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<b>Issue Date:</b> 03/01/83	
<b>Revised:</b> 12/02/19	

**Notes and  
References**

## **Petitions**

### **I. Introduction**

- A. A petition is a pleading to the Court, signed or sworn to under penalty of perjury (verified) by the petitioner, that a minor be declared a ward of the Court, based upon the petitioner's knowledge or information and belief of certain allegations stated in the petition.

### **II. Verified Petition**

- A. A petition is verified when the petitioner signs it under penalty of perjury or swears or affirms that the petition has been read, and either knows the allegations to be true, or believes them to be true, in open court.
  - 1. In general, all petitions must be verified except:
    - a. Certifications from Adult Court.
    - b. Incoming inter-county transfers (the filing of transfer papers is the equivalent to the filing of a petition)

### **III. Juvenile Court Proceedings**

- A. Juvenile Court proceedings to declare a minor a ward of the Court under §601.3(e) WIC may be commenced by the filing of a petition by the probation officer or the District Attorney after consultation with the probation officer.
- B. Juvenile Court proceedings to declare a minor a ward of the Court under §602 WIC is commenced by the filing of a petition by the District Attorney upon referral by the probation officer.
- C. Proceedings to modify an existing order by removing the minor from the physical custody of a parent or guardian and committing the minor to a private or county program or institution are commenced with the filing of a supplemental petition pursuant to §777 WIC.

Chapter  
2102.1  
Article VII  
§750-55  
WIC

§650 WIC

Pro-190

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1. The filing of a petition under this section may be made by the Probation Officer or prosecuting attorney. The timeframes for filing for detained youth is the same as for other petitions. The §777 petition is the most commonly used instrument for alleging violations of terms and conditions of probation and allows the Court to escalate its interventions. These include removal to a foster care program or detention.
  2. The Probation Officer has the responsibility to insure proper notice is given to required parties. (See Manual Section 2105, Notice of Hearing.)
- D. A further proceeding in the Juvenile Court to change, modify or set aside a previous order of the Court is commenced by the submission of a supplemental petition pursuant to §778 WIC.
1. Supplemental petitions pursuant to §778 WIC may be filed by the probation officer. The probation officer will follow the same §601 WIC and §602 WIC custodial status guidelines and notification requirements.
  2. After reviewing the supplemental petition, the Court will grant the request, deny the request, or set the matter for a hearing.
- IV. Amended Petitions
- A. Minor changes in a petition, such as birth date, age, clerical errors, etc., are done in Court upon the motion of the District Attorney or Court Hearing Officer.
  - B. Other changes in a petition require the filing of an amended petition by the District Attorney for §602 and by the probation officer for §601, §601.3(e), and §778 WIC to correct or change allegations. The Court may also amend or delete part of the allegations during a hearing.

§778 WIC

Judicial  
Council  
Forms:  
JV-600  
JV-740

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V. Time Limits (In Custody)

A. If the minor is detained:

1. For a petition alleging a misdemeanor offense 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, the petition must be filed within 48 hours after the minor was taken into custody, excluding non-judicial days, and the minor must be ordered detained by a judge or referee of the juvenile court within the same 48 hours. Otherwise, the minor must be released.

§631 &  
§632 WIC  
5.752(e)  
CRC

2. For a petition alleging a felony offense, or a misdemeanor offense that involves violence, the threat of violence, or possession or use of a weapon, or if the minor is currently on probation as a §602 WIC ward, the petition must be filed within 48 hours after the minor was taken into custody, excluding non-judicial days, unless within that period of time a petition to declare the minor a ward has been filed or a criminal complaint against the minor has been filed in adult court.

5.752(f)  
CRC

If a petition is filed, the minor must be brought before a judge, referee, or commissioner of the juvenile court for a detention hearing before the expiration of the next judicial day after the petition was filed. The entire process must happen within 72 hours of the minor being detained. Otherwise, the minor must be released.

3. Whenever a minor who has been held in custody for more than 24 hours 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 of custody of the minor.

Pro-69

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| <p>4. Generally, petitions on detention matters should be filed by 3:00 PM of the preceding day to appear on calendar and be heard. This may be completed by 10:00 AM the same day in Santa Barbara due to the afternoon calendar settings in that court.</p> <p>B. If the minor is <u>not</u> detained:</p> <p>1. A petition or other action must be taken within 21 court days after the receipt of Pro-190.</p> <p>C. Continued detention hearings</p> <p>1. When parent/guardian is not present at the hearing, and have not been noticed for said hearing, the Court may continue the hearing for 24 hours, excluding non-judicial days.</p> <p>2. When the minor or his/her attorney requests evidence of the prima facie case, the Court will set the hearing within three (3) judicial days.</p> <p>3. Upon motion of the minor or parent, the Court shall continue the hearing for one day, excluding non-judicial days.</p> <p>4. The Clerk of the Juvenile Court shall set the time for any additional hearings within 15 judicial days from the date of the Court order directing such detention unless the minor and attorney waives time on the official Court record.</p> <p>D. If a minor is <u>not</u> detained:</p> <p>1. The Clerk of the Juvenile Court shall set the time for a hearing within 30 days from the date of the filing of the petition.</p> <p>VII. Decision to Refer for Filing</p> <p>A. The decision to file a petition falls into several categories:</p> | <p>§632 WIC<br/>5.752(e)<br/>CRC</p> <p>§631 (b)<br/>WIC</p> <p>§636 WIC</p> <p>§657 WIC</p> |
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1. A petition is filed when the circumstances surrounding the offense, recidivism risk score, and/or family situation warrants it.
  2. The law requires that certain offenses be referred to the District Attorney.
  3. Court orders a petition to be filed.
  4. The matter is certified to the Juvenile Court by another Court.
- B. Discretionary Filings: The decision to file in cases not required by law to be referred to the District Attorney will be made on a case-by-case basis
1. The decision is based upon whether a lower level intervention via a diversion program, sole sanction and closed at intake disposition, or informal probation is insufficient to protect the community and/or provide a sufficient duration and intensity of a specific intervention required to effect change. Consideration for utilization of court interventions should be reserved for higher-risked youth and the most serious offenses.
  2. The decision-making should reflect consideration of the following criteria:
    - a. The degree of the minor’s criminal sophistication.
    - b. The amount of time the Juvenile Court has to rehabilitate the minor.
    - c. Prior attempts of the Juvenile Court and juvenile probation to rehabilitate the minor.
    - d. Circumstances and gravity of the alleged offense.
    - e. Protection of the community.

§653.5 WIC

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- f. Whether the circumstances of the crime indicate felonious behavior that could result in the charging of a felony-level offense.
  - g. Prior record of other felony-type behavior.
  - h. Use or threat of significant physical harm.
  - i. Level of cooperation of the minor and parent.
  - l. The minor’s age and maturity.
  - m. Cognitive and Mental health deficits and capacity could result in initial use of informal probation, in conjunction with treatment resources.
- C. **Mandatory Filings:** The law requires the probation officer to refer certain cases to the District Attorney’s Office for review:
- 1. A violation of a 707(b) WIC offense
  - 2. Under age 14 and 2<sup>nd</sup> felony referral
  - 3. 14 years or older and felony referral
  - 4. Sale or possession for sale of a controlled substance
  - 5. 11350 H&S or 11377 H&S on school campus
  - 6. Violations of 245.5 PC, 626.9 PC or 626.10 PC
  - 7. Previous informal probation per 654 WIC
  - 8. Restitution exceeding \$1000

§653.5(c)  
WIC

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VIII. Consultation with District Attorney

- A. If the probation officer determines that proceedings pursuant to §650 WIC should be commenced to declare a person described in §602 WIC to be a ward of the Juvenile Court, the probation officer shall submit two copies of the Juvenile Referral (Pro-190) to the District Attorney (yellow and pink).
  - 1. The District Attorney determines if there is sufficient evidence to support a §602 WIC petition.
  - 2. The District Attorney will return one copy of Pro-190 (pink) to indicate:
    - a. A petition will be filed and the date of filing.
    - b. A petition was not filed (yellow copy of PRO-190 will also be returned in this instance).
    - c. Comments as to reasons for the action.
- B. The probation officer retains the original Pro-190 in the case file and once returned from the DA, it is scanned and the pink/yellow copies go on top of the white copy.
- C. In cases where a referral to the District Attorney is mandated or advised, the Probation Officer may consult further with the prosecuting attorney to determine if the filing of a petition is necessary under the circumstances. The prosecuting attorney has the discretion to return a referral for handling by the Probation Officer.

IX. Jurisdiction to Proceed

- A. Section 651 WIC contains three situations which define the proper Court venue to commence proceedings:
  - 1. The Court for the county in which the minor resides.

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2. The Court for the county where the minor is found.
  3. The Court for the county where the acts take place, or the circumstances exist which bring the minor within the provisions of §601 or §602.
    - a. By statute, after true findings, proceedings may be transferred to the county of legal residence at the earliest possible stage.
    - b. Legal residence is generally the county in which the custodial parent resides.
- B. Filing on Transients (Out-of-County)**
1. All referrals involving California non-county residents found in Santa Barbara County are evaluated in the same manner as are referrals dealing with youth who reside in Santa Barbara County.
    - a. An intake determination is made as to whether or not Court action is warranted.
    - b. If indicated, the matter is referred to the District Attorney for filing.
  2. If a true finding is made in the Santa Barbara County Juvenile Court, the entire matter is then transferred to the minor's county of legal residence within California for social study and disposition.

§750 WIC