evidence

Will the probation officer explain to the court the facts and circumstances under which *[name of child]* was taken into custody, the grounds on which *[name of child]* was originally detained, and the grounds on which detention should continue?

[The judge reads the written probation report(s) that the child and parents should have had an opportunity to review and acknowledges on the record that he or she has read and considered the police reports if that is the case.]

The court receives into evidence the report dated _____, 20__.

[The court should orally examine the child, if present, and the parents or other persons for relevant knowledge bearing on the grounds for detention and on the prima facie case, and allow cross-examination of any witness who wishes to testify:]

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether [*name of child*] should [*remain/be placed*] in custody or [*remain/be placed*] on home supervision.

B. [§116.61] Spoken Form: Findings and Orders

(1) Introduction

The court has read and considered [*name the documents, e.g., the petition or the probation report dated _____, 20__*, and attached documents]. The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

(2) Detention

The court finds that continuation in the home [*would/would not*] be contrary to the child's welfare.

For a discussion of how to proceed if there is no basis for detention but it is contrary to the child's welfare to remain in the home, see §116.42. If the converse situation is true (the court finds that it would not be contrary to the child's welfare to remain in the home but grounds for detention exist), it must not detain. See Welf & I C §636(d).

[*No detention/no prima facie case.*]

The court finds that no prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 602, nor do any of the circumstances outlined in Welfare and Institutions Code sections 635 and 636(a) apply. [*Name of child*] should not remain in detention and is hereby released to the custody of [*his/her*] [*parent(s)/guardian(s)*].

[*Detention/Prima facie case.*]

Good cause appearing, the court finds that a prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 602 because of [*list facts*]. In addition, the circumstance[s] outlined in Welfare and Institutions Code sections 635 and 636(a) apply[ies]. [*List one or more circumstances and provide reasons for the conclusions as follows:*]

- (a) The child has violated a court order.
- (b) The child has escaped from a commitment.
- (c) The child is likely to flee.
- (d) Detention is needed for immediate and urgent protection of the child.

(e) Detention is reasonably necessary for the protection of the person or property of another.

(3) Reasonable efforts findings

The court also finds that under California Rules of Court 5.760(e):

(a) The probation officer is given temporary placement pending disposition or further court order.

(b) Reasonable efforts have been made to *[prevent/eliminate the need for]* removal.

Note: These findings must be made on the record and in the written orders. Cal Rules of Ct 5.760(e).

(4) Initial removal

Removal from the home was necessary initially because *[list reasons]*.

(5) Provision of Services

The following services must be provided in order to facilitate the child's return home: *[list services]*.

(6) Release on home supervision

[Name of child] is released on home supervision under the following conditions: *[specify; see §116.50 for examples of conditions]*.

(7) Detention in juvenile hall

[Name of child] will be detained in the juvenile hall pending the jurisdiction hearing.

(8) Admission or no-contest plea

The court finds that the child understands the nature and consequences of the *[plea/admission]* and that counsel consents. You are ordered to appear at a disposition hearing on _____, 20__, at _____ *[a.m./p.m.]*, in Department _____.

[If no admission or no-contest plea:]

(9) Next hearing

You are ordered to be present at the *[jurisdictional hearing/fitness hearing]* on _____, 20__, at _____ *[a.m./p.m.]*, in Department _____.

Do you have any questions about the court's order or what is going to happen?

C. [§116.62] Sample Form: Advisement and Waiver of Rights

In the Superior Court of the State of California
County of _____

In re the Matter of _____

Case No. _____

Statement of Advisement and Waiver of Rights

My name is _____. I have reviewed my rights with _____, who has [not] been [retained/appointed] to be my attorney.

[] 1. I have seen the video advisement of rights, or I have been read a transcript of the video advisement of rights by _____.

[] 2. I am charged with the following offenses in the petition dated _____, 20 _____:

Table with 4 columns: Count, Code Section, Nature of the Offense, Maximum Time in Custody. Rows 1-5.

[] 3. There are _____ offenses listed on a separate page. I have also initialed each of them.

[] 4. Trial Rights

[] I understand that I have a right to a trial.

[] At that trial I have the right to see and hear the witnesses who will testify against me.

[] I also have the right to have those witnesses questioned by my attorney.

[] I have the right to have my own witnesses at the trial to tell my side of the story.

[] If my witnesses will not come voluntarily, I have the right to have them ordered to be present at no cost to me.

- I have the right to testify as a witness.
- I have the right to be silent in court and not say anything that would help the District Attorney's office prove the charges against me.
- 5. I want this kind of a trial, and I do not give up any of my rights.
- 6. I do not want this kind of a trial. I want to give up each one of the trial rights that I have just initialed and admit to the court that I am responsible for the behavior listed in Count(s) _____.
- 7. No threats have been made to force me to give up my trial rights.
- 8. As a result of my admission today I will have _____ years _____ months of lockup time. I already have _____ years _____ months from previous petitions.
- 9. I admit the 777 petition and acknowledge that I violated the terms of my probation.

Agreements

- 1. I agree that restitution may be ordered on Count(s) _____ even though it has been dismissed.
- 2. I agree that the decision about whether Count(s) _____ will be a felony or a misdemeanor may be made at a time prior to the termination of probation based on how I do on probation.
- 3. I agree that if the court reads the probation/police report, there are facts that will support my admission.
- 4. The following promises have been made to me as a part of my decision to admit:
 - a. Count(s) _____ will be dismissed.

b. _____

Probation Violation

- 1. I understand that I am charged with violating the terms of my probation.
- 2. I understand that if I get in more trouble in the future, more time will be added to my maximum time.

3. I understand that even if my lockup time is not used in this case, it is available in the future and may be used as a consequence for any violation of my probation.
4. I know that if I am ever committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), the calculation of time may result in a number of years in custody that is different, but not more than the maximum time stated here.

Consequences of Admission

1. I can be sent home on probation or removed from my home and placed in a foster home or group home or in the home of a friend or relative that is approved by the court.
2. I can be locked up at the _____, a camp, the DJJ, or County Jail after my 18th birthday.
3. There are some mandatory fines the court will order me to pay as well as other fines and community work service that can be ordered.
4. I will be required to pay the victim the damages that I caused.
5. I will remain on probation until I have completed my obligations to the court and my community.
6. I can remain on probation until I am 21, unless I am sent to the DJJ.
7. The DJJ may keep me until my 25th birthday if I am sent there for certain offenses.

Knowledge of Wrongfulness

1. I was under the age of 14 when I committed the offense listed in Count(s) _____.
2. At the time I committed the offense, I knew that what I was doing was wrong.

Additional Consequences

(Check only those items that apply to your case)

Driver's License Consequences:

1. For admitting to an alcohol or drug-related offense, I will lose my driving privilege for one year. I may be able to get a restricted license if I have only one such offense on my record. For each additional offense for which I am found to be responsible between now and my 21st birthday, I will absolutely lose my license until I have been offense-free for one year. The year for each suspension starts when any earlier year of suspension ends. For admitting to a vandalism, I will lose my license for up to two years. For admitting to an offense involving a firearm, I could lose my license for 5 years.

- 2. My driving privilege has been previously suspended until [date]. It will now be suspended until [date].
- Notice to School:** I understand that my admission to Count(s) _____ will require the Superior Court Clerk to notify my school of my responsibility for that count. The school will keep that information in my file until I graduate from high school.
- Immigration:** I understand that my admission to the counts in this petition can prevent me from ever being able to legally enter the United States of America or become an American citizen.
- Special Consequences:** I understand that my case has additional consequences that are stated on the attached page. I have read that page and my attorney has explained it to me.

Minor’s Declaration

I, _____, declare that I reviewed each of these rights with my attorney before I initialed them. I understand what each of the rights means. I freely and voluntarily give up my rights to a trial and ask to enter my admission.

- 1. I understand that I have a right to have an attorney represent me, and I understand that _____ is my attorney.
- 2. I have reviewed this form with _____ who will not be acting as my attorney in court. I give up my right to have an attorney with me in court.

 Minor

Attorney’s Declaration

I, _____, am an attorney licensed to practice law in the State of California. I have fully advised the minor of each of the rights involved in this case as initialed above by the minor. I stipulate that there is a factual basis for the admission based on the [probation/police report].

I have been:

- 1. Retained for the entire case.
- 2. Retained for the purpose of advising the minor only because the minor wants to proceed without counsel.
- 3. Appointed by the court to represent the minor as a[n] [alternate/conflict] public defender.
- 4. Appointed subject to reimbursement.

 Attorney at Law

Order

The court accepts the Statement of Advisement and Waiver of Rights prepared by the minor and counsel and orders it filed.

Date: _____

[Judge/Referee/Commissioner of the Superior Court]

Supplemental Advisement

I understand that if I am ever sent to the California Department of Correction and Rehabilitation, Division of Juvenile Justice (DJJ), my admission to Count(s) _____ of the petition filed on _____, will require me to register with the local police department as a sex offender in every place I live, for the rest of my life.

I understand that the victim or the District Attorney may ask the court to order that I be tested for AIDS and other sexually transmitted diseases and that the results will be made available to the victim and others who are entitled by law to have the information.

I understand that the offense listed in Count(s) _____ of the petition would qualify as a “strike” under the three strikes law if I were an adult.

_____ I also understand that it may count as a strike for me.

_____ I understand that if I am sent to prison as an adult in the future, this offense may cause my time in custody to be doubled.

Interpreter’s Declaration

I, _____, am a [certified/uncertified] interpreter from _____ into English. I interpreted for the [minor/parents].

1. I have read the transcript of the video to the minor and [his/her] parent(s).
2. I have translated for counsel as the minor reviewed this form.
3. I believe that the minor and [his/her] parents understood my translation and that my translation was accurate.

Date: _____

[Certified/Uncertified] Interpreter

Appendix: Written Report Requirements for Delinquency Foster Care (AB 575 and 1696) Cases*

<p>Detention Report for Children at Risk of Entering Foster Care <i>Timing: Must be filed at detention hearing (§ 635)**</i></p>
<p>For any child at risk of entering foster care, as defined by section 727.4(d)(2) and section 11402, the written detention report must include:</p> <ol style="list-style-type: none"> 1. The reasons for removal from parents or guardians 2. Any prior referrals for abuse or neglect, or dependency (§300) actions regarding the child 3. The need, if any, for continued detention 4. The available services to facilitate the child's return home to the child's parents or guardians 5. The availability of relatives who are able and willing to provide effective care and control over the child 6. Documentation that continuance in the home is contrary to child's welfare 7. Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from home and the nature and results of the services provided (§§ 635, 636(c))
<p>Case Plan <i>Timing: When a child is detained following a court finding that "continuance in the home is contrary to the child's welfare," a case plan must be prepared within 60 calendar days of the initial removal or by the date of the disposition hearing, whichever occurs first. (§§ 636.1(a), 706.5(a))</i></p>
<p>A. If the probation officer (PO) believes that reasonable efforts by the child, by his or her parents or legal guardian, and by the PO will enable the child to return home safely, the case plan must focus on the issues and activities associated with those efforts and must identify:</p> <ol style="list-style-type: none"> 1. Strengths and needs of the child and his or her family 2. Services to the child and family that will reduce or eliminate the need for placement and will make it possible for the child to safely return home (§ 636.1(b)) <p>B. If, based on the information available, the PO believes that foster care placement is the most appropriate disposition, the case plan must be submitted to the court as part of or an attachment to the social study and must include, but is not limited to (§§ 636.1(c), 706.6):</p> <ol style="list-style-type: none"> 1. A description of the circumstances surrounding removal and placement in foster care 2. An assessment of the child's needs and the type of placement best equipped to meet them 3. A description of the placement, including a discussion of the safety and appropriateness of the placement 4. Information about the educational stability of the child while in foster care, including: <ul style="list-style-type: none"> • Assurances that the placement takes into account the appropriateness of the current educational setting and the proximity of the child's school at the time of placement; and • An assurance that the placement agency has coordinated with appropriate local educational agencies to ensure that the child remains in school, or, if remaining in that school is not in the child's best interest, assurances that the placement and educational agencies provide immediate and appropriate enrollment in a new school 5. Concurrent planning activities—specific time-limited goals and related activities designed to enable the safe return of the child to his or her home or if that is not possible, activities designed to result in permanent placement or emancipation.

Specific responsibility for carrying out the planned activities shall be assigned to one or more of the following:

- The probation department
- The child's parents or guardians
- The child
- The foster parents or licensed agency providing foster care (group home)

* Prepared by the Center for Families, Children & the Courts. Revisions added by CJER editors.

** All citations in this chart are to the California Welfare and Institutions Code, unless otherwise indicated.

6. The projected date of completion of the case plan objectives and the date on which services will be terminated
 7. Scheduled visits between the child and his or her family and an explanation if no visits are made
 8. For placements at a substantial distance from home or out-of-state placements:
 - The reasons why the placement is the most appropriate
 - The reasons why the placement is in the best interest of the child (see *Out-of-State Placement* chart for additional case plan requirements for out-of-state placements pursuant to § 727.1 and Family Code § 7911.1).
 9. A description of efforts to place siblings together, unless placement together is not in the best interest of one or more siblings
 10. A schedule of visits between the child and the probation officer, including a monthly visitation schedule for those children placed in group homes
 11. Health and education information, including:
 - School records
 - Names and addresses of health and educational providers
 - The child's grade level performance
 - Assurances that the child's placement in foster care takes into account proximity to the school in which the child was enrolled at the time of placement
 - Immunizations
 - Known medical problems and any known medications
 - Other relevant health and educational information
 12. A description of services to assist in reunification and services to be provided concurrently to achieve legal permanency if efforts to reunify fail
 13. Documentation of the compelling reasons, as defined by section 727.3(c), why termination of parental rights is not in the best interest of the child, if neither a return home nor adoption is the permanent plan
 14. Descriptions of the services provided to the child and evaluations of the appropriateness and effectiveness of those services
 15. Descriptions of the services provided to help any child 16 years or older to make the transition from foster care to independent living
 16. A statement that the parent or legal guardian and the child have had an opportunity to participate in the development of the case plan, to review it, sign it, and receive copies of it, or an explanation about why the parent or legal guardian and the child were not able to participate or sign the plan
- C. If placement in foster care is not recommended by the PO prior to disposition, but the court orders foster care placement, the court shall order the PO to prepare and file a case plan within 30 days of the placement order. The plan must include the information in section B, above (§ 706.5(b))**
- D. Parents, legal guardians, and the child shall have an opportunity to participate in the development of the case plan, to review and sign it whenever possible, and to receive a copy of the plan (§ 706.6(o))**

<p>Case Plan Update <i>Timing: An updated case plan must be filed at least 10 days prior to each status review and permanency planning hearing (§§ 727.4(b), 706.5(c), (d))</i></p>
<p>A. Each updated case must include:</p> <ol style="list-style-type: none"> 1. All of the information in the initial case plan, as described in section B, above (§ 706.6) 2. A description of the services that have been provided to the minor under the plan that has been in effect (§ 706.6(n)) 3. An evaluation of the appropriateness and effectiveness of those services (§ 706.6(n)) <p>B. The updated case plan prepared for a permanency planning hearing must also include a recommendation for a permanent plan for the child.</p> <ol style="list-style-type: none"> 1. The PO must consider all of the following permanent plans and recommend one to the court: reunification, adoptive placement, guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement (§ 706.6(m)) 2. If the PO recommends placement in a planned permanent living arrangement, the PO must document a compelling reason why termination of parental rights is not in the minor's best interest. The compelling reasons are listed in § 727.3 and on the <i>Delinquency Foster Care Requirements</i> chart (§ 706.6(m))
<p>Social Study <i>Timing: A social study must be prepared and filed prior to the disposition hearing (§ 706) and at least 10 days prior to each status review hearing and permanency hearing. (§ 727.4(b))</i></p>
<p>A. At each disposition hearing where placement in foster care is recommended by the PO, or where the child is already in placement, or is pending placement, the social study report shall include a case plan as described in section B of the Case Plan, above (§ 706.5(a))</p> <p>B. The social study report shall include, but not be limited to, the following information:</p> <ol style="list-style-type: none"> 1. Progress toward goals established in the case plan previously submitted to the court 2. The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care 3. The safety of the child and the continuing necessity for and appropriateness of the placement 4. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship 5. An updated case plan as specified in section 706.6 6. Information about whether the child has been or will be referred to educational services, including special education; whether the parent or guardian's educational rights have been limited by the court; and comments from the appropriate local education agency (§ 706.5(c)) <p>C. At each permanency hearing, the social study must also include a recommended permanent plan for the child (§ 706.5(d))</p>
<p>Adoption Assessment Report <i>Timing: An adoption assessment report must be filed at least 10 days prior to any hearing held pursuant to section 727.31 (§§ 727.31(b), 366.26 (b)).</i></p>
<p>A. The licensed county adoption agency or the state Department of Social Services, if it is acting as the adoption agency in that county, prepares the assessment, with input from the probation department (§ 727.31(b)).</p> <p>B. The assessment must include (§ 727.31(b)):</p> <ol style="list-style-type: none"> 1. Current search efforts for an absent parent or parents 2. A description of the amount and nature of contact between the child and his or her parents and other extended family members since the date of placement

3. An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.
4. A preliminary assessment of any identified prospective adoptive parent or guardian, particularly the caregiver, including:
 - A social history
 - Screening for criminal records
 - Screening for prior referrals for child abuse or neglect
 - The person's capability of meeting the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship
 - If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of section 361.3.
5. The relationship of the child to any identified prospective adoptive parent or guardian, including:
 - The duration and character of the relationship
 - The motivation of seeking adoption or guardianship
 - The child's statement concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response; if so, a description of that condition
6. An analysis of the likelihood that the child will be adopted if parental rights are terminated.
- C. Whenever a court orders a termination of parental rights hearing pursuant to section 727.31, it shall order that the licensed county adoption agency or the state Department of Social Services, if it is acting as the adoption agency in that county, have exclusive responsibility for determining the adoptive placement and making all adoption-related decisions (§ 727.31(c)).**

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