

YOUTH DETENTION LAW

KEY GUIDEPOSTS FOR REFORM:

- ✦ There is no legal requirement that youth be detained in a *secure facility*. Rather, the law requires some youth to be *held in custody pending court review*.
- ✦ The law states that for a certain subset of cases, a youth must be held in custody until a judge can conduct a detention hearing. This subset 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).
 - Because of this law, the charges cited by law enforcement at arrest determine whether a youth must be held in custody or may be released.
 - Even for youth whose charges require law enforcement and Probation to hold them in custody, an expedited detention hearing could reduce or eliminate the need for custodial detention.
- ✦ For all other youth delivered to Probation's custody, *there is a legal presumption that they should be released*. Probation's decision to detain a youth must be individualized and based on the specific grounds set out in the statute. It also must be justified by actual evidence that overcomes the legal presumption that youth should be released.
 - Any Probation policies and practices that create a presumption in favor of detention or require detention in certain circumstances are out of compliance with this statutory structure.
 - Further, even where Probation has a lawful basis for detention, Probation's decision to detain is not inevitable or legally required. Probation can still decide not to detain and release the youth. Or, if Probation decides to detain, Probation can make use of alternative types of detention, such as Home Supervision or non-secure detention.
- ✦ For all detained youth, the court could hold immediate detention hearings to significantly reduce the amount of time that a youth is held in custody. California law requires that detention hearings be held "as soon as possible," but also allows detention hearings to be delayed for several days.

- ✦ Because California law allows detention hearings to be conducted several days after arrest, there is tension between state law and the federal constitutional requirement that a court must review an arrest within 48 hours. Under the Fourth Amendment, an arrest must be supported by evidence amounting to “probable cause” to believe that the person committed the offense charged. If a county does not have separate procedures for reviewing probable cause prior to the detention hearing, it is likely that the county is routinely violating this constitutional requirement.
- ✦ In many cases where the youth is initially detained, the young person is ultimately ordered by the court to be released back to the community, either home or to another community-based placement. For this reason, counties should consider whether detentions are actually serving their statutory purpose, particularly in light of recent research documenting the harms of detention to youth.

For more information:
ylc.org/navigate-juvenile-justice-law

