

YOUTH DIVERSION LAW

KEY GUIDEPOSTS FOR REFORM:

- ✦ In line with current research and best practices, diversion should be implemented at the earliest point possible to minimize contact with the juvenile delinquency system. The best, most flexible opportunities for diversion are those led and implemented by community members, families, schools, community-based organizations, and social service agencies.
- ✦ The community, law enforcement, Probation, the District Attorney, and the Court are all decision-makers with the power to minimize a young person's contact with the juvenile delinquency system.
- ✦ Once law enforcement has been contacted, every effort should be made to implement diversion before referral to Probation, at which point diversion options can become more limited.
- ✦ In general, law enforcement has discretion regarding whether or not to take formal action, and can decline to take temporary custody of a youth, choosing instead to counsel the youth or provide resources. If law enforcement decides to take temporary custody, there must be a lawful basis for doing so, such as reasonable cause to believe that the minor has committed a delinquent act.
- ✦ When law enforcement takes temporary custody of a youth, there are several options for diversion. Law enforcement may counsel and release the youth, or may refer or deliver the young person for diversion services.
- ✦ In a specified subset of cases, the law does not allow law enforcement to initiate diversion, instead requiring that youth in this category be retained in custody and delivered to Probation. This subset only includes youth who are 14 years of age or older, and taken into custody for the personal use of a firearm in an attempt or commission of a felony or for any offense listed in Welf. & Inst. Code section 707(b).
- ✦ If law enforcement decides not to implement a diversion program, a youth can still be released by law enforcement with a "Notice to Appear" before Probation.
- ✦ If law enforcement decides to refer the case to Probation, law enforcement may either release the minor and provide them a "Notice to Appear" before Probation for an intake, or deliver the young person to Probation's custody.

- Once Probation takes custody, Probation must release the youth unless certain factors are present. There are certain specified cases where the youth must first be brought before a judicial officer before he or she can be released.
- For youth delivered to Probation's custody who are age 14 and over and have been taken into custody for an attempt or commission of a felony, neither the police nor Probation may release such youth until the youth signs a "Promise to Appear" before Probation.
- If Probation retains a youth in detention in juvenile hall, the case will be referred automatically to the District Attorney and the minor will be brought to court for a detention hearing.

- ✦ Once Probation receives a delinquency case referral, Probation must investigate and conduct an intake.
- ✦ For certain categories of cases, if law enforcement submits an application to Probation to begin formal proceedings, Probation must refer the case to the District Attorney within 48 hours. For example, this requirement applies to any felony charge where the youth is at least 14 years of age.
- ✦ If Probation is not obligated by law to refer a case to the District Attorney, Probation may decide to settle the case at intake, including by referring the youth and family to services. Court rules dictate that Probation should settle a case at intake where there is not sufficient evidence to show that the youth actually committed a delinquent act.
- ✦ If Probation does not settle a case at intake, Probation can initiate a term of "informal supervision" for a maximum of six months. Such informal supervision requires consent from the youth and their family, and can include referral for sheltered care, a crisis resolution home, and/or education and counseling services. If the informal supervision is completed successfully, the records are sealed.
- ✦ When a case is referred to the District Attorney, the decision whether to file a court petition is in the discretion of the District Attorney. The District Attorney may decline to file or may return the case to Probation for informal supervision or other appropriate action.
- ✦ Even after a delinquency petition is filed in court, a judge can order that the youth be referred back to Probation for informal supervision, instead of going forward on the case in court. If the informal supervision is completed successfully, the delinquency case is dismissed and the records are sealed.

For more information:

ylc.org/navigate-juvenile-justice-law

