CALIFORNIA JUDGES BENCHGUIDES

Benchguide 116

JUVENILE DELINQUENCY INITIAL OR DETENTION HEARING

[REVISED 2017]

JUDICIAL COUNCIL OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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JUVENILE DELINQUENCY INITIAL OR DETENTION HEARING

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 for truancy and habitual disobedience are not covered. This benchguide includes a procedural checklist, a brief summary of the applicable law, spoken forms, and appendices.

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 §116.7.

(2) *Ask the bailiff, court clerk, or probation officer to call the case.*

(3) *Determine who is present and their interest in the case before the court*. Welf & I C §§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 §116.16),
- Crime victims and their support persons (see §116.10),
- Family members or other support persons for prosecuting witnesses (see §116.12),
- Child's family members (see §116.12),
- Public (see §§116.13–116.14),
- Media (see §116.15),
- Court-appointed special advocate (CASA) (see §116.12), and
- If provisions of the Indian Child Welfare Act (ICWA) apply, a representative of the Indian child's tribe (see §116.22).

(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 for the child.* 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 §§116.17–116.20.

(6) *Advise the child of his or her rights* (see §116.44) *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.

☛ JUDICIAL TIP: Many judges explain at this point what to expect of the juvenile court process; some do it after grounds for detention have been found.

(7) *If the child's competency appears to be an issue, make an inquiry and, if necessary, suspend the proceedings and schedule a competency hearing.* Welf & I C §709(a)–(b); Cal Rules of Ct 5.645(d)(1). See discussion in §116.21.

(8) *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 §116.45). *If there is a plea, go to step 9; otherwise, go to step 11.*

☛ JUDICIAL TIP: Even when the district attorney or the child's attorney advises the child and obtains waivers, many judges also question the child to ensure the child understands and has freely and voluntarily waived his or her rights verbally on the record, as well as by agreeing to the statements made by the attorney or on a written form. See Judicial Council form JV-618: *Waiver of Rights–Juvenile Delinquency*.

(9) *Consider a deferred entry of judgment request, if appropriate.* See discussion in §116.51.

(10) *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 5.778(g)).* No additional checklist steps are needed.

(11) *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).

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

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

(14) *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.

(15) *With counsel's consent, ask the child if he or she has anything to add or wishes to address the court.* If no admission has been taken, do not to discuss the specifics of the alleged offense when speaking with the child.

(16) *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(a), (c)(1), 636(a); Cal Rules of Ct 5.758(a)(1), (3). See discussion in §§116.49, 116.56.

(17) *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 §116.56 on the consequences of this determination.

(18) *To detain the child, make the following findings on the record.* See §116.56.

- A prima facie showing has been made that the child is described by Welf & I C §602. Welf & I C §635(c)(1); 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).

- 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 a parent or legal guardian's home. Welf & I C §636(d); Cal Rules of Ct 5.760(c)(1).
- One or more of the grounds for detention is found to exist. The grounds for detention include the following (Welf & I C §§635(a), 636(a); Cal Rules of Ct 5.760(c)(1)):
  - 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.

(19) *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).

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

- 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 §116.62 for a discussion of the importance of these findings.

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

(22) *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. A child released or placed on home supervision is not detained for purposes of federal foster care funding and Title IV-E removal findings (§116.62) are not required. See §116.64.

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

(24) *If the prosecutor has made a motion to transfer the child from juvenile court to a court of criminal jurisdiction, explain the procedure to the parents and child and set the transfer of jurisdiction hearing date; otherwise, go to step 25.*

(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 date.

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

III. APPLICABLE LAW

A. [§116.3] Overview of Delinquency Proceedings

When a child is taken into custody for an alleged criminal violation, the judicial process begins with a detention hearing. Welf & I C §§632, 635, 636. If non-judicial days cause the detention hearing to be held more than

72 hours from when the child is taken into custody, there must be a probable cause determination, often conducted by duty judge by phone or fax. *Alfredo A. v Superior Court* (1994) 6 C4th 1212, 1232, 26 CR2d 623. A jurisdiction hearing must be held within 15 judicial 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 10 court days 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. The jurisdiction hearing is then held within 30 days of the child's initial appearance on the petition, or within 15 judicial days of the detention hearing if the child 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 of age 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 of age, the judge must certify to the juvenile court that (Welf & I C §604(a)):

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

Once there has been a certification to juvenile court, the case must remain there unless the child is later transferred back to the criminal court or new evidence comes before the court that the person was over 18 years of age when the alleged offense was committed. 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).

1. [§116.4] Comparison Between Delinquency and Criminal Systems

	Criminal Court	Juvenile Court
Purposes of proceedings generally	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. *Santosky v Kramer* (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). To promote public safety. Welf & I C §202(b).
Person who is the subject of the proceeding	Defendant.	Minor or child.
Document initiating the proceeding	Complaint or information.	Petition.
Initial hearing	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).
Bail	May be applicable.	Not applicable. *Aubry v Gadbois* (1975) 50 CA3d 470, 473, 123 CR 365.
Plea bargaining	Often done.	Often done.
Fact-finding	Trial.	Jurisdiction hearing.
Right to jury trial	Yes, in many instances.	No. *In re Myresheia W.* (1998) 61 CA4th 734, 741, 72 CR2d 65.
Right to appointed counsel	Yes, for indigent defendant.	Yes, for indigent juvenile or those whose parents refuse to pay.
Judgment	Guilty or not guilty verdict.	Petition is sustained or not sustained.
Outcome	Sentence.	Disposition.
Incarceration	Few resources directed toward rehabilitation.	Many more resources directed toward rehabilitation.

	Criminal Court	Juvenile Court
Credit for time served in nonsecure or home detention	Yes, under Pen C §2900.5.	No. *In re Randy J.* (1994) 22 CA4th 1497, 1506, 28 CR2d 152.

A great difference between the juvenile and criminal court system is the emphasis on rehabilitation. Unless the juvenile is transferred to a court of criminal jurisdiction under Welf & I C §707, 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 commits 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 commits 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).

2. Delinquency Proceedings Generally

a. [§116.5] Nature of Delinquency Hearing; Control by Court

The court must control the proceedings to quickly and effectively ascertain jurisdictional facts and all information about the child's present condition and future welfare. Welf & I C §680; Cal Rules of Ct 5.534(a). Unless there is a contested issue of fact or law, the court must conduct proceedings in an informal nonadversarial manner to maximize cooperation of the child and all those interested in the child's welfare. Welf & I C §680; Cal Rules of Ct 5.534(b). Informality does not extend, however, to ex parte communications. It is a violation of due process for a judicial officer to question the sole witness in the absence of the prosecutor and the probation officer and then adjudicate the case. *In re Jesse G.* (2005) 128 CA4th 724, 731, 27 CR3d 331.

b. [§116.6] Venue

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

c. [§116.7] Hearing Officer

In addition to superior court judges designated by the presiding judge to hear juvenile matters, delinquency 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 orders by a referee must be approved by a juvenile court judge before becoming effective (Welf & I C §251), and
- Absent a written stipulation of the parties conferring judicial power, a referee may not conduct a jurisdiction hearing based on a Welf & I C §602 petition. (Welf & I C §248(a); see *In re Perrone C.* (1979) 26 C3d 49, 57, 160 CR 704).
- No order of a referee removing a child from the home becomes effective until expressly approved within 2 court days by a juvenile court judge. Welf & I C §249; Cal Rules of Ct 5.540(b)(1).

In some counties, superior court commissioners are assigned to the juvenile court without a designation that they are to perform the duties of a juvenile court referee. Parties appearing before commissioners in these counties must stipulate that the commissioner may act as a temporary judge in order for the commissioner to hear the case. *In re Courtney H.* (1995) 38 CA4th 1221, 1224, 45 CR2d 560. In other counties, commissioners are appointed as temporary judges and not as referees. As such, their decisions and orders are not subject to rehearing.

A court commissioner is a "different and separate statutory creature" from a juvenile court referee. 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. 38 CA4th at 1224–1225.

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. 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 10 days after the service of the referee's order. Welf & I C §252; Cal Rules of Ct 5.542(a). After 10 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).

For more discussion of rehearing proceedings conducted by a referee, see §116.54.

d. [§116.8] Court Reporter; Transcripts

If the hearing is conducted by a judge or by a referee acting as a temporary judge by stipulation, a court reporter or other authorized reporting procedure must record all proceedings. 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), 5.538(a)(1). When directed by a judge or requested by a party, the official court reporter must prepare the transcript of the proceedings within a reasonable time as designated by the judge and must certify that the proceedings have been correctly reported and transcribed. Welf & I C §677; Cal Rules of Ct 5.532(c).

e. Who May Be Present

(1) [§116.9] The Child

At a 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. The court should do nothing to preclude the child from being present. *In re Sidney M.* (1984) 162 CA3d 39, 48, 208 CR 378. If the child refuses to attend, however, the hearing may be held in the child's absence if the court determines that the child knowingly and intelligently waived the right under Welf & I C §679 to be present. In determining the validity of the waiver,

the court should consider the child's age, experience, and ability to understand the meaning and effects of his or her acts. *In re Sidney M., supra.*

(2) [§116.10] Victim and Support Persons

A victim of an offense alleged to have been committed by the child who is the subject of the petition, and up to two support persons of the victim's choosing are entitled to attend the delinquency hearing. Welf & I C §676.5(a); Cal Rules of Ct 5.530(e)(2)(D).

However, the court may exclude a victim or victim's support person(s), after a hearing at which the person sought to be excluded has an opportunity to be heard and each of the following criteria are met (Welf & I C §676.5(b); 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 presence of the victim or victim's support person(s);
- The court considers reasonable alternatives to excluding the victim or victim's support person(s);
- Any limitation on the presence of the victim or victim's support person(s), 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 the exclusion of the victim or victim's support person(s) from, or any limitation on the victim's presence at, the juvenile court hearing.

Nothing in Welf & I C §676.5 prevents a court from excluding a victim or victim's support person(s) from a hearing under Evid C §777 when the victim is subpoenaed as a witness. An exclusion order must be consistent with the objective of allowing the victim to be present, whenever possible, at all hearings. Welf & I C §676.5(d).

(3) [§116.11] CASA Volunteer

A court-appointed special advocate (CASA) may be appointed to any the child who is the subject of a delinquency proceeding. Welf & I C §102(b)**.** However, the CASA may not participate or appear in proceedings to declare a person a ward of the juvenile court with two exceptions. Welf & I C §109(a). The CASA may participate in a determination of a minor's status under Welf & I C §241.1, and in all delinquency proceedings after adjudication of delinquency. Welf & I C §109(b). And the CASA may appear at any hearing if acting solely as a support person to the child. Welf & I C §109(c). See also Welf & I C §§100–110, 356.5 (setting forth the requirements governing the appointment and duties of a person appointed as a CASA volunteer); Cal Rules of Ct 5.655 (CASA program guidelines).

(4) [§116.12] Other Participants and Relatives

In addition to the child and victim, the following persons may be present at a delinquency hearing:

- All parents or guardians of the child or, if no parent or guardian resides within the state or their places of residence are not known, any adult relative residing within the county or, if none, any adult relative residing nearest the court. Cal Rules of Ct 5.530(b)(2).
- Counsel representing the child or the parent, guardian, adult relative, or Indian custodian or the tribe of an Indian child. Cal Rules of Ct 5.530(b)(3).
- Probation officer. Cal Rules of Ct 5.530(b)(4).
- Prosecuting attorney (appearance mandatory). Welf & I C §681(a); Cal Rules of Ct 5.530(b)(5), 5.530(c).
- Up to two family members or support persons of a prosecuting witness's choosing in cases involving a violation of an offense listed in Pen C §868.5(a). Pen C §868.5; Welf & I C §§676(a); Cal Rules of Ct 5.530(e)(2)(B).
- Court clerk. Cal Rules of Ct 5.530(b)(8).
- Court reporter. Cal Rules of Ct 5.530(b)(9).
- Bailiff, at the court's discretion. Cal Rules of Ct 5.530(b)(10).
- Interpreter. Cal Rules of Ct 2.893(b).
- Representative of an Indian tribe or Bureau of Indian Affairs. See generally 25 USC §1912; Cal Rules of Ct 5.481, 5.530(b)(7).

The court may also permit any of the child's relatives to be present at the jurisdiction hearing and address the court 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).

No person who is 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; Cal Rules of Ct 5.530(a).

(5) Exclusion of Public

(i) [§116.13] Public Generally Excluded

Welfare and Institutions Code §676 generally prohibits the public from attending a delinquency court hearing unless the child and parent or guardian requests an open hearing (Welf & I C §§676(a); Cal Rules of Ct 5.530(e)(2)(A). However, the court may admit anyone it determines has a direct and legitimate interest in the case or in the work of the court. Welf &

I C §676(a); Cal Rules of Ct 5.530(e). Examples of such individuals a bench officer may choose to permit include coaches, teachers, or mentors.

☛ JUDICIAL TIP: If someone other than an individual identified in Cal Rules of Ct 5.530 is seeking to attend the hearing, ask the child and the attorneys if there is any objection, and determine whether the individual has a direct and legitimate interest in the case or in the work of the court.

(ii) [§116.14] Exception When Serious Offense Charged

If the petition alleges that the child committed one of the serious offenses listed in Welf & I C §676(a), the public must be allowed to attend the hearing. Welf & I C §676(a); Cal Rules of Ct 5.530(e)(2)(C). See Appendix B for a list of Welf & I C §676(a) offenses.

However, there are limitations to this open hearing exception when the petition alleges that the child committed certain sex crimes. Welf & I C §676(b). In such cases, the public may not attend the hearing in the following instances:

- On a motion for a closed hearing by the prosecutor if requested by the victim. Welf & I C §676(b)(1).
- During testimony of a child-victim witness who was under 16 years of age at the time of the offense. Welf & I C §676(b)(2).

The juvenile court must for each day that the court is in session, post in a conspicuous place which is accessible to the general public, a written list of hearings that are open to the general public, the location of those hearings, and the time when the hearings will be held. Welf & I C §676(g).

(6) [§116.15] The Media

The court may not preclude the press from attending an otherwise open hearing and reporting on the proceedings. *KGTV Channel 10 v Superior Court* (1994) 26 CA4th 1673, 1685, 32 CR2d 181. However, the court may deny admittance if the child shows a reasonable likelihood that the presence of the media will impair the child's right to receive a fair and impartial trial. *Tribune Newspapers West, Inc. v Superior Court* (1985) 172 CA3d 443, 451, 218 CR 505; *KGTV Channel 10 v Superior Court, supra*. The court may also 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).

When the child has been detained for an offense listed in Welf & I C §676(a), the court may not restrict the media from publishing the child's name and likeness without violating the constitutional prohibition against prior restraints. *KGTV Channel 10 v Superior Court, supra*, 26 CA4th at

1684. Although the court may declare the name of the child confidential after determining the juvenile committed the offense under Welf & I C §676(c), the statute does not require the media to keep the name confidential until there is an adjudication in the case and the court decides whether there is good cause to order that the name not be divulged. Welf & I C §676(c) simply gives the court discretion, even after it determines a child committed one of the serious offenses, to continue to keep the name confidential assuming it previously took steps to preserve confidentiality. 26 CA4th at 1683–1684. Such steps may include identifying the case by first name and last initial, ordering participants to refer to the child by first name, and designating family members as "mother," "father," and the like. 26 CA4th at 1684.

(7) [§116.16] Interpreters

The court must appoint an interpreter whenever a party or witness cannot speak or understand English well enough to participate fully in the proceedings or is deaf or hard of hearing. Cal Const art I, §14; Evid C §752(a), 754(b); Cal Rules of Ct, Standards of J Admin 2.10(a). California Rules of Court 2.893 sets out the circumstances under which the presiding judge may appoint a noncertified interpreter in a delinquency case. If an interpreter has been assigned to the child, the court may not borrow that interpreter to translate other witnesses' testimony absent a knowing and intelligent waiver by the child. *In re Dung T.* (1984) 160 CA3d 697, 709, 206 CR 772.

☛ JUDICIAL TIP: If the child speaks English but the parents do not, the court should seriously consider obtaining an interpreter for the parents. The parents need to know what is happening at the delinquency hearing, and the court should not rely on the child to apprise the parents of the proceedings.

f. Right to Counsel

(1) [§116.17] The Child

The child who is the subject of a Welf & I C §602 proceeding is entitled to the assistance of counsel. If the child cannot afford to retain an attorney, the child is entitled to appointed counsel. Welf & I C §§633–634, 700; *In re Gault* (1967) 387 US 1, 87 S Ct 1428, 18 L Ed 2d 527 (right guaranteed by 14th Amendment Due Process Clause). If a minor appears at a hearing without counsel, the court must appoint counsel for the child whether or not the child is able to afford counsel, unless there is an intelligent waiver of the right of counsel by the child. If the court determines that the parent or guardian can afford but has not retained counsel for the child, the court must

appoint counsel and order the parent or guardian to reimburse the county. Welf & I C §§634, 700; Cal Rules of Ct 5.534(h)(2)(A).

The right to counsel applies at each stage of the delinquency proceeding, including police interrogations (Welf & I C §625), hearings to determine age (*People v Malveaux* (1996) 50 CA4th 1425, 1437, 59 CR2d 371), pretrial conferences (see *In re Ryan B.* (1989) 216 CA3d 1519, 1527, 265 CR 629), and postdispositional hearings (Cal Rules of Ct 5.663(c)). The child's counsel is charged with defending the child and advocating for the child's care and treatment. Cal Rules of Ct 5.663(b).

Once counsel enters an appearance on behalf of a child, counsel must continue to represent that child unless relieved by the court on the substitution of other counsel or for cause. Welf & I C §634.6; Cal Rules of Ct 5.663(c).

Children's counsel in delinquency cases must meet stringent education and training requirements set out in Cal Rules of Ct 5.664(b)–(c). The court may require evidence of the competency of any attorney appointed to represent a youth in a delinquency proceeding, including requesting documentation of trainings attended. The court may also require attorneys who represent youth in delinquency proceedings to complete Judicial Council form JV-700 (Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court). Cal Rules of Ct 5.664(d).

(2) [§116.18] 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 or the child's parents 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.

(3) [§116.19] The Parent

The parent of a child who is the subject of a Welf & I C §602 proceeding does not have an absolute right to a court-appointed attorney. *In re Robert W.* (1977) 68 CA3d 705, 716, 137 CR 558. However, the court has discretionary authority to appoint counsel for a parent who desires counsel but is unable to afford counsel. Welf & I C §634; Cal Rules of Ct 5.534(h)(2)(B). When one attorney cannot properly represent both the parent and child due to a conflict of interest, the court must appoint counsel, in addition to the counsel already employed by the parent or appointed by the court, to represent either the child or parent. Welf & I C §634; Cal Rules

of Ct 5.534(h)(2)(C) (court must take steps to protect the child's interests if conflict arises).

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

(4) [§116.20] Waiver of Right to Counsel

Practically speaking, it is rare for a juvenile to seek self-representation in a delinquency case. 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 of age, 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).

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. Such communications 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. There is also no privilege between parent and child under the Evidence Code.

g. [§116.21] Child's Competence

During the pendency of any juvenile proceeding, the child's counsel or the court may express a doubt as to the child's competency. A child is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the child's competency, the proceedings must be suspended. Welf & I C §709(a); Cal Rules of Ct 5.645(d)(1); see, *e.g., In re Alejandro G.* (2012) 205 CA4th 472, 481–482, 140 CR3d 340.

Once the proceedings are suspended, the court must order that the question of the child's competence be determined at a hearing. Welf & I C §709(b); Cal Rules of Ct 5.645(d)(1). The court must appoint an expert to evaluate whether the child suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the child's competency. Welf & I C §709(b). The expert must have expertise in child and adolescent development, training in the forensic evaluation of juveniles, and be familiar with competency standards and accepted criteria used in evaluating competence. Welf & I C §709(b); Cal Rules of Ct 5.645(d)(1).

☛ JUDICIAL TIP: Juvenile incompetency is not defined solely in terms of mental illness or developmental disability. It also encompasses developmental immaturity, in light of the fact that a child's brain is still developing. A child may be found incompetent on the basis of developmental immaturity, without a finding of a mental disorder or developmental disability. See *Bryan E. v Superior Court* (2014) 231 CA4th 385, 390–391, 179 CR3d 739.

The child is presumed competent at the start of the competency hearing and bears the burden of proving incompetence by a preponderance of the evidence. *In re R.V.* (2015) 61 C4th 181, 187 CR3d 882 (Welf & I C §709 contains an implied presumption of competence). If the child is found to be competent, the court may proceed commensurate with the court's jurisdiction. Welf & I C §709(d). If the child is found to be incompetent by a preponderance of the evidence, all proceedings must remain suspended for no longer than reasonably necessary to determine whether there is a substantial probability that the child will attain competency in the foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make orders it deems appropriate for services that may assist the child in attaining competency. Welf & I C §709(c). Further, the court may rule on motions that do not require the child's participation, including the following (Welf & I C §709(c):

- Motions to dismiss.
- Motions by the defense regarding a change in the placement of the child.
- Detention hearings.
- Demurrers.

If the child is found not competent to proceed due to developmental delay or lack of maturity, the court must allow the child to withdraw a prior admission of delinquency jurisdiction. *In re Matthew N.* (2013) 216 CA4th 1412, 1420–1421, 157 CR3d 233.

If the expert believes the child is developmentally disabled, the court must appoint the director of a regional center for developmentally disabled individuals, or the director's designee, to evaluate the child. The director or designee must determine whether the child is eligible for services under the Lanterman Developmental Disabilities Services Act, and must provide the court with a written report of that determination. The court's appointment of the regional director to determine eligibility for services must not delay the court's proceedings to determine competency. Welf & I C §709(f). An expert's opinion that a child is developmentally disabled does not supersede an independent determination by the regional center whether the child is eligible for services. Welf & I C §709(g).

Welfare and Institutions Code §709, however, does not authorize or require (Welf & I C §709(h)):

- The court to place a child who is incompetent in a developmental center or community facility without a regional center director's determination that the child has a developmental disability and is eligible for services; or
- The director of the regional center to determine the competency of a child.

Some juvenile courts have competency protocols developed by the Presiding Juvenile Court Judge and other stakeholders. See, *e.g.*, *In re Jesus G.* (2013) 218 CA4th 157, 167–171, 159 CR3d 594 (local protocol placing 120-day limitation on detention period was not preempted by statute and satisfied due process).

h. [§116.22] Application of ICWA in Delinquency Proceedings

The Indian Child Welfare Act (ICWA) (25 USC §1901 et seq) has limited application in Welf & I C §602 delinquency proceedings. Consistent with the federal statutes, California law requires the court and the probation department to inquire about a child's possible Indian status whenever a petition has been or is to be filed under Welf & I C §601 or §602 and the child is in foster care or at risk of entering foster care. Welf & I C §224.3(a); Cal Rules of Ct 5.480(2), 5.481(a). However, ICWA's additional procedures are not required in most delinquency cases. A delinquency court must ensure that notice is given and other ICWA procedures are complied with only when (1) exercising "dual status" jurisdiction over an Indian child (see §116.24); (2) placing an Indian child outside the family home for committing a "status offense" under Welf & I C §601; or (3) placing an Indian child initially detained for "criminal conduct" outside the family home for reasons based entirely on harmful conditions in the home. *In re W.B.* (2012) 55 C4th 30, 144 CR3d 843; Cal Rules of Ct 5.480(2). In the narrow third category, ICWA notice is required when the delinquency court

sets a permanency planning hearing to terminate parental rights, or when the court contemplates ordering the child placed in foster care and announces on the record that the placement is based entirely on abuse or neglect in the family home and not on the child's delinquent conduct. Without a clear announcement from the court to the contrary, it will be presumed that a placement of a Welf & I C §602 ward is based on the ward's delinquent conduct, rather than conditions in the home.

As stated above, the court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Welf & I C §601 or §602 is to be, or has been, filed is or may be an Indian child in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care. Welf & I C §224.3(a); Cal Rules of Ct 5.480(2), 5.481(a). The circumstances that may provide the court reason to believe a child may be Indian include, but are not limited to, the following (Welf & I C §224.3(b), Cal Rules of Ct 5.481(a)(5)):

- Any of the following parties or entities provides information to the court suggesting the child is an Indian child to the court, probation officer, or county welfare department:
  - A person having an interest in the child, including the child;
  - An officer of the court;
  - A tribe;
  - An Indian organization;
  - A public or private agency; or
  - A member of the child's extended family.
- The residence or domicile of the child, the child's parents, or Indian custodian is in a predominantly Indian community.
- The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service.

If the routine inquiry about Indian status provides no suggestion that the child has any Indian heritage, the court has fulfilled its statutory obligation under ICWA. If, however, the probation officer or social worker knows or has reason to know that an Indian child is or may be involved, that person must inquire further as soon as practicable. This inquiry includes (Welf & I C §224.3(c); Cal Rules of Ct 5.481(a)(4)):

- Interviewing the parents, Indian custodian, and extended family members to gather the information required in Welf & I C §224.2(a)(5);

- Contacting the Bureau of Indian Affairs and the State Department of Social Services for assistance in identifying the names and contact information of the tribes that the child may be a member or eligible for membership; and
- Contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.

Regardless of whether all of the substantive provisions of ICWA apply, the tribe of an Indian child may be able to offer services and resources that would otherwise be unavailable to the child. California Rules of Court 5.785 requires that in preparing a case plan for an Indian child at risk of entering foster care, a probation officer must solicit and integrate into the case plan the input of the child, the child's family, and the child's identified Indian tribe.

i. Dependency and Wardship—Determination of Status

(1) [§116.23] Single Status

When a child appears to become within the jurisdiction of the both the dependency and delinquency courts, the county probation department and the child welfare services department, using a jointly developed written protocol, must conduct a joint assessment to determine which status will serve the best interests of the child and the protection of society. Welf & I C §241.1(a); Cal Rules of Ct 5.512(a). The written protocol acts to ensure appropriate local coordination in the assessment of the child and the development of recommendations by both departments for consideration by the juvenile court. Welf & I C §241.1(b)(1). The recommendations of both departments must be presented to the juvenile court in which the petition is filed on behalf of the minor. The court then determines the appropriate status. The court must give any other juvenile court having jurisdiction over the minor notice of the presentation of the recommendations within 5 calendar days. Welf & I C §241.1(a).

The assessment must be completed as soon as possible after to the child comes to the attention of either the child welfare or probation department, and the determination of status must be made, whenever possible before any petition concerning the child is filed. Cal Rules of Ct 5.512(a). Welfare and Institutions Code §241.1(a) states that a joint recommendation as to status should be presented to the juvenile court with the petition that is filed on behalf of the child. This provision has been interpreted to mean that the report should be filed in connection with the later petition—that is, the petition that creates the potential for dual jurisdiction. *In re M.V.* (2014) 225 CA4th 1495, 1507, 171 CR3d 519. For details of the joint assessment

procedure, including the preparation and contents of the report and hearing on joint assessment, see Welf & I C §241.1(b); Cal Rules of Ct 5.512.

Except as provided in Welf & I C §241.1(e) (see §116.24), nothing in Welf & I C §241 authorizes the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court. Welf & I C §241.1(d).

(2) [§116.24] Dual Status

A county's probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county, may jointly develop a written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a "dual status child," allowing the child to be simultaneously a dependent child and a ward of the court. A juvenile court may not order that a child is simultaneously a dependent child and a ward of the court unless and until the required protocol has been created and implemented. Welf & I C §241.1(e). The required contents of the protocol are outlined in Welf & I C §241.1(e)(1)–(4).

Counties that exercise the option to create a dual status protocol must adopt one of two methods:

- *On-hold system*. In counties in which an on-hold system is adopted, the dependency jurisdiction must be suspended while the child is a ward of the court. Welf & I C §§241.1(e)(5)(A), 366.5. If the jurisdiction established under Welf & I C §601 or §602 is terminated without the need for continued dependency proceedings, the juvenile court must terminate the child's dual status. Welf & I C §366.5. If the termination of the jurisdiction establish under Welf & I C §601 or §602 is likely and reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and child welfare services department must jointly assess and produce a recommendation regarding whether the court's dependency jurisdiction should be resumed. Welf & I C §§241.1(e)(5)(A), 366.5.
- *Lead court or lead agency system.* In counties in which a lead court/lead agency system is adopted, the protocol must include a method for identifying which court or agency will be the lead court or agency. That court or agency will be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports. Welf & I C §241.1(e)(5)(B).

As of January 2017, the following counties permit a dual status of a child: Butte, Colusa, Del Norte, Inyo, Los Angeles, Modoc, Mono, Orange,

Placer, Riverside, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Clara, Siskiyou, Sonoma, and Stanislaus.

B. [§116.25] 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 the child is removed from the custody of the parent or guardian entitled to custody or placed on home supervision. 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, usually the following judicial day after the timely filing 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 under Welf & I C §680). 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. However, it is not uncommon, such as when an arrest occurs on a weekend, for the probable cause determination to take place prior to the detention hearing.

☛ JUDICIAL TIP: In many counties, the practice is not to wait for the detention hearing for the determination of probable cause to arrest and detain a youth pending the filing of a petition or probation violation, but to have the probation (or police) officer communicate with an on-call judge to obtain this determination within 24 hours of the detention. Some courts use fax communication, electronic secured communications or make other arrangements for judicial determination of probable cause. See §116.32.

A detention hearing must be held for any juvenile who is in custody such as in juvenile hall. See generally Welf & I C §630; Cal Rules of Ct 5.752(e)–(h). In addition, a detention hearing is required for a child who is placed on a program of home supervision pending the next court date. Welf & I C §628.1; Cal Rules of Ct 5.502(11) (child released on home supervision is detained). If the child violates conditions of home supervision which the child promised in writing to obey, the child must be taken into custody and brought before the court for a detention hearing within 48 hours, excluding nonjudicial days. Welf & I C §628.1; Cal Rules of Ct 5.752(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

relating to one of the grounds for detention discussed in §§116.57–116.61. *In re Ryan B.* (1989) 216 CA3d 1519, 1527, 265 CR 629.

If the child is 14 years of age or older and is taken into custody for personal use of a firearm during the commission or attempted commission of a felony or any offense listed in Welf & I C §707(b), the child may not be released until he or she is brought before a judicial officer. Welf & I C §625.3.

If, following a detention hearing, a child who has been released is redetained for new offenses after the jurisdiction hearing has been held, a detention hearing on the new offenses is necessary. *In re Talbott* (1988) 206 CA3d 1290, 1295, 254 CR 421.

C. [§116.26] When Child Not Detained/Initial Hearing

When a child is not detained, an initial 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 10 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. Welf & I C §658(a).

If the child does not appear at this initial hearing, the court may not detain the child solely due to 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 of the petition and subsequent court hearing. Welf & I C §660(c). If at a subsequent court hearing the minor fails to appear and service was proper, the court may issue an arrest warrant.

An arrest warrant may be issued for a nondetained child on a showing that (1) the child's whereabouts are unknown, (2) the conduct or behavior of child may endanger the health, person, welfare or property of minor or others, (3) the child has willfully evaded service, or (4) attempts at personal service have been unsuccessful. Welf & I C §663. If the child's whereabouts are unknown, personal service of the notice and a copy of the petition is not required and an arrest warrant may be issued under Welf & I C §663. Welf & I C §660(c).

A child 14 years of age or older who is arrested for a felony or attempted felony may not be released 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.

D. Time Limitations for Detention Hearing

1. [§116.27] Limits on Custody Prior to Filing of Petition

Generally, a child may be held in custody for no more 48 hours, (excluding nonjudicial days), unless a petition for wardship or criminal complaint is filed within that time. Welf & I C §631(a); Cal Rules of Ct 5.752(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).

Similarly, if a child who is not currently on probation or parole is taken into custody without a warrant for an alleged misdemeanor that does not involve violence, the threat of violence, or possession or use of a weapon, the child must be released within 48 hours (excluding nonjudicial days), unless a petition is filed to declare the child a ward of the court and the child is ordered detained by a judge or referee of the juvenile court under Welf & I C §635. Welf & I C §631(b). In all cases involving the detention of a child under Welf & I C §631(b), any decision to detain the child more than 24 hours must be subject to written review and approval by a probation officer who is a supervisor as soon as possible after it is known that the child will be detained more than 24 hours. However, if the initial decision to detain the child more than 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval. Welf & I C §631(b).

A child may held in custody no more than 48 hours, (excluding non-judicial days) after certification to juvenile court under Cal Rules of Ct 4.116 (certification to the juvenile court after criminal proceedings have been attempted in some other court) or Cal Rules of Ct 5.516(d) child enters the juvenile probation system directly) unless a petition has been filed. Welf & I C §604; Cal Rules of Ct 5.752(d). This provision is not applicable when an adult criminal complaint has been filed after a transfer of jurisdiction hearing under Welf & I C §707. See Welf & I C §604(d).

The time for filing a petition is extended when the child 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 when 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 the court finds it would be of assistance. Welf & I C §608. The burden of proving that an adult defendant was a juvenile when 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.

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.

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.

If a child is held for more than 24 hours and is subsequently released and no petition is filed, the probation officer must provide a written explanation to the child's parent or guardian and file that explanation in the case records. Welf & I C §631(c).

2. Setting Detention Hearing

a. [§116.28] Felony or Violent Misdemeanor or Ward

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, a threat of violence, or the possession or use of a weapon, or when the child is a ward currently on probation or parole. Welf & I C §632(a); Cal Rules of Ct 5.752(f).

b. [§116.29] Warrant or Nonward Charged With Nonviolent Misdemeanor

The detention hearing must be held as soon as possible but no later than 48 hours after the child has been taken into custody (excluding nonjudicial days) (1) when the child was arrested without a warrant for a nonviolent misdemeanor and is not on probation or parole or (2) when the child has been taken into custody on a warrant or by the authority of the probation officer (*i.e.* probation violation). Welf & I C §632(a)–(b); Cal Rules of Ct 5.752(e).

c. [§116.30] 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 (excluding nonjudicial days) after the child arrives at the facility. 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 (excluding nonjudicial days). Cal Rules of Ct 5.752(h).

3. [§116.31] Failure To Meet Time Limits

The time limits for detentions hearing 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)). 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. 58 CA4th at 1505 n8.

4. [§116.32] 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 §116.25. If there is a separate determination, it is usually made by an on-call judge after reviewing the relevant reports.

☛ JUDICIAL TIP: Check with your juvenile court to determine the procedures used to satisfy probable cause determinations.

E. The Petition

1. [§116.33] 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 (usually law enforcement) who alleges the child has committed the stated offense. Welf & I C §653.5(a). The prosecutor may not file a petition unless the probation officer provides an affidavit requesting that a petition be filed or an applicant requests a review of the probation officer's decision not to take such an affidavit to the prosecutor. *Marvin F. v Superior Court* (1977) 75 CA3d 281, 285, 142 CR 78. The applicant may request the prosecutor to review the decision of the probation officer. Welf & I C §655(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. Welf & I C §653.5(c). Once a petition has been filed, the prosecutor may, under certain conditions, 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.

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

2. [§116.34] 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 and Cal Rules of Ct 5.524(b), 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, and 656.1, including:

- The name of the court.
- The title of the proceeding.
- The code section and subdivision 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 the 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, separately stated, to support the conclusion that the child is a person within each of the sections and subdivisions under which the proceedings are being instituted.
- Whether the child is in custody and if so, from what time.
- Specify as to each count, whether the crime charged is a felony or a misdemeanor.
- If applicable, the intent to aggregate other offenses.
- 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.

If not verified, the petition is subject to dismissal without prejudice. Welf & I C §656.5; Cal Rules of Ct 5.524(b). Approved Judicial Council form JV-600 (Juvenile Wardship Petition) should be used.

F. [§116.35] 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); Cal Rules of Ct 5.524(f)(1). Notification may be either oral or in writing. Welf & I C §630(a); Cal Rules of Ct 5.524(h).

1. [§116.36] Who Must Be Served

Once the petition has been filed, the clerk of the juvenile court must issue and serve a notice of hearing with a copy of the petition to the following persons (Welf & I C §§658(a), 656(e); see Cal Rules of Ct 5.524(f)(2)):

- The child if 8 years of age or older, and
- The parents or guardians, if they reside within the state, or
- Any adult relative residing within the county or, if none,
- The adult relative residing nearest to the location of the court.

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)(3)), 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).

Also entitled to notice are attorneys for the child and parent or guardian, if any, and the prosecutor, if he or she has requested notice. Welf & I C §658(a); see Cal Rules of Ct 5.524(f)(3). For the purpose of meeting the time requirements, service on the child's attorney constitutes service on the parent or guardian. Welf & I C §660(d).

2. [§116.37] Contents of Notice

The notice must contain (Welf & I C §659):

- The name and address of the person to whom the notice is directed;
- The date, time, and place of the hearing on the petition;

- The name of the child who is the subject of the petition;
- Each section and subdivision under which the proceeding has been instituted;
- A statement that:
  - The child and child's parent or guardian or adult relative are entitled to have an attorney present at the hearing.
  - If the parent or guardian or adult relative is indigent and the child or his or her parent or guardian or adult relative desire an attorney, the court should be notified promptly.
  - If an attorney is furnished by the court, the parents, guardians, or adult relatives will be liable for legal representation expenses to the extent of their financial ability.
- A statement that the parent or guardian or the responsible relative may be liable for the costs of supporting the child in a county institution; and
- A statement that the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

3. Service Time and Methods

a. [§116.38] When Child Is Detained

If the child has been detained, the notice and a copy of the petition must be served either by personal service or by certified mail, as soon as possible, but no later than 5 days before the time set for hearing, unless the hearing is set less than 5 days from the filing of the petition, in which case service must take place at least 24 hours before the hearing. (Welf & I C §660(a)).

b. [§116.39] When Child Is Not Detained

If the child has not been detained, the notice and a copy of the petition must be served either by personal service or by first-class mail at least 10 days before the time set for hearing. Welf & I C §660(c). If the person being served is known to reside outside the county, notice must be by personal service or by first-class mail, as soon as possible after the filing of the petition, but no later than 10 days before the time set for hearing. Welf & I C §660(c).

4. [§116.40] Waiver of Service

Service may be waived by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of

the court before or during the hearing. Welf & I C §660(c); Cal Rules of Ct 5.524(g).

5. [§116.41] Failure To Respond to Notice

Failure to respond to the notice will not result in arrest or detention; instead, the court must direct personal service of the person who did not appear after having been served by first-class mail. Welf & I C §660(c). Personal service is not required, however, if the whereabouts of the child are not known, the child is evading the process of the court, or there is concern for the welfare of the child or community; in such cases, the court may issue an arrest warrant under Welf & I C §663. Welf & I C §660(c).

6. [§116.42] Citation To Appear

In addition to notice required under Welf & I C §658 and Cal Rules of Ct 5.524, the court may issue a citation directing a parent or guardian to appear and may direct the child's present caregiver to bring the child to court. Welf & I C §661; Cal Rules of Ct 5.526(a). The notice must state that the parent or guardian 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).

G. [§116.43] Discovery

The child, the parent or guardian, and counsel may inspect police reports, 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), (e); Cal Rules of Ct 5.756(a). Once a petition is filed under Welf & I C §602, 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; Cal Rules of Ct 5.546(a)–(c). The prosecutor has an affirmative duty to make these disclosures. See Cal Rules of Ct 5.546(b)–(c). California Rules of Court 5.546 must be liberally construed to encourage informal disclosure, unless the requested party can show privilege or other good cause not to disclose. Cal Rules of Ct 5.546(a).

In addition, on timely request, the prosecutor is required to disclose the following to the child, parent or guardian, or counsel (Cal Rules of Ct 5.546(d)):

- 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 the potential witnesses each party intends to call.

Note: Records of the above identified items may include audio or video recordings.

If a prosecutor refuses to disclose information or permit inspection of materials, the requesting party or counsel may move the court for an order requiring timely disclosure of the information or materials. Cal Rules of Ct 5.546(f). 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 where there is cooperation between the prosecution and the defense bar, formal discovery motions are rarely necessary.

Disclosure may be restricted on a showing of privilege or other good cause (Cal Rules of Ct 5.546(g)), including an 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)). The court may issue sanctions for noncompliance (Cal Rules of Ct 5.546(j)).

The court also has discretionary authority to order reciprocal discovery consistent with Pen C §§1054–1054.10, despite the fact that these reciprocal criminal discovery provisions do not expressly apply to juvenile court. *Robert S. v Superior Court* (1992) 9 CA4th 1417, 1422, 12 CR2d 489. Generally, discovery practice is discretionary and should parallel that of adult criminal court. See *Clinton K. v Superior Court* (1995) 37 CA4th 1244, 1248–1249, 44 CR2d 140. Accordingly, a juvenile is subject to the same kind of exclusions from disclosure when seeking police records under a *Pitchess* motion that an adult defendant would be subject to. *City of San Jose v Superior Court* (1993) 5 C4th 47, 53, 19 CR2d 73; Evid C §1045(b) (exclusion of certain police records concerning prior complaints).

The court must exercise its discretion to order reciprocal discovery by making a discovery order. In the absence of an express order, the provisions of Pen C §1054 et seq, do not automatically apply to a delinquency proceeding *In re Thomas F.* (2003) 113 CA4th 1249, 1254–1255, 7 CR3d

19 (juvenile court erred in issuing witness preclusion sanction in absence of order for reciprocal discovery).

H. Conducting the Detention Hearing

1. [§116.44] Explanation of Proceedings and 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 (Welf & I C §633; Cal Rules of Ct 5.754(a)):

- The contents of the petition,
- The nature and possible consequences of juvenile court proceedings, and
- If the child has been taken into custody, the reasons for the initial detention and the purpose and scope of the detention hearing.

In addition, the court must advise the child and parent or guardian of the following hearing rights (Welf & I C §§630(b), 633, 702.5; Cal Rules of Ct 5.534(g), (k)):

- The right of the child to counsel at each stage of the proceedings (see §116.17);
- 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 evidence.

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

2. [§116.45] 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). See discussion of Cal Rules of Ct 5.778 procedures in California

Judges Benchguide 118: *Juvenile Delinquency Jurisdiction Hearing*, §118.23 (Cal CJER).

3. Presentation of Evidence

a. [§116.46] 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). 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). However, 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.

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. [§116.47] 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(a); 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 (sufficient evidence) is not met. Welf & I C §701.1; Cal Rules of Ct 5.534(d)(1); see §116.46. The court must release the child from custody unless certain findings have been made concerning the child's likelihood of fleeing the

court's jurisdiction, safety or propensity to do harm to self or others, disobeyance of a court order, as well as a prima facie showing that the child is described by Welf & I C §602. See Welf & I C §635(c)(1); Cal Rules of Ct 5.760(c), (d). See discussion in §116.56.

c. [§116.48] Documentary Evidence

The court may base its detention 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 the court considers at this hearing. Welf & I C §630; *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 §116.52). In deciding whether continuation in the home is contrary to the child's interests, 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 at the request of the child.

The court may also consider contents of the probation officer's report on the child's risk of entering foster care placement, including (Welf & I C §635(d); 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. [§116.49] Prima Facie Case; Burden of Proof

To detain the child, in addition to finding one or more grounds for detention (see §116.56), the court must also find that there is a prima facie showing that the child is described by Welf & I C §602. Welf & I C §635(c)(1); 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 transfer of jurisdiction hearing under Welf & I C §707, they will generally agree to stipulate to delay the prima facie hearing until the transfer hearing (or they may stipulate to detention and waive the prima facie hearing because of the evidence that will be presented at the transfer 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.

I. [§116.50] Continuances

A detention hearing or rehearing must be continued for 1 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. Welf & I C §682(b); 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. Welf & I C §682(b); 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 2 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 nonobjection is deemed to be a consent to the continuance. Welf & I C §682(d); Cal Rules of Ct 5.550(b)(4). Once continued, the detention hearing must begin on the date to which it was continued or within 7 days thereafter when the court is satisfied that there was good cause for the continuance and that the party seeking the continuance is prepared to proceed. Welf & I C §682(e).

☛ 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 5 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 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 continued detention hearing. Cal Rules of Ct 5.550(c)(2).

A judge may also grant a continuance when the child appears to be a danger to himself or herself or others as a result of drug use. Welf & I C §708(a). In that event, the judge may continue the hearing and order the child taken to a designated facility. Welf & I C §708(a). Once the child has been housed in a facility, Welf & I C §5343 applies. Welf & I C §708(a). If it is determined that the child is not a danger to himself or herself or others, and no more treatment is required, the child must be returned to the juvenile court if the proceeding was not dismissed. Welf & I C §708(b).

J. [§116.51] Deferred Entry of Judgment

At an initial hearing, the court may be requested to order a suitability hearing as to whether or not the child would benefit from the education, treatment and rehabilitation offered by deferred entry of judgment (DEJ) pursuant to provisions of Welf & I C §§790–795 and Cal Rules of Ct 5.800. In lieu of jurisdiction and disposition hearings, the court may grant a deferred entry of judgment with respect to allegations contained in a Welf & I C §602 petition, provided the child admits all the allegations and waives the right to a speedy disposition hearing. Judgment is deferred (not entered) with the child ordered to comply with certain terms and conditions. After the successful completion of a minimum 1-year term of deferred entry of judgment (not to exceed 3 years) and a positive recommendation of the

probation department and the motion of the prosecutor, the court must dismiss the charge(s) and seal the records. And the arrest on which the judgment was deferred is deemed never to have occurred and any records of the proceedings are sealed. Welf & I C §793(c); Cal Rules of Ct 5.800(g).

Before filing a petition alleging a felony offense, or as soon as possible after filing, the prosecutor must review the case file to determine whether or not the DEJ eligibility criteria in Welf & I C §790(a) apply. Welf & I C §790(b); Cal Rules of Ct 5.800(b)(1). If the child is found eligible for deferred entry of judgment, the prosecutor must file a declaration in writing with the court or state for the record the grounds on which the determination is based, and must make this information available to the child and his or her attorney. Welf & I C §790(b). The prosecutor must file form JV-750, *Determination of Eligibility–Deferred Entry of Judgment–Juvenile* with the petition. Cal Rules of Ct 5.800(b)(1). The prosecutor must provide written notification of the child's eligibility for DEJ eligibility and the procedural advisements outlined in Welf & I C §§791(a) to the child and his or her attorney. Welf & I C §§790(b), 791(a); see also *In re Trenton D.* (2015) 242 CA4th 1319, 1325–1327, 195 CR3d 794. The prosecutor must issue form JV-751, *Citation and Written Notification for Deferred Entry of Judgment–Juvenile* to the child's custodial parent, guardian, or foster parent, and the form must be personally served on the custodial adult at least 24 hours before the time set for the DEJ hearing. Cal Rules of Ct 5.800(c).

Only juveniles to whom all of the following apply are eligible to participate in the DEJ program (Welf & I C §790(a); Cal Rules of Ct 5.800(a)):

- The child is at least 14 years of age at the time of the DEJ hearing;
- The offense is not one listed in Welf & I C §707(b);
- The child has not previously been declared a ward for the commission of a felony;
- The child has not previously been committed to the custody of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ);
- There is no record that probation, including Welf & I C §654.2 informal supervision, has ever been revoked without being completed (see *In re C.Z.* (2013) 221 CA4th 1497, 1504–1508, 165 CR3d 409 (includes informal supervision));
- The child is eligible for probation under Pen C §1203.06; and
- The offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration specified in Pen C §289 when the victim was prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim was incapable, because of mental disorder or developmental

> or physical disability, of giving consent, and that was known or reasonably should have been known to the child at the time of the offense.

Once the child is found eligible to participate in the DEJ program, the court must determine the child's suitability for DEJ, that is whether the child would derive benefit from education, treatment, and rehabilitation efforts. The court may order the probation department to prepare a report with recommendations on the suitability of the child for DEJ and set a hearing on the matter. Welf & I C §790(b). The court may set this hearing at the child's initial appearance under Welf & I C §657. Welf & I C §790(b). Alternatively, the court may summarily grant DEJ, thereby dispensing with a hearing, if the child admits each allegation as charged and waives the right to a speedy disposition hearing. Welf & I C §791(b); Cal Rules of Ct 5.800(d).

Although the court is not required to ultimately grant DEJ, it is required to at least follow specified procedures and exercise discretion to reach a final determination once the mandatory threshold eligibility determination is made by the prosecutor. *In re C.W.* (2012) 208 CA4th 654, 661–662, 145 CR3d 312. When the court has found that the child is a suitable candidate for DEJ, 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 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.

When the child does not admit the allegations, but instead insists on a contested hearing, the child is ineligible 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. 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.

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 only to a misdemeanor when charged with a felony is ineligible for DEJ. *In re R.C.* (2010) 182 CA4th 1437, 1443, 106 CR3d 711.

Because a hearing on a suppression motion takes place before the jurisdiction hearing begins, a child may seek DEJ after a suppression motion is denied. *In re A.I.* (2009) 176 CA4th 1426, 1436, 98 CR3d 501 (a child is not required to forego the right to a suppression hearing in order to accept DEJ).

☛ JUDICIAL TIP: If a child is eligible for DEJ consideration, ask the child and defense attorney whether the child intends to pursue a suitability determination; and if not, waive the suitability determination on the record. Absent a waiver of suitability, the minor may be able to pursue DEJ even at the time of the jurisdiction hearing.

K. Detention Rehearings

1. [§116.52] Rehearing for Lack of Notice or Unavailability of Report Preparers

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, court must grant a request for a detention rehearing under these circumstances:

- 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));
- The parent or guardian fails to appear after receiving notice of the hearing and the court finds that the failure to appear was due to good cause (Cal Rules of Ct 5.762(b)); or
- The child has not had the opportunity to confront and cross-examine the preparers of reports (Cal Rules of Ct 5.762(c)).

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 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.

2. [§116.53] Prima Facie Rehearing

After a decision of detention has been made, the child or the child's attorney may request that further evidence of the prima facie case be presented, the court must set a prima facie rehearing within 3 judicial days or, if witnesses are unavailable, within 5 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. [§116.54] Rehearing of Proceedings Before Referees

Within 10 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 rehearings on their own motion. Welf & I C §253; Cal Rules of Ct 5.542(d) (rehearings 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 10 calendar days from service of referee's order or 20 judicial days after hearing, whichever is later).

Detention rehearings must be conducted de novo before a judge within 2 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 otherwise the jurisdiction hearing will have occurred before the detention rehearing takes place, and detention will no longer be an issue.

L. [§116.55] 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).

M. Findings

1. [§116.56] Generally

Before detaining the child, the court must determine whether continuance in the home of the parent or legal guardian is contrary to the child's welfare and whether there are available services that would prevent the need for further detention. Welf & I C §636(d); see Cal Rules of Ct 5.760(d). In addition, at least one of five grounds for detention must be found by the court. Welf & I C §636(a); Cal Rules of Ct 5.760(c)(1). See §§116.57–116.61.

☛ 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 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 §§116.57–116.61), 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(b)(1). 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), (d)(3)(A); see Cal Rules of Ct 5.760(d). If the child can be returned home at this hearing with 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:

- A prima facie showing that the child is described by Welf & I C §602 (Welf & I C §635(c)(1); Cal Rules of Ct 5.758(a); see §116.50);
- Continuance in the home of the parent or legal guardian is contrary to the child's welfare (Welf & I C §636(a); Cal Rules of Ct 5.758(a)); and
- One or more of the grounds for detention exist. (Welf & I C §§635(a), 636(a); Cal Rules of Ct 5.758(a). The grounds for detention include the following (Welf & I C §636(a); Cal Rules of Ct 5.760(c)(1)):
  - The child has violated a court order.
  - The child has escaped from commitment.
  - The child is likely to flee the jurisdiction of the court.
  - 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.

If the child is a dependent child of the court under Welf & I C §300, the court's decision to detain the child may not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide placement for the child. Welf & I C §§635(b)(2), 636(a); Cal Rules of Ct 5.760(c)(2); see also *In re Bianca S.* (2015) 241 CA4th 1272, 1275, 194 CR3d 404. Nor may the court's decision to detain the dependent child be based on a finding that the child's current placement is contrary to the child's welfare. If the court determines that continuance in the child's current placement is contrary to the child's welfare, the court must order the child welfare services department to place the child in another licensed or approved placement. Welf & I C §636(e). See also Cal Rules of Ct 5.760(c)(4) (if court releases dependent child it must order child welfare services department either to ensure that the child's current caregiver takes physical custody of the child or to take physical custody of the child and places the child in a licensed or approved placement).

2. [§116.57] 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)(A)), the court must consider (Cal Rules of Ct 5.760(g)):

- The specificity of the court order.
- The nature and circumstances of the violation.
- The severity and gravity of the violation.
- Whether the violation endangers the child or others.
- The prior history of disobedience of court or probation department orders.
- Whether the child's presence in court can be ensured without detention.
- The nature of the underlying conduct or offense.
- The likelihood that the child will be ordered removed from the custody of the parent or guardian.

3. [§116.58] 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)(1)(B)), the court must consider whether (Cal Rules of Ct 5.760(h)):

- The child was committed to the 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. [§116.59] 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)(1)(C)), 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 and circumstances of the alleged conduct or offense which may increase likelihood of flight;
- Whether there is an unstable home 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. [§116.60] 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)(1)(D)), 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.

6. [§116.61] 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)(1)(E) the court must consider the following (Cal Rules of Ct 5.760(k)):

- The offense involved physical harm to the person or property of another;
- There is prior history of physical harm or the substantial threat of physical harm to the person or property of another; and
- Other compelling circumstances that make detention reasonably necessary.

7. [§116.62] Title IV-E Removal Findings

Certain findings must be made by the court 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(e), require the court to make the following findings both on the record and in the written order:

- Continuance in the home of the parent or legal guardian is 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 of the child from the home; 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 generally 42 USC §§671–672 (findings required when placing children in foster care or group homes).

If the court 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 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.
- 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 from home and placed, but in no event later than 1 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 Title 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.
- If prior to a detention hearing the court is asked to issue an arrest warrant or a juvenile detention order because the child's whereabouts are unknown, the warrant or order should contain language indicating that continuance in the home is contrary to the child's welfare.

N. [§116.63] 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)); 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). If the court orders release of a dependent child, the court must order the child welfare services department either to ensure that the child's current foster parent or other caregiver takes physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement. Welf & I C §635(c)(2); Cal Rules of Ct 5.760(c)(4).

- Release (detention) on home supervision for no more than 15 court days unless there is a time waiver. Welf & I C §636(b); see §116.64.
- 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)(1)):
  - 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 child (see Welf & I C §636(a)). If that is the only Welf & I C §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. [§116.64] 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 placing 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 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. 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 issuing an order restraining the child from any or all of the following activities (Cal Rules of Ct 5.760(*l*)):

- Molesting, assaulting, or otherwise having contact with the alleged victim and victim's family;
- Being near or 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.

☛ 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, and
- Behave in school.

Where appropriate, a child may also be subject to electronic monitoring (*e.g.*, GPS tracking device, ankle bracelets) as a condition home supervision.

☛ 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 a detention for the purposes of federal foster care funding (Cal Rules of Ct 5.5.502(11)) nor for accruing custody credits (*In re Randy J.* (1994) 22 CA4th 1497, 1501–1506, 28 CR2d 152).
- If the child violates conditions of home supervision, the reasonable efforts findings set out in §116.62 must be made at the subsequent detention hearing that occurs to address the violation of home supervision conditions and where a change of detention status may be made.

2. [§116.65] Nonsecure Facilities

Children who are not considered escape risks nor a danger to themselves, to 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.

There is no predispositional custody credit for time spent in in a nonsecure facility. *In re Randy J.* (1994) 22 CA4th 1497, 1501–1506, 28 CR2d 152.

3. [§116.66] 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. 87 CA4th at 326. See §§116.23–116.24.

4. [§116.67] Psychological, Medical, and/or Rehabilitative Evaluation and Treatment

If the court believes a child needs specialized psychiatric treatment while unable to live at home, the court must 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. 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 where 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.

☛ JUDICIAL TIP: Become acquainted with the types of evaluations and services for mental health and substance abuse that are available for youth in your community. Sometimes services are available pre-jurisdiction while others are available only after jurisdiction is taken.

5. [§116.68] Restraining Orders

At the initial or detention hearing, the court may be asked to consider whether or not to issue a restraining order. Once a petition has been filed, the juvenile court has exclusive jurisdiction to issue restraining orders under Welf & I C §213.5. Cal Rules of Ct 5.625(a), 5.630(a). The court may issue these orders ex parte, on application, as provided in CCP §527 or as provided in Fam C §6300, if related to domestic violence. Welf & I C §213.5(b); 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 21 days from the issuance of the order, or 25 days if good cause appears to the court for the later date. Welf & I C §213.5(c)(1). The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for the service of the order to show cause on the person to be restrained. Welf & I C §213.5(c)(1). The respondent is entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition. Welf & I C §213.5(c)(2). Either party may request a

continuance of the hearing, which the court must grant on a showing of good cause. The request may be made in writing before or at the hearing or orally at the hearing. The court may also grant a continuance on its own motion. Welf & I C §213.5(c)(3). If the court grants a continuance, any temporary restraining order that has been issued must remain in effect until the end of the continued hearing, unless otherwise ordered by the court. In granting a continuance, the court may modify or terminate a temporary restraining order. Welf & I C §213.5(c)(4). The hearing may be combined with any other regularly scheduled hearing regarding the child. Welf & I C §213.5(c)(5).

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)(1), (f) (not to exceed 3 years).

Under Welf & I C §213.5(b), the juvenile court has exclusive jurisdiction to issue the following ex parte orders during the pendency of a delinquency proceeding (Welf & I C §213.5(b); Cal Rules of Ct 5.630(a)):

- Enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting by mail or otherwise, coming within a specified distance of, or disturbing the peace of:
  - — the child who is the subject of the proceedings or any other child of the household;
  - — the child's parent, legal guardian, or current caregiver, regardless of whether the child lives with him or her; or
  - — the child's current or former probation officer, or court appointed special advocate.
- Enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.
- Excluding any person from the residence of the person having care, custody, and control of the child.
- In connection with an animal owned, possessed, leased, kept, or held by a person protected by the restraining order, or residing in the residence or household of a person protected by the restraining order, the court may, on a showing of good cause, (1) grant the applicant exclusive care, possession, or control of the animal. and/or (2) order the restrained person to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

The showing necessary to exclude a person from the child's dwelling is the same as 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, or its designee, must transmit the order within 1 business day, to a local law enforcement agency authorized to enter orders into the California Law Enforcement Telecommunications System (CLETS), or, with the approval of the Department of Justice, the court may enter the order into CLETS directly. 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).

Prior to a hearing on the issuance of a restraining order, the court must ensure that a search is or has been conducted to determine if the subject of the proposed order has any prior conviction for a violent felony specified in Pen C §667.5 or a serious felony specified in Pen C §1192.7; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order. Welf & I C §213.5(j)(1)–(2); Fam C §6306(a); Cal Rules of Ct 5.630(j)(1). If the subject has an outstanding warrant, or is on probation or parole, the court must direct the court clerk to notify appropriate the appropriate law enforcement entity. Welf & I C §213.5(j)(3); Cal Rules of Ct 5.630(j)(2). The court must consider the information obtained from the search before deciding whether to issue a restraining order. Welf & I C §213.5(j)(2); Cal Rules of Ct 5.630(j)(1).

If an action is filed for the purpose of modifying or terminating a protective order prior to the expiration date specified in the order by a party other than the protected party, the protected party must be given notice of the proceeding by personal service or, in certain cases, by service on the Secretary of State. Welf & I C §213.5(d)(2). If the protected party cannot be notified prior to the hearing for modification or termination of the protective order, the juvenile court must deny the motion without prejudice or continue the hearing until the protected party can be properly noticed and may, on a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice. The protected

party may waive the right to notice if he or she is physically present and does not challenge the sufficiency of the notice. Welf & I C §213.5(d)(2).

Written applications for a restraining order must be submitted on Judicial Council form JV-245: *Request for Restraining Order–Juvenile.* A completed *Confidential CLETS Information Form (form CLETS-001)* must accompany the application. Cal Rules of Ct 5.630(b)(2).

A temporary restraining order must be prepared on Judicial Council form JV-250: *Notice of Hearing and Temporary Restraining Order–Juvenile*. An order after hearing must be prepared on form JV-255: *Restraining Order–Juvenile.* Cal Rules of Ct 5.625(a).

O. [§116.69] Service of Findings and Orders

Written findings and orders must be personally served by the clerk or served by first class mail within 3 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.

P. [§116.70] Setting Other Hearings

Any transfer of jurisdiction hearing under Welf & I C §707 must be held before the jurisdiction hearing begins. Welf & I C §707(a)(1) (transfer motion must be made prior to attachment of jeopardy); Cal Rules of Ct 5.766(c). Notice of the transfer hearing must be given at least 5 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 transfer 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.

☛ JUDICIAL TIP: Some courts set an appearance between the detention and the jurisdiction hearings to ensure that both sides are prepared for the jurisdiction hearing.

IV. FORMS

A. [§116.71] Spoken Form: Conduct of Detention Hearing

(1) Introduction

(2) Appointment of attorney for child

[*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.

[Detention Hearing]

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 transfer of jurisdiction hearing is sought:*]

After this hearing, the prosecutor may make a motion to transfer [*name of child*] to a court of criminal jurisdiction. If the court orders a transfer of jurisdiction, [*name of child*] will be tried in adult criminal court.

[Jurisdiction/Adjudication Hearing/Trial]

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.

[Disposition Hearing]

The purpose of a disposition hearing is to decide whether you should be placed on probation and what your conditions of probation should be in view of what has been found to have happened. It may also include as a part of your probation your placement at [*DJJ/camp/ranch/residential treatment/etc.*].

[Constitutional Rights]

(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 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 5.778(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. [§116.72] 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 §116.56. 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(a) and 636(a) apply. [*Name of child*] should not remain in detention pending the jurisdiction hearing and is hereby released to the custody of [*his/her*] [*parent(s)/ guardian(s)/ child welfare* services (if no placement available)].

[*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(a) 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 and care of the child pending disposition or further court order.

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

Note: These findings must be made on the record and in the written order. 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 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 §116.64 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. The

court [sustains the petition as to count(s) __/finds the minor is in violation of child's probation conditions]. You are ordered to appear at a disposition hearing on _____, 20__, at _____ [*a.m./p.m.*], in Department _____.

[NOTE: For a more detailed spoken word/script for taking a plea, please see California Judges Benchguide 118: *Juvenile Delinquency Jurisdiction Hearings* §118.42 (Cal CJER).]

[*If no admission or no-contest plea:*]

(9) Next hearing

You are ordered to be present at the [*jurisdictional hearing/transfer of jurisdiction 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?

Appendix A: Checklist of Grounds for Detention

The child must be released unless the court finds that continuance in the home is contrary to the child's welfare and one of the following grounds for detention exist (Welf & I C §§635(a), 636(a); Cal Rules of Ct 5.760(c), (g)–(k)):

(1) **The child has violated a court order.** If this ground is alleged, the court must consider:

- The specificity of the court order alleged to have been violated;
- The nature and circumstances of the alleged violation;
- The severity and gravity of the alleged violation;
- Whether the alleged violation endangered the child or others;
- The child's prior history of disobedience of orders or directives of the court or probation officer;
- Whether there are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- The nature of the underlying offense; and
- The likelihood that if the petition is sustained, removal of custody will be ordered.

(2) **The child has escaped from commitment.** If this ground is alleged, the court must consider whether:

- The child was committed to the Division of Juvenile Justice or a county juvenile home, ranch, camp, forestry camp, or juvenile hall; and
- The child escaped from the facility or the lawful custody of any person in which the child was placed during commitment.

(3) **The child is likely to flee.** If this ground is alleged, the court must consider whether:

- The child has previously fled the jurisdiction of the court or failed to appear in court as ordered;
- There are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- The child promises to appear at scheduled court hearings;
- The child has a prior history of disobedience of orders or directives of the court or the probation officer;
- The child is a county resident;

- The nature and circumstances of the alleged conduct or offense which may increase likelihood of flight;
- There is an unstable home situation that makes flight likely; and
- The child would probably be released on modest bail or own recognizance if there is no danger to the child and this were adult court.

(4) **Detention is an immediate and urgent necessity for the child's protection.** If this ground is alleged, the court must consider whether:

- The child can be cared for and protected until the next appearance;
- The child is addicted to or is in imminent danger from the use of drugs or alcohol; and
- There are other compelling circumstances that make detention immediately and urgently necessary.

(5) **Detention is reasonably necessary to protect the person or property of another.** If this ground is alleged, the court must consider whether:

- The alleged offense involved physical harm to the person or property of another;
- There is a history of physical harm or the substantial threat of physical harm to the person or property of another; and
- There are other compelling circumstances that make detention reasonably necessary.

Appendix B: Enumerated Offenses in Welfare and Institutions Code §676(a)

Offense	**Penal Code**
Murder	Pen C §187
Arson of an inhabited building	Pen C §451(b)
Robbery while armed with a dangerous or deadly weapon	Pen C §§211, 212.5 with Pen C §12022(a) allegation
Rape with force or violence, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable of giving consent because of a disability and this is known or reasonably should be known to the person committing the offense	Pen C §261(a)(1)–(3)
Sodomy by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable of giving consent because of a disability and this is known or reasonably should be known to the person committing the offense	Pen C §286(c)(2)(A)–(C), (d)(1)–(3), (g), (i)
Oral copulation by force, violence, duress, menace, threat of great bodily harm, or when the person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable of giving consent because of a disability and this is known or reasonably should be known to the person committing the offense	Pen C §288a(c)(2)(A)–(C), (d)(1)–(3), (g), (i)
Sexual penetration by force, violence, duress, menace, or threat of great bodily harm	Pen C §289(a)(1)(A)–(C)

Offense	**Penal Code**
Sexual penetration when the person is prevented from resisting by any intoxicating, anesthetizing, or controlled substance, and this is known or reasonably should be known to the person committing the offense	Pen C §289(e)
Kidnapping for ransom	Pen C §209(a)
Kidnapping for purpose of robbery	Pen C §209(b)
Kidnapping with bodily harm	Pen C §207(a) with a Pen C §242 or §245(a)(4) allegation
Assault with intent to murder or attempted murder	Pen C §§664/187 (*Note:* Pen C §217 (assault with intent to commit murder) law has been repealed.)
Assault with a firearm	Pen C §245(a)(2)–(3), (b)
Assault with a destructive device	Pen C §§18740, 18745
Assault by any means of force likely to produce great bodily injury	Pen C §245(a)(4)
Discharge of a firearm at an inhabited dwelling or occupied building	Pen C §246
Certain violent crimes (Pen C §§187, 207, 209, 209.5, 211, 215, 220, 261(a)(2), 261(a)(6), 262(a)(1), 262(a)(4), 460(a),) involving great bodily injury, as defined in Pen C §12022.7, against a person 60 years of age or older or a person who is blind, paraplegic, quadriplegic, or confined to a wheelchair, or any Pen C §245(a)(1), §243(d), §215, §211, or §203 offense against a person 60 years of age or older	Pen C §1203.09
Personal use of a firearm in the commission or attempted commission of a felony	Felony with Pen C §12022(b), §12022.5 or §12022.53 allegation
Any felony offense in which a minor personally used a weapon listed in Pen C §16590	Felony with Pen C §12022(b) allegation

Offense	**Penal Code**
Burglary of an inhabited dwelling house or trailer coach, or inhabited portion of any other building, if the minor previously has been adjudged a ward of the court by reason of the commission of any offense listed in this section, including an offense listed in this paragraph	Pen C §§459 and 460(a) with prior wardship offense listed in Welf & I C §676(a). (Note: Pen C §459.5 (shoplifting) is not included in Welf & I C §676(a).)
Felony offense of preventing or dissuading a witness or victim from attending court proceeding or giving testimony	Pen C §136.1
Felony offense of bribing a witness or inducing false testimony	Pen C §137
Possession or purchase for sale, sale, furnishing, administration, giving away, importation, or transportation, or offer to do the above of certain controlled substances (including opiates, amphetamine, methamphetamine, MDMA (Ecstasy), LSD, PCP, cocaine, heroin, codeine, oxycodone, and morphine)	H & S C Welf & I C §§11351, 11351.5, 11352, 11378, 11378.5, 11379, and 11379.5
Criminal street gang activity that constitutes a felony	Pen C §186.22
Manslaughter, including misdemeanor vehicular manslaughter but excluding Pen C §191.5 gross vehicular manslaughter while intoxicated	Pen C §192
Drive by shooting or discharge of a weapon from or at a motor vehicle	Pen C §§246, 247, 26100
Any crime committed with an assault weapon, including possession of an assault weapon	Pen C §§30510 and 30605 with Pen C §12022(a)(2), §12022.5(b), or §12022.53 allegation
Carjacking while armed with a dangerous or deadly weapon	Pen C §215 with Pen C §12022(a) allegation
Kidnapping in commission of carjacking	Pen C §209.5
Torture	Pen C §§206, 206.1
Aggravated mayhem	Pen C §205

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