

Access to JUVENILE RECORDS

WIC § 827 AND BEYOND

PRESENTED BY THE OFFICE OF THE COUNTY COUNSEL

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GOALS TODAY

Brief overview of the juvenile dependency system including key terms

Legal provisions in play

Best practice and procedure for obtaining and using the records obtained under WIC § 827

* The Training is the product of the review, analysis and opinion of the San Luis Obispo Office of the County Counsel. Users are advised to conduct their own review and analysis to assure accuracy, thoroughness, and applicability of the content.

Juvenile Dependency and Child Welfare Generally

Governed by Welfare and Institutions Code (WIC) and California Rules of Court. (And an active body of case law, a whole host of Federal and other State laws and regulations.)

- Prima Facie for initial detention
- Preponderance for jurisdiction (proving the facts of the petition)
- Clear and Convincing to remove custody or to not return at certain points.

Investigating abuse or neglect vs filing a petition

Initial investigation:

Investigate if there is abuse or neglect under Penal Code definitions of CANRA

PC § 11164 *et. seq.*

Assess immediate risk

Gather information

Determine if allegation is

“Unfounded” “Substantiated” and
“Inconclusive” –defined at PC §
11165.12

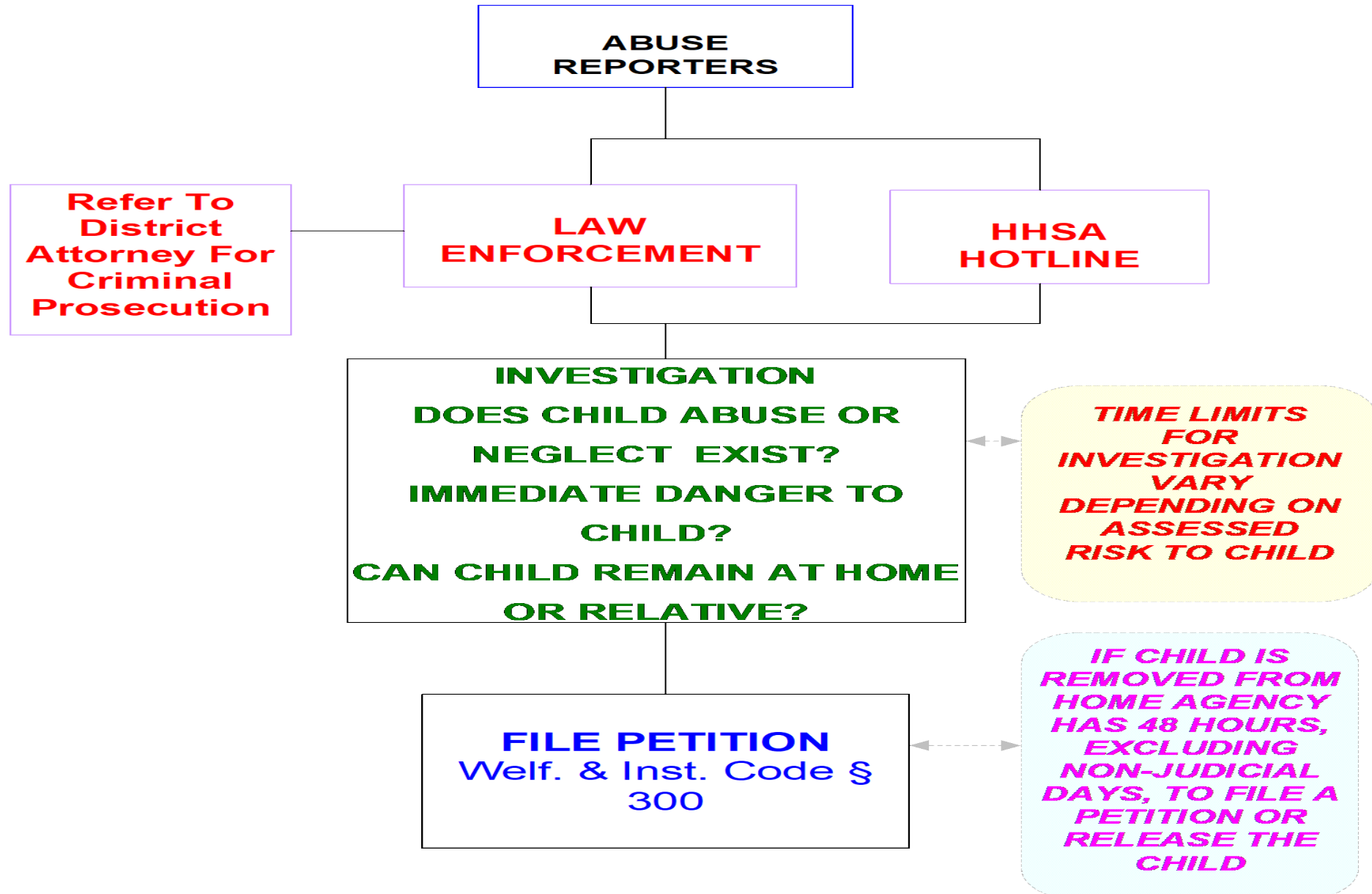
In order to file petition must determine that the child is “as described in WIC § 300.”

“The child has suffered, or there is a substantial risk that the child will suffer....”

WIC § 300(a) – (j)

JUVENILE DEPENDENCY SYSTEM

REPORTING AND INVESTIGATION





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Timelines

From protective custody (warrant or exigency) to filing of petition is 48 hours:

Hearing on petition is 24 within hours of filing the petition

- WIC § 309

WIC § 309 mandates

“the social worker shall immediately investigate the circumstances of the child and facts surrounding the (PC) and shall immediately release the child to the custody of the child’s parent, legal guardian, Indian Custodian, or relative UNLESS”:

WIC § 309 mandates

None of the above available to care or
“continued detention is a matter of
immediate and urgent necessity for the
protection of the child and there are no
reasonable means by which the child can
be protected in his or her home or the
home of a relative”.

Flight risk

Other

Why is this important?



Expedited timelines and independent mandates sometimes conflict with LE timelines.



Additional regs require the social worker to make contact with and interview the parents.



Furthermore, parents will have notice of the allegations within 48 hours of the PC in the form of a petition.

Some key hearings

Detention: Initial Hearing can go contested same day or the next.

Jurisdiction: hearing at which evidence is presented about the allegations of abuse or neglect, can be as soon as 10 days after filing or 15 court days

Disposition: where the court determines if sufficient to remove custody from a parent. (C/C/E) And then what to do: e.g. reunification, Family Maintenance, denial of services, return to non-custodial parent.

Other timelines

Reunification for children under three six months from disposition but not more than 12.

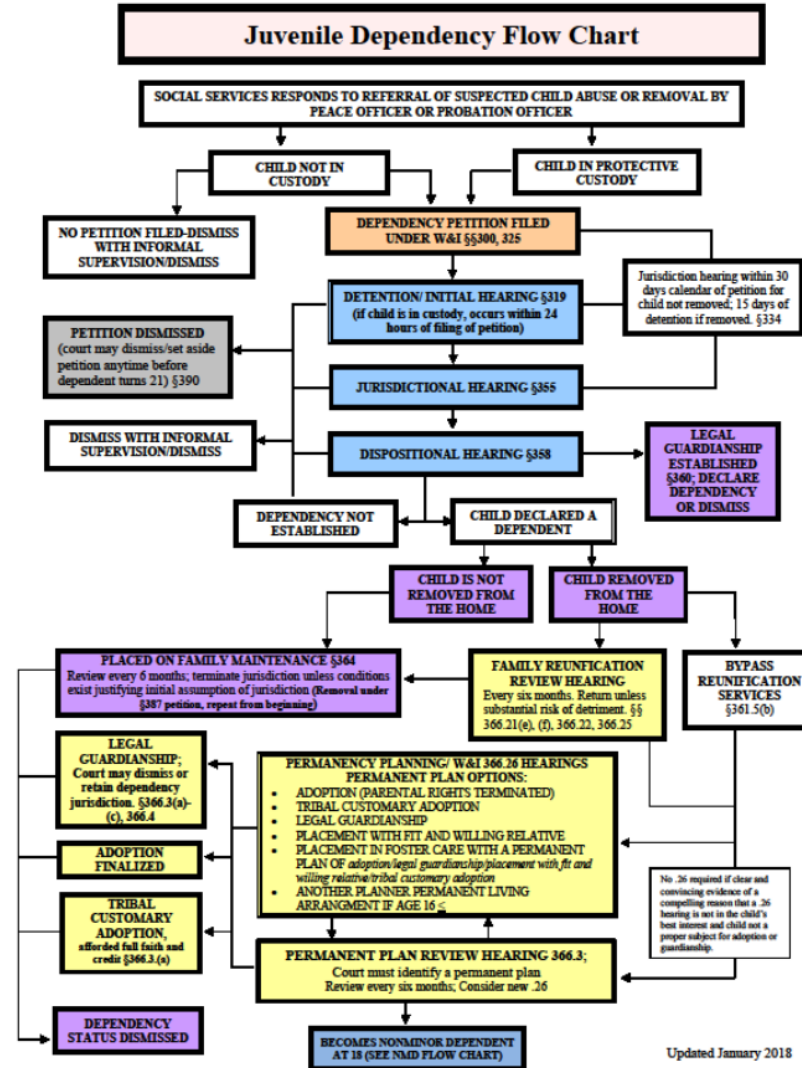
For children three and older 12 months but not more than 18.

If parents fail to reunify, case moves to permanency planning:

Adoption

Legal Guardianship

Placement with a fit and willing relative



WIC § 827 protects juvenile records

WHY Protected: Public policy, legislative intent and child protection and safety. One of the highest protection of confidentiality. Encourage reporting and cooperation with intervention.

WHO can access

WHAT can the person access?

WHAT is not disclosable?

How can they be used or protected?

Content may also be protected by other laws.



So what kind of information and what can be provided?

- What is in the file?
- What is protected by other laws?
- What information do you want/need?
- What are you going to do with that information?
- What's the easiest way to obtain that information?

What is a Juvenile Case File?

CRC 5.552(a)(1)-(6) defines it as

All documents filed in a Juvenile court case

Reports to the court by probation officers, social workers of child welfare services programs and CASA volunteers

Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social worker of child welfare services programs, cans CASA volunteers

Transcripts, records, or reports relating to matter prepared or released by the court, probation department, or child welfare services program; and

Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

Child Welfare Services File

- Information does NOT need to be from a juvenile case file to be protected.

Every document contained in a CWS file is protected- even if the case did not go to Court.

Testimony and/or statements of a social worker if based upon information relating to the contents of a CWS file are protected.

- Protected Information maintained by CWS includes:

Child abuse referrals and investigations (unfounded, inconclusive or substantiated)

- Suspected Child Abuse Reports submitted to DOJ (CACCI)

Voluntary Cases

Juvenile Court Records.

Who is entitled to Inspect and Receive Juvenile Case File Copies without a Court Order?

Court personnel

CASA

District attorneys, city attorneys and city prosecutors prosecuting criminal or juvenile cases under state law.

The minor who is the subject of the proceeding.

The minor's parent or guardian

Attorneys for the parties, hearing officers, probation officers and LE officers actively participating in criminal or juvenile proceedings involving the child.

County Counsel

Other CPS agencies

State DSS/licensing agencies and LE investigators related to licensing.

Family Court and Probate § 827.10

WIC § 827.10 authorizes certain persons involved in family law or probate matters to inspect and receive copies of CWS files if these persons are actively participating in a family law or probate case.

Persons who may be permitted access and obtain copies include:

Judge, commissioner, other hearing officer

Parent of legal guardian of the minor

An attorney for a party to the family law or probate case

A family court mediator and the court-appointed investigator

Counsel appointed for the minor in family law case.

Additional protections

SOME OF THE LAWS WHICH PROTECT ADDITIONAL INFORMATION

Disclosure of Reports Made to Child Protection Agencies

Reports made by a reporter to a child protection agency per PC§11167(d)(1) may be disclosed only to:

- Agencies charged with investigating child abuse.
 - District Attorney or County Counsel involved with criminal prosecution of child abuse, WIC §§300 or 602 cases.
 - Licensing agency investigating out-of-home abuse/neglect (may also get the investigative notes.)
 - Child’s dependency attorney appointed per WIC §317(c)
 - When those persons waive confidentiality.
 - By order of the court.
- * The name of the reporting party may not be further disclosed.

**** Family Law and Probate Attorneys are not on this list.**

Disclosure of Non-Minor Dependent Cases. (NMD)

WIC §362.5 created special rules regarding the records for an NMD. Access is limited to the following:

- Court personnel

- The DA ONLY, if the NMD is also a delinquent ward

- The NMD

- The NMD's attorney

- Judges and other hearing officers actively participating in juvenile proceedings involving the NMD

- DSS and Probation

- County Counsel

- Certain personnel of the State Department of Social Services



Disclosure of Adoption Records

Adoption information is confidential and is not to be released (or inspected) by anyone who was not a party to the adoption.

The birth family (parents, siblings, relatives) MAY NOT receive identifying information about the adoptive family (including the adopted child).

The adoptive family MAY NOT receive identifying information about the birth family.

See Family Code §§9200-9206

Why do the documents I receive look like



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Never [redacted] gonna [redacted] give
[redacted] you [redacted] up [redacted]
[redacted] never [redacted] gonna [redacted]
[redacted] let you [redacted] down never [redacted]
[redacted]
[redacted]
gonna run [redacted] around [redacted] and [redacted]
[redacted]
[redacted]
[redacted] desert you [redacted] never [redacted] gonna [redacted]
[redacted]
[redacted] make you [redacted] cry [redacted]
[redacted] never [redacted]
[redacted]
[redacted] gonna [redacted]
[redacted] say [redacted]
goodbye [redacted] never gonna tell a [redacted]
[redacted] lie and [redacted] hurt you.

Other Layers of Protection

Other statutes/privileges may need to be addressed before information may be disclosed.

- Documents/information in a juvenile case file, including DSS files, may be protected by several statutes or privileges in addition to WIC § 827. (i.e. attorney-client communication, medical and mental health records, HIV status, etc.)

Including but not limited to:

- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act (CAAPTR) [substance abuse treatment records],
- Family Educational Rights and Privacy Act (FERPA) [education records],
- Confidentiality of Medical Information Act (CMIA) [medical records],
- Lanterman-Petris-Short Act (LPS) [mental health records],
- Privileges under the Evidence Code section 900 et seq. [e.g. attorney-client privilege, physician-patient privilege, psychiatrist-patient privilege],
- California Education Code section 49075 [education records],
- Health and Safety Code section 11845.5 [substance abuse treatment records],
- Penal Code section 11167.5 [child abuse reports and mandated reporters], and California Vehicle Code [personal identification].



Enough black letter lets talk nuts and bolts

How do I request records?

How to successfully petition for release for other uses?

- NB: Judge Crandall was consulted on these recommendations for local use.

Requesting records

First you must be prosecuting a case related to the minor. (Child abuse generally or 602)

You will fill out a DSS CWS 626. (provided in fillable format)

You will email your request to SS_CWSRecordRequest@co.slo.ca.us

- Can include additional information in your email or attached. The more specific you are the faster you will get documents.
- You will receive an email acknowledgment and then an email when the copies are ready.
- Recommended lead time of 30 days.

What
kind of
items
might be
useful to
ask for?



INVESTIGATIVE
NARRATIVES



INCIDENT
REPORTS



DETENTION/JURISDICTION/
DISPOSITION REPORTS

What you will get

The Documents may be redacted for other protected information, for example mental health records/information, substance use treatment, confidential reproductive health information of the minor.

As a DDA, your records may include information that you are prohibited from redisclosing. (PC § 11166 and Reporting Parties for example)

If, after reviewing, you believe you need or are entitled to additional information submit an email request for the additional information and any supporting authority.

WHAT NEXT ?

I would like the
SW to testify or I
would like to use
this information
or documents at
trial

Note: Juvenile Case Files May Not Be Obtained By A Subpoena

Juvenile case records
“cannot be obtained by a
subpoena.” (*Lorenzo P. v.
Superior Court* (1988) 197
Cal.App.3d607, 611.)

- California Rules of Court, Rule 5.552 (b)(4) states that “juvenile case files may not be obtained or inspected by civil or criminal subpoena.”

Judicial Authority

The Juvenile Court has **exclusive** authority to determine whether the records may be released AND the extent to which juvenile case records can be disclosed. (In re Elijah S.(2005) 125 Cal.App.4th 1532.)

- Only the Juvenile Court may order the dissemination of juvenile case information through a petition filed through the Juvenile Court.
- Therefore, any person not listed in WIC § 827 and any person listed in WIC § 827 who wishes to further disclose the information to a person not listed in WIC § 827 must file a petition with the Juvenile Court in order to gain access.



Then file a petition pursuant
to WIC § 827



Use Judicial Council Forms

JV 570 Request for
Disclosure of
Juvenile Case File

JV 571 Notice of
request for
disclosure of
juvenile case file

JV 572 Objection to
release of juvenile
case file (must be
served with
petition)

JV 569 Proof of
Service

If you want to
redisclose or to
use documents
in criminal
proceedings or
want a social
worker to testify

Pleading your Petition

see CRC 5.552

Must demonstrate that the need for the disclosure of the records outweighs the minor's right to privacy. By extension the parents' right to privacy.

- Support with short attachment if box 7 on the form insufficient. May include legal authority if warranted.

Clearly identify the documents and **narrowly** tailor your request.

Request the specific uses and needs, i.e at prelim and trial, testimony of SW, sentencing, disclosure to defense counsel.

Give yourself time.

Remember Balancing test

PUBLIC POLICY TO
PROTECT THESE FILES
WITH UPMOST
CONFIDENTIALITY.

MUST NOT BE
INCONSISTENT WITH
BEST INTEREST OF
MINORS. CHECK CASE
LAW AS NEEDED.

And then?

Serve the required parties 10 days before petition is filed with JV 570, JV 571, and a blank JV 572 (See CRC 5.552(c))

Complete a Proof of Service form JV-569 and file it with the court.

10 days after service file it with the court.

The court will assign it a case number (currently 20-JP-xxx) and, if you have made a sufficient preliminary showing, will set it for a hearing.

Response and Hearing



The parties, including probation and the Department of Social Services, may file an objection.

Bring a copy of the records to the hearing that you want released for the judge to review. Do not attach them to your petition.

The judge will take them, review them and issue a ruling.

It is recommended that you have a proposed protective order or order after hearing to provide to the judge at the hearing.

Judge will review and conduct balancing

In balancing the child's privacy interests and third party interests in disclosure of minor's juvenile court records, the juvenile court must recognize the general policy of confidentiality and hold paramount the best interests of the minors; confidentiality serves not only to protect the best interests of the minors, it also encourages full disclosure, by the minors and others, of all information necessary for proper functioning of the juvenile welfare system.

In re Anthony H. (App. 4 Dist. 2005), 129 Cal.App.4th 495.



Judge has
independent duty.

BUT WE ARE ALL WELL
SERVED WHEN WE
OPTIMIZE OUR USE OF
JUDICIAL RESOURCES:
PLEAD YOUR PETITION TO
SUPPORT DISCLOSURE AND
TAILOR IT SPECIFICALLY



Discussion

Contacts

DSS records request : SS_CWSRecordRequest@co.slo.ca.us

If you have further questions:

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Thank You!
