



Part 3
YOUTH DETENTION HEARINGS IN CALIFORNIA
A LEGAL MAP

STATUTES CITED

This document contains the full text of the California state statutes and Rules of Court cited in **Part 3: A Legal Map of Youth Detention Hearings in California**.¹ For all maps in the series, visit our website: www.ylc.org/navigate-juvenile-justice-law.

Penal Code

- **825**

(a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

(2) When the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday.

(Amended by Stats. 2003, Ch. 149, Sec. 66. Effective January 1, 2004.)

Welfare and Institutions Code

- **249.**

No order of a referee removing a minor from his home shall become effective until expressly approved by a judge of the juvenile court.

(Added by Stats. 1976, Ch. 1068.)

¹ Current as of January 2020. All of California's laws are available at <http://leginfo.legislature.ca.gov/>.

- **628.**

(a) (1) Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody and shall immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare and one or more of the following conditions exist:

(A) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.

(B) The minor is likely to flee the jurisdiction of the court.

(C) The minor has violated an order of the juvenile court.

(2) The probation officer's decision to detain a minor who is currently a dependent of the juvenile court pursuant to Section 300 or the subject of a petition to declare him or her a dependent of the juvenile court pursuant to Section 300 and who has been removed from the custody of his or her parent or guardian by the juvenile court shall not be based on any of the following:

(A) The minor's status as a dependent of the juvenile court or as the subject of a petition to declare him or her a dependent of the juvenile court.

(B) A determination that continuance in the minor's current placement is contrary to the minor's welfare.

(C) The child welfare services department's inability to provide a placement for the minor.

(3) The probation officer shall immediately release a minor described in paragraph (2) to the custody of the child welfare services department or his or her current foster parent or other caregiver unless the probation officer determines that one or more of the conditions in paragraph (1) exist.

(4) This section does not limit a probation officer's authority to refer a minor to child welfare services.

(b) If the probation officer has reason to believe that the minor is at risk of entering foster care placement as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, the probation officer shall, as part of the investigation undertaken pursuant to subdivision (a), make reasonable efforts, as described in paragraph (5) of subdivision (d) of Section 727.4, to prevent or eliminate the need for removal of the minor from his or her home.

(c) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in subdivision (d) of Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while he or she is at the office of the physician or surgeon or that medical facility.

(d) (1) It is the intent of the Legislature that this subdivision shall comply with paragraph (29) of subsection (a) of Section 671 of Title 42 of the United States Code as added by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351). It is further the intent of the Legislature that the identification and notification of relatives shall be made as early as possible after the removal of a youth who is at risk of entering foster care placement.

(2) If the minor is detained and the probation officer has reason to believe that the minor is at risk of entering foster care placement, as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, then the probation officer shall conduct, within 30 days, an investigation in order to identify and locate all grandparents, adult siblings, and other relatives of the child, as defined in paragraph

(2) of subdivision (f) of Section 319, including any other adult relatives suggested by the parents. The probation officer shall provide to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate, within 30 days of the date on which the child is detained, written notification and shall also, whenever appropriate, provide oral notification, in person or by telephone, of all the following information:

(A) The child has been removed from the custody of his or her parent or parents, or his or her guardians.

(B) An explanation of the various options to participate in the care and placement of the child and support for the child's family, including any options that may be lost by failing to respond. The notice shall provide information about providing care for the child, how to become a foster family home, approved relative or nonrelative extended family member as defined in Section 362.7, or resource family home, and additional services and support that are available in out-of-home placements. The notice shall also include information regarding the Kin-GAP Program (Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9), the CalWORKs program for approved relative caregivers (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9), adoption and adoption assistance (Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9), as well as other options for contact with the child, including, but not limited to, visitation. When oral notification is provided, the probation officer is not required to provide detailed information about the various options to help with the care and placement of the child.

(3) The probation officer shall use due diligence in investigating the names and locations of the relatives pursuant to paragraph (2), including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child, consistent with the child's best interest, and obtaining information regarding the location of the child's adult relatives.

(4) To the extent allowed by federal law as a condition of receiving funding under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), if the probation officer did not conduct the identification and notification of relatives, as required in paragraph (2), but the court orders foster care placement, the probation officer shall conduct the investigation to find and notify relatives within 30 days of the placement order. Nothing in this section shall be construed to delay foster care placement for an individual child.

(Amended by Stats. 2017, Ch. 732, Sec. 53. (AB 404) Effective January 1, 2018.)

- **630.**

(a) If the probation officer determines that the minor shall be retained in custody, he or she shall immediately proceed in accordance with Article 16 (commencing with Section 650) to cause the filing of a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the matter for hearing on the detention calendar. Immediately upon filing the petition with the clerk of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the probation officer or the prosecuting attorney shall serve the minor with a copy of the petition and notify him or her of the time and place of the detention hearing. The probation officer or the prosecuting attorney shall notify each parent or each guardian of the minor of the time and place of the hearing if the whereabouts of each parent or guardian can be ascertained by due diligence. Notice pursuant to this subdivision may be given orally and shall not be delivered electronically.

(b) In a hearing conducted pursuant to this section, the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 635.

(Amended by Stats. 2017, Ch. 319, Sec. 137. (AB 976) Effective January 1, 2018.)

• **631.**

(a) Except as provided in subdivision (b), whenever a minor is taken into custody by a peace officer or probation officer, except when the minor willfully misrepresents himself or herself as 18 or more years of age, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within that period of time a petition to declare the minor a ward has been filed pursuant to this chapter or a criminal complaint against the minor has been filed in a court of competent jurisdiction.

(b) Except when the minor represents himself or herself as 18 or more years of age, whenever a minor is taken into custody by a peace officer or probation officer without a warrant on the belief that the minor has committed a misdemeanor that does not involve violence, the threat of violence, or possession or use of a weapon, and if the minor is not currently on probation or parole, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless a petition has been filed to declare the minor to be a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court pursuant to Section 635. In all cases involving the detention of a minor pursuant to this subdivision, any decision to detain the minor more than 24 hours shall 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 minor will be detained more than 24 hours. However, if the initial decision to detain the minor more than 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) Whenever a minor who has been held in custody for more than 24 hours by the probation officer is subsequently released and no petition is filed, the probation officer shall prepare a written explanation of why the minor was held in custody for more than 24 hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

(Amended by Stats. 1989, Ch. 686, Sec. 1.)

• **632.**

(a) Except as provided in subdivision (b), unless sooner released, a minor taken into custody under the provisions of this article shall, as soon as possible but in any event before the expiration of the next judicial day after a petition to declare the minor a ward or dependent child has been filed, be brought before a judge or referee of the juvenile court for a hearing to determine whether the minor shall be further detained. Such a hearing shall be referred to as a “detention hearing.”

(b) Whenever a minor is taken into custody without a warrant on the belief that he or she has committed a misdemeanor not involving violence, a threat of violence, or possession or use of weapons, if the minor is not currently on probation or parole, he or she shall be brought before a judge or referee of the juvenile court for a detention hearing as soon as possible, but no later than 48 hours after having been taken into custody, excluding nonjudicial days, after a petition to declare the minor a ward has been filed. In all cases involving the detention of a minor pursuant to this

subdivision where the minor will not be brought before the judge or referee of the juvenile court within 24 hours, the decision not to bring the minor before the judge or referee within 24 hours shall 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 minor will not be brought before the judge or referee within 24 hours. However, if the decision not to bring the minor before the judge or referee within 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) If the minor is not brought before a judge or referee of the juvenile court within the period prescribed by this section, he or she shall be released from custody.

(Amended by Stats. 1989, Ch. 686, Sec. 2.)

- **633.**

Upon his appearance before the court at the detention hearing, such minor and his parent or guardian, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of such minor and his parent or guardian to be represented at every stage of the proceedings by counsel.

(Repealed and added by Stats. 1961, Ch. 1616.)

- **635.**

(a) The court will examine the minor, his or her parent, legal guardian, or other person having relevant knowledge, hear relevant evidence the minor, his or her parent, legal guardian, or counsel desires to present, and, unless it appears that the minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, the court shall make its order releasing the minor from custody.

(b) (1) The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained.

(2) If a minor is a dependent of the court pursuant to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor.

(c) (1) The court shall order release of the minor from custody unless a prima facie showing has been made that the minor is a person described in Section 601 or 602.

(2) If the court orders release of a minor who is a dependent of the court pursuant to Section 300, the court shall order the child welfare services department either to ensure that the minor's current foster parent or other caregiver takes physical custody of the minor or to take physical custody of the minor and place the minor in a licensed or approved placement.

(d) If the probation officer has reason to believe that the minor is at risk of entering foster care placement as described in Section 11402, then the probation officer shall submit a written report to the court containing all of the following:

(1) The reasons why the minor has been removed from the parent's custody.

(2) Any prior referrals for abuse or neglect of the minor or any prior filings regarding the minor pursuant to Section 300.

(3) The need, if any, for continued detention.

(4) The available services that could facilitate the return of the minor to the custody of the minor's parents or guardians.

(5) Whether there are any relatives who are able and willing to provide effective care and control over the minor.

(Amended by Stats. 2014, Ch. 760, Sec. 5. (AB 388) Effective January 1, 2015.)

- **636.**

(a) If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter the order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained. If a minor is a dependent of the court pursuant to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor.

(b) If the court finds that the criteria of Section 628.1 are applicable, the court shall place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

(c) If the probation officer is recommending that the minor be detained, the probation officer shall submit to the court documentation, as follows:

(1) Documentation that continuance in the home is contrary to the minor's welfare shall be submitted to the court as part of the detention report prepared pursuant to Section 635.

(2) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the minor from the home and documentation of the nature and results of the services provided shall be submitted to the court either as part of the detention report prepared pursuant to Section 635, or as part of a case plan prepared pursuant to Section 636.1, but in no case later than 60 days from the date of detention.

(d) Except as provided in subdivision (e), before detaining the minor, the court shall determine whether continuance in the home is contrary to the minor's welfare and whether there are available services that would prevent the need for further detention. The court shall make that determination on a case-by-case basis and shall make reference to the documentation provided by the probation officer or other evidence relied upon in reaching its decision.

(1) If the minor can be returned to the custody of his or her parent or legal guardian at the detention hearing, through the provision of services to prevent removal, the court shall release the minor to the physical custody of his or her parent or legal guardian and order that those services be provided.

(2) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall state the facts upon which the detention is based. The court shall make the following findings on the record and reference the probation officer's report or other evidence relied upon to make its determinations:

(A) Whether continuance in the home of the parent or legal guardian is contrary to the minor's welfare.

(B) Whether reasonable efforts have been made to safely maintain the minor in the home of his or her parent or legal guardian and to prevent or eliminate the need for removal of the minor from his or her home. This finding shall be made at the detention hearing if possible, but in no case later than 60 days following the minor's removal from the home.

(3) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall make the following orders:

(A) The probation officer shall provide services as soon as possible to enable the minor's parent or legal guardian to obtain any assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.

(B) The minor's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

(4) If the matter is set for rehearing pursuant to Section 637, or continued pursuant to Section 638, or continued for any other reason, the court shall find that the continuance of the minor in the parent's or guardian's home is contrary to the minor's welfare at the initial petition hearing or order the release of the minor from custody.

(e) For a minor who is a dependent of the court pursuant to Section 300, the court's decision to detain the minor shall not be based on a finding that continuance in the minor's current placement is contrary to the minor's welfare. If the court determines that continuance in the minor's current placement is contrary to the minor's welfare, the court shall order the child welfare services department to place the minor in another licensed or approved placement.

(f) Whether the minor is returned home or detained, the court shall order the minor's parent or guardian to cooperate with the probation officer in obtaining those services described in paragraph (1) of, or in subparagraph (A) of paragraph (3) of, subdivision (d).

(Amended by Stats. 2014, Ch. 760, Sec. 6. (AB 388) Effective January 1, 2015.)

- **680.**

The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought. Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum cooperation of the minor upon whose behalf the petition is brought and all persons interested in his welfare with such provisions as the court may make for the disposition and care of such minor.

(Repealed and added by Stats. 1961, Ch. 1616.)

• **727.4.**

(a) (1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be served by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents, resource family, community care facility, or foster family agency, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, by personal service on those persons, or by electronic service pursuant to Section 212.5, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the minor being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that he or she may attend all hearings or may submit any information he or she deems relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings. Proof of notice shall be filed with the court.

(2) If the court or probation officer knows or has reason to know that the minor is or may be an Indian child, any notice sent under this section shall comply with the requirements of Section 224.2.

(b) At least 10 calendar days before each status review and permanency planning hearing, after the hearing during which the court orders that the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the probation officer shall file a social study report with the court, pursuant to the requirements listed in Section 706.5.

(c) The probation department shall inform the minor, the minor's parent or guardian, and all counsel of record that a copy of the social study prepared for the hearing will be available 10 days before the hearing and may be obtained from the probation officer.

(d) As used in Article 15 (commencing with Section 625) to Article 18 (commencing with Section 725), inclusive:

(1) "Foster care" means residential care provided in any of the settings described in Section 11402 or 11402.01.

(2) "At risk of entering foster care" means that conditions within a minor's family may necessitate his or her entry into foster care unless those conditions are resolved.

(3) "Preadoptive parent" means a licensed foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency.

(4) "Date of entry into foster care" means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies:

(A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer.

(B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the "date of entry into foster care" is the date the minor is physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the "date of entry into foster care" is the earlier of the date the

juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) “Reasonable efforts” means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor’s home.

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services.

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(D) In child custody proceedings involving an Indian child, “reasonable efforts” shall also include “active efforts” as defined in Section 361.7.

(6) “Relative” means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” “grand,” or the spouse of any of these persons even if the marriage was terminated by death or dissolution. “Relative” shall also include an “extended family member” as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(7) “Hearing” means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, recorded by a court reporter.

(B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions:

(i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a).

(ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a).

(iii) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the minor or the parents who are the subjects of the review.

(iv) The findings of the administrative review panel shall be submitted to the juvenile court for the court’s approval and shall become part of the official court record.

(Amended by Stats. 2017, Ch. 319, Sec. 141. (AB 976) Effective January 1, 2018.)

- **840.**

There shall be in each county probation department a program of home supervision to which minors described by Section 628.1 shall be referred. Home supervision is a program in which persons who would otherwise be detained in the juvenile hall are permitted to remain in their homes pending court disposition of their cases, under the supervision of a deputy probation officer, probation aide, or probation volunteer.

(Amended by Stats. 1977, Ch. 1241.)

- **841.**

The duties of a deputy probation officer, or a probation aide, a community worker or a volunteer under the supervision of a deputy probation officer, assigned to home supervision are to assure the minor's appearance at probation officer interviews and court hearings and to assure that the minor obeys the conditions of his or her release and commits no public offenses pending final disposition of his or her case. A deputy probation officer, probation aide, or community worker assigned to home supervision shall have a caseload of no more than 10 minors. However, if the county probation department employs a method of home supervision which includes electronic surveillance, the caseload shall be no more than 15 minors. Whenever possible, a minor shall be assigned to a deputy probation officer, probation aide, community worker, or volunteer who resides in the same community as the minor.

(Amended by Stats. 1991, Ch. 155, Sec. 1.)

- **842.**

A probation volunteer is a person who donates personal services to the probation department and probationers without compensation. A probation aide or a community worker may receive compensation for such services. Probation aides, community workers, and volunteers shall not qualify for peace officer status pursuant to Section 830.5 of the Penal Code.

(Amended by Stats. 1979, Ch. 291.)

Rules of Court

- **Rule 5.758. Requirements for detention; prima facie case**

(a) Requirements for detention (§§ 635, 636)

The court must release the child unless the court finds that:

- (1) A prima facie showing has been made that the child is described by section 601 or 602;
- (2) Continuance in the home is contrary to the child's welfare; and
- (3) One or more of the grounds for detention stated in rule 5.760 exist. However, except as provided in sections 636.2 and 207, no child taken into custody solely on the basis of being a person described in section 601 may be detained in juvenile hall or any other secure facility.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Detention in adult facility

A child must not be detained in a jail or lockup used for the confinement of adults, except as provided in section 207.1.

(Subd (b) amended effective July 1, 2002.)

Rule 5.758 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1474 effective January 1, 1998; previously amended effective July 1, 2002.

- **Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; retraining orders**

(a) Conduct of detention hearing (§§ 635, 636)

The court must consider the written report of the probation officer and any other evidence and may examine the child, any parent or guardian, or any other person with relevant knowledge of the child.

(Subd (a) adopted effective January 1, 2007.)

(b) Written detention report (§§ 635, 636)

If the probation officer has reason to believe that the child is at risk of entering foster care placement, the probation officer must submit a written report to the court that includes the following:

- (1) The reasons the child has been removed;
- (2) Any prior referral for abuse or neglect of the child and any prior filing of a petition regarding the child under section 300;
- (3) The need, if any, for continued detention;
- (4) Available services to facilitate the return of the child;
- (5) Whether there are any relatives able and willing to provide effective care and control over the child;
- (6) Documentation that continuance in the home is contrary to the child's welfare; and
- (7) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home and documentation of the nature and results of the services provided.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective January 1, 2001; previously amended effective July 1, 2002.)

(c) Grounds for detention (§§ 625.3, 635, 636)

- (1) The child must be released unless the court finds that continuance in the home of the parent or legal guardian is contrary to the child's welfare, and one or more of the following grounds for detention exist:
 - (A) The child has violated an order of the court;
 - (B) The child has escaped from a commitment of the court;
 - (C) The child is likely to flee the jurisdiction of the court;
 - (D) It is a matter of immediate and urgent necessity for the protection of the child; or
 - (E) It is reasonably necessary for the protection of the person or property of another.
- (2) If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child.
- (3) The court may order the child placed on home supervision under the conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a suitable place designated by the court.

- (4) If the court orders the release of a child who is a dependent of the court under section 300, the court must order the 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 place the child in a licensed or approved placement.

(Subd (c) amended effective January 1, 2016; adopted as subd (a); previously amended effective July 1, 2002; previously amended and relettered as subd (b) effective January 1, 2001, and as subd (c) effective January 1, 2007.)

(d) Required determinations before detention

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. The court must make these determinations on a case-by-case basis and must state the evidence relied on in reaching its decision.

- (1) If the court determines that the child can be returned to the home of the parent or legal guardian through the provision of services, the court must release the child to the parent or guardian and order that the probation department provide the required services.
- (2) If the child cannot be returned to the home of the parent or legal guardian, the court must state the facts on which the detention is based.

(Subd (d) amended effective January 1, 2016; adopted as subd (c) effective July 1, 2002; previously amended and relettered as subd (d) effective January 1, 2007.)

(e) Required findings to support detention (§ 636)

If the court orders the child detained, the court must make the following findings on the record and in the written order. The court must reference the probation officer's report or other evidence relied on to make its determinations:

- (1) Continuance in the home of the parent or guardian is contrary to the child's welfare;
- (2) Temporary placement and care is the responsibility of the probation officer pending disposition or further order of the court; and
- (3) Reasonable efforts have been made to prevent or eliminate the need for removal of the child, or reasonable efforts were not made.

(Subd (e) amended effective January 1, 2016; adopted as subd (b); previously relettered as subd (c) effective January 1, 2001; previously amended and relettered as subd (d) effective July 1, 2002, and as subd (e) effective January 1, 2007.)

(f) Required orders to support detention (§ 636)

If the court orders the child detained, the court must make the following additional orders:

- (1) As soon as possible, the probation officer must provide services that will enable the child's parent or legal guardian to obtain such assistance as may be needed to effectively provide the care and control necessary for the child to return home; and
- (2) The child's placement and care must be the responsibility of the probation department pending disposition or further order of the court.

(Subd (f) relettered effective January 1, 2007; adopted as subd (e) effective July 1, 2002.)

(g) Factors-violation of court order

Regarding ground for detention (c)(1), the court must consider:

- (1) The specificity of the court order alleged to have been violated;
- (2) The nature and circumstances of the alleged violation;
- (3) The severity and gravity of the alleged violation;
- (4) Whether the alleged violation endangered the child or others;
- (5) The prior history of the child as it relates to any failure to obey orders or directives of the court or probation officer;
- (6) Whether there are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- (7) The underlying conduct or offense that brought the child before the juvenile court; and
- (8) The likelihood that if the petition is sustained, the child will be ordered removed from the custody of the parent or guardian at disposition.

(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (c); previously relettered as subd (d) effective January 1, 2001; previously amended and relettered as subd (f) effective July 1, 2002.)

(h) Factors-escape from commitment

Regarding ground for detention (c)(2), the court must consider whether or not the child:

- (1) Was committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice; or a county juvenile home, ranch, camp, forestry camp, or juvenile hall; and
- (2) Escaped from the facility or the lawful custody of any officer or person in which the child was placed during commitment.

(Subd (h) amended and relettered effective January 1, 2007; adopted as subd (d); previously relettered as subd (e) effective January 1, 2001; amended and relettered as subd (g) effective July 1, 2002; previously amended effective January 1, 2006.)

(i) Factors-likely to flee

Regarding ground for detention (c)(3), the court must consider whether or not:

- (1) The child has previously fled the jurisdiction of the court or failed to appear in court as ordered;
- (2) There are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- (3) The child promises to appear at any scheduled court hearing;
- (4) The child has a prior history of failure to obey orders or directions of the court or the probation officer;
- (5) The child is a resident of the county;
- (6) The nature and circumstances of the alleged conduct or offense make it appear likely that the child would flee to avoid the jurisdiction of the court;
- (7) The child's home situation is so unstable as to make it appear likely that the child would flee to avoid the jurisdiction of the court; and

- (8) Absent a danger to the child, the child would be released on modest bail or own recognizance were the child appearing as an adult in adult court.

(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (e); previously relettered as subd (f) effective January 1, 2001; previously amended and relettered as subd (h) effective July 1, 2002.)

(j) Factors-protection of child

Regarding ground for detention (c)(4), the court must consider whether or not:

- (1) There are means to ensure the care and protection of the child until the next scheduled court appearance;
- (2) The child is addicted to or is in imminent danger from the use of a controlled substance or alcohol; and
- (3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (j) amended and relettered effective January 1, 2007; adopted as subd (f); previously relettered as subd (g) effective January 1, 2001; previously amended and relettered as subd (i) effective July 1, 2002.)

(k) Factors-protection of person or property of another

Regarding ground for detention (c)(5), the court must consider whether or not:

- (1) The alleged offense involved physical harm to the person or property of another;
- (2) The prior history of the child reveals that the child has caused physical harm to the person or property of another or has posed a substantial threat to the person or property of another; and
- (3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (k) amended and relettered effective January 1, 2007; adopted as subd (g); previously relettered as subd (h) effective January 1, 2001; previously amended and relettered as subd (j) effective July 1, 2002.)

(l) Restraining orders

As a condition of release or home supervision, the court may issue restraining orders as stated in rule 5.630 or orders restraining the child from any or all of the following:

- (1) Molesting, attacking, striking, sexually assaulting, or battering, or from any contact whatsoever with an alleged victim or victim's family;
- (2) Presence near or in a particular area or building; or
- (3) Associating with or contacting in writing, by phone, or in person any adult or child alleged to have been a companion in the alleged offense.

(Subd (l) amended effective January 1, 2016; adopted as subd (i); previously relettered as subd (j) effective January 1, 2001; previously amended and relettered as subd (k) effective July 1, 2002, and as subd (l) effective January 1, 2007.)

Rule 5.760 amended effective January 1, 2016; repealed and adopted as rule 1475 effective January 1, 1998; previously amended effective January 1, 2001, July 1, 2002, and January 1, 2006; previously amended and renumbered as rule 5.760 effective January 1, 2007.