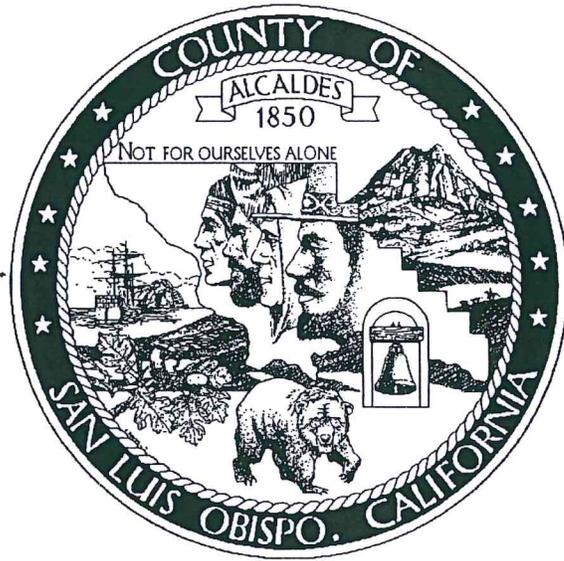


# JUVENILE FIELD PROCEDURES FOR POLICE AND PROBATION OFFICERS



OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF SAN LUIS OBISPO

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Juvenile Field Procedures for Police and Probation Officers

Involving Minors Who Commit Criminal Offenses

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with annotations to Proposition 21

THE JUVENILE JUSTICE SYSTEM IN OPERATION (W&I 602)

The following is a general overview of the operation of the juvenile justice system. This is typical of the case of a minor who is charged with being a delinquent as described by §602 Welfare & Institutions Code (herein after "W&I") by reason of his/her having allegedly committed a criminal offense:

I. Temporary Custody and Detention

A minor may become involved with the juvenile justice system when he/she comes into contact with a police officer who is called upon for investigation of the minor having committed a criminal offense (W&I 625).

If the officer's investigation discloses that the minor has not committed a criminal offense or is not otherwise within the jurisdiction of the juvenile court, no further action is taken. On the other hand, if the officer has reasonable cause to believe that the minor is a person described in W&I 602, the minor may be taken into temporary custody (i.e., arrest the minor).

An officer may take into temporary custody a minor without a warrant if the minor is described in W&I 602 as follows (W&I 625):

- A. There is reasonable cause to believe that the minor has committed a misdemeanor, a felony, or local public offense, W&I 625(a). A minor may be arrested for a misdemeanor which is not committed in the officer's presence: In re Samuel V. (1990) 225 Cal.App3d 511. (However, search warrant and "Ramey" arrest procedures are applicable to juveniles.)
- B. The minor is a ward of the court, or there is reasonable belief of violation of a court order; or the minor has escaped a commitment ordered by the juvenile court, (Note: The Probation Officer may request such minor be detained, and there is no requirement for an arrest warrant.)

If a minor is taken into temporary custody without a warrant pursuant to Welfare & Institutions Code section 625(a) or (b) for reasonable cause to believe that the minor is a person described in Welfare & Institutions Code section 602 (i.e., commission of a public offense, violation of a court order, or escape from any commitment ordered by the juvenile court), the officer shall advise the minor of his/her constitutional (i.e., Miranda) rights. Welfare & Institutions Code section 625(c).

Although there is conflicting case authority, the most recent cases hold that there is no legal or constitutional requirement that the minor also be given a separate admonition of his/her right to speak to a parent or guardian. Fare v. Michael C. (1977) 442 U.S. 707, 724; People v. Lara (1967) 67 L.2d 365, 378-379; In re Jessie L. (1982) 131 Cal.App.3d 202, 214-215; U.S. v. John Doe (9th Cir. 1998) 155 F2d. 1070, 1075; People v. May (1988) 44 Cal.3d 309; People v. Maestos (1987) 194 Cal.App.3d 1499, 1507-10; In re Abdul Y. (1982) 130 Cal.App.3d 847, 863.

However, if the Miranda warning that is given to the minor by the police officer additionally includes the “right” to the presence of or a consultation with a parent, this would likely imply such a “right” to meet and confer with a parent upon the minor’s request before questioning. U.S. v. Doe (9th Cir.2000) 219 F.3d 1009, 1017. In other words, an arresting officer cannot offer access to a parent, then later deny access if requested. Therefore, under existing law and as a matter of practicality, a minor should be advised of his/her constitutional (i.e., Miranda) rights as an adult would be so advised.

There is also no constitutional duty to advise a minor that his parents or a close relative have asked to see him or her. In re John S. (1988) 199 Cal.App.3d 441, 443-446; In re Patrick W. (1981) 104 Cal.App.3d 615-618, 624-630.

A juvenile’s request for a parent or guardian had been previously held to be the equivalent of a request for a lawyer, thereby requiring interrogation to cease and that any statement taken thereafter to be suppressed. People v. Burton (1971) 6 Cal.3d 375, 378-384; People v. Rivera (1985) 41 Cal.3d 388, 394-395. However, this rule has been changed in recent case decisions. People v. May (1988) 44 Cal.3d 309; People v. Hector (2000) 83 Cal.App.4th 228, 232-237.

Now, under both federal and state law, an actual request for counsel is the only automatic invocation of the right to counsel. All other requests by a minor to speak to someone other than an attorney are analyzed by the court as part of what is referred to as the “totality of circumstances.”

A “totality of circumstances” test applies generally to the admissibility of a minor’s confession. People v. Hector (2000) 83 Cal.App.4th 228, 232-237. People v. Lara (1967) 67 Cal.2d 365, 375-291. Factors that a court will consider include the minor’s age, intelligence, education, experience, and ability to comprehend the meaning and effect of his/her statement. Thus, even though adult consent to a minor’s interrogation or the minor’s waiver of an adult’s presence is not legally required, you may want to obtain such consent or such a waiver, in your discretion, whenever feasible. By so doing, this waiver may be considered in the “totality of circumstances” as one of the factors by the trial judge in determining the admissibility of a minor’s confession.

If a minor is under 14 years of age, the minor is legally presumed to be incapable of committing a crime in the absence of “clear proof” that at the time of committing the act charged against him/her, the minor knew its wrongfulness. Penal Code section 26; In re Gladys R. (1970) 1 Cal.3d 855, 864. However, the presumption of a minor’s incapacity may be rebutted by “clear and convincing” evidence that the minor knew the act’s wrongfulness. In re Manuel L. (1994) 1 Cal.4th 229, 238; People v. Lewis, 26 Cal.4th 334. This may be accomplished by either directly questioning the minor in order to determine whether the minor knows right from wrong (see Appendix A below) or by the attendant circumstances of the crime such as its preparation, the particular method of its commission, or its concealment. However, it should be noted that

knowledge of wrongfulness may not be inferred from the commission of the act itself. In re Tony C. (1978) 21 Cal.3d 888, 900.

If taken to a place of detention [i.e., juvenile hall], parents or guardian must be advised and within one hour, the minor must be accorded two telephone calls at public expense, one to a parent, guardian or employer and one call to an attorney, if desired (W&I 627.) If drugs or alcohol are suspected the minor may also be requested to provide a voluntary urine sample per W&I 625.1, but must be advised the test is voluntary using the format in W&I 625.2(a), except if detained pursuant to Vehicle Code sections which apply to driving while using any alcoholic beverage or drugs. The minor may also be booked and photographed with preparation of DOJ form JUS 8716/8717, [see also W&I 602.5, and W&I 626(c).]

If continued in custody, the officer shall take the minor before the Probation Officer without unnecessary delay, which usually involves transporting the minor to juvenile hall, W&I 626. The peace officer shall prepare a concise written statement of the probable cause for taking the minor into custody (elements of the criminal offense with a brief descriptive statement of involvement on San Luis Obispo County Juvenile Admission Record form.)W&I 626(d)

NOTE: IT IS EXTREMELY IMPORTANT THAT SUFFICIENT FACTS ARE RECITED ON THE ADMISSION RECORD FORM TO INDICATE PROBABLE CAUSE EXISTS TO BELIEVE A CRIME HAS BEEN COMMITTED BY THE MINOR AND SUFFICIENT EVIDENCE EXISTS TO CONNECT THE MINOR TO THE COMMISSION OF SUCH CRIME. IN MOST CASES, THE ADMISSION/BOOKING RECORD FORM IS THE ONLY DOCUMENT AVAILABLE FOR CHARGING AND FILING AN IN CUSTODY JUVENILE COURT PETITION ON A JUVENILE WHO IS DETAINED AT JUVENILE HALL.

Note: Minors over age 14 who use a firearm in any felony offense, or who commit a W&I 707 offense shall not be released and are to be continued in custody until brought before a judicial officer (at a detention hearing) W&I 625.3, and W&I 626.6. The minor shall not be released by the Probation officer to any other alternative disposition until such a detention hearing can be held, W&I 629.1

## II Alternative Dispositions

A police officer has several alternatives for dealing with a minor in the field and is obligated to choose that alternative which least restricts the minor's freedom of movement, provided that choice is compatible with the best interests of the minor and the protection of the community. W&I 626

- A. The officer may release the minor if the minor has been taken into "temporary custody." If this course is followed, the officer will usually discuss the matter with the minor and his parents and attempt to counsel them so that the situation

will not be repeated. An incident report and juvenile index card may be prepared under P.C. 849(b) and 849.5.

- B. If the officer chooses to release the minor, the minor may be diverted to an agency or organization for counseling or other services. Diversion is an alternative to the formal processing of a case in the juvenile justice system. Commonly, diversion represents a referral to a community based program or agency which is separate of the justice system. Such programs may be overseen by governmental agencies including local municipalities, or county organizations such as Intensive Community Diversion (ICD.) If the minor agrees to participate in the diversion program and successfully completes it within six months, no further formal action is taken, W&I 626(b), and W&I 654.

Thus, settlement at intake, by excluding or diverting from the Juvenile Court processes inappropriate or less serious offenses, may be implemented by informal supervision programs and suitable non-judicial agencies available in the community, 1404(b)(1)(c) California Rules of Court, and W&I 626(b.)

Diversion at departmental level. Minors may be diverted by law enforcement officers after determining that sufficient evidence of involvement exists to charge the minor with a W&I 602 violation, based on the following:

1. The conduct of a minor is not serious, and the minor has not presented significant problems in the home, school or the community.
2. Limited history of dependency or law enforcement contacts and the minor has not been diverted before.
3. The problem arose from a temporary situation, and may be or will be resolved through use of a community resource.
4. Whether any agency or other resource in the community is able to offer services to the child and the family to eliminate the potential need for removal of the minor from the family/home setting.
5. The attitudes of the minor, the parent and any affected party.
6. Age, maturity level, and capabilities of the minor.
7. The minor acknowledges involvement in the wrongful act.
8. The recommendations, if any, of the referring/involved parties

9. Considering, all the above factors, settlement at the intake stage would be consistent with the welfare of the minor and the protection of the community.

See California Rules of Court 1404/1405 Intake Guidelines and Factors

- C. The officer may release the minor but refer the matter to the Probation Officer for further investigation and action. In this situation the matter is handled as a non-detained case. In most cases, the officer will prepare a duplicate of a written notice specifying a time and place to appear before the Probation Officer and may contain a concise statement of reasons why the minor was detained.

Thereafter, a copy is delivered to the Probation Officer as soon as practicable. Failure or the parent or minor to comply with the notice is a misdemeanor. W&I 214.

- D. The officer may detain the minor and take him/her before the Probation Officer without unnecessary delay. In cases where the police officer detains the minor, the minor is transported by police to juvenile hall, as previously described.

### III. Referral to Probation

#### A. Non-detained cases

If the police officer releases the minor but refers the case to the Probation Officer, the referral is in the form of a police report and an application to file a §602 W&I petition in juvenile court, see 653 W&I and Appendix B. Upon receiving the referral, the Probation Officer investigates the circumstances involved in the case to determine what further action should be taken. In arriving at a decision, however, the Probation Officer may meet with the minor and parents and discuss the case with them.

Upon receipt of allegations that minor has committed a public offense, the Probation Officer is required to make immediate investigation to determine whether juvenile court proceedings should be commenced, and after such investigation, the Probation Officer has three courses of disposition; first, if it is determined that proceedings should be commenced, the matter is referred to the prosecuting attorney; second, a decision may be made to take no action; and third, the Probation Officer may institute a program of informal probation. Charles S. v. Superior Court of Los Angeles County (1982) 32 Cal.3d 741.

1. The Probation Officer refers the law enforcement petition request to the District Attorney for filing of a Juvenile Court petition if it is determined that proceedings should be commenced in Juvenile Court. It should

noted that all petition requests shall be taken to the District Attorney within 48 hours if the following conditions exist (W&I 653):

- a. A W&I 707(b), 707(d)2) or 707(e) offense is involved.
- b. The minor is under 14 and the offense is the second felony referral.
- c. The minor is over 14 and the offense involves felony conduct.
- d. The offense involves sale or possession for sale of a controlled substance.
- e. The offense involves possession of narcotics (HS11350/HS1 1377) at any school; ADW, GBI, or assault with a firearm upon a school employee; and possession of a firearm or a knife at school.
- f. Any gangs violation of P.C.186.22
- g. The minor has previously been on W&I 654 (or 626[b]) diversion.
- h. Offense involves \$1000 or over in restitution to any victim.

NOTE: The District Attorney will act within the statutory and discretionary role referred back to the Probation Officer for whatever action the Probation Officer may deem appropriate under the circumstances.

2. The Probation Officer may close the case if the decision is made that no further action need to required. If this course is followed, the Probation Officer will normally provide counseling services and alternatives to the minor and parents in order to prevent a recurrence of the situation, W&I 653.5(a) and 653.7.
3. The Probation Officer may divert the minor to a community-based organization for informal supervision, such as Intensive Community Diversion (ICD). 654 W&I.

Under section 654 W&I, determination whether to institute informal probation or to file court proceedings is placed in the discretion of Probation Officer, and determination whether to proceed by informal probation or to seek court proceedings may not be delegated to prosecuting attorney. Charles S. v. Superior Court of Los Angeles County (1982) 32 Cal.3d 741.

Informal supervision should be considered in cases where short term counseling for up to six months would be helpful. The Probation Officer should consider the following (W&I 653.5, 654 and California Rules of Court, 1405):

- a. The conduct of a minor is not serious, and the minor has not presented significant problems in the home, school or the community;
- b. The problem arose from a temporary situation, and the minor and parents/guardian seem able to resolve the matter with the assistance of the Probation Officer, without formal court intervention;
- c. Whether further observation or evaluation by the Probation Officer is needed before a decision can be reached;
- d. The attitudes of the minor, and the parent or guardian;
- e. Age, maturity level, and capabilities of the minor.
- f. The dependency or delinquency history of contacts, if any;
- g. The recommendations, if any, of the referring/involved parties;
- h. The attitudes of affected persons; and
- i. Considering, all the above factors, are there any other factors which indicate that informal supervision would be consistent with the welfare of the minor and the protection of the community.

Note: If a program of informal supervision is undertaken, and the minor fails to meaningfully participate within 60 days the matter may be referred to the District Attorney for filing of a petition in Juvenile Court, 654 W&I.

B. Continued Custody At Juvenile Hall/Detained Cases

If the police officer decides to detain the minor, he/she is transported to the juvenile hall, as previously described. At that time, the Probation Officer makes an immediate determination as to whether the minor should be continued in custody and what further action should be taken in the matter. W&I 628(a) The Probation Officer is required to immediately release the minor to the custody of his parent, guardian or responsible relative unless one of the statutory reasons is determined as cause for the minor to continue to be detained at Juvenile Hall/Juvenile Services Center, W&I 628(a)(1-7), and W&I 625.3-(use of a firearm by 14 year old or older in any felony.)

Inquiry into the propriety of a continued detention of a minor is broader than the usual scope of an adult case of whether probable cause existed to believe minor committed the crime alleged. One or more of the seven statutory

conditions must be found to exist to warrant continued detention, referring to the District Attorney for immediate filing, and scheduling of a detention hearing within the statutory time. See Alfredo A. v. Superior Court (1994) 6 Cal.4th 1212.

1. The minor is in need of effective parental care, and/or the parent or guardian is not capable of exercising such care and control, 628(a)(1) W&I.
2. The minor is destitute, or is not provided with the necessities of life, or he is not provided with a home or suitable place of abode, 628(a)(2) W&I.
3. The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or guardians, 628(a)(3) W&I.
4. Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor, or reasonable necessary for the protection of the person or property of another, 628(a)(4) W&I.  
"It is not unconstitutional to authorize detention when it is a matter of immediate and urgent necessity for the protection of a minor, or the person or property of another, that he be detained. Aubry v. Gadbois, (1975) 50 Cal.App.3d 470@482, and Schall v. Martin (1984) 467 U.S.253@267-268."
5. The minor is likely to flee the jurisdiction of the court, 628(a)(5) W&I.
6. The minor has violated an order of the court, 628(a)(6) W&I.
7. The minor is physically dangerous to the public because of mental or physical deficiency, disorder, or abnormality, 628(a)(7) W&I.

"The Probation Officer may authorize a doctor's examination of a minor without parental consent if deemed necessary. 42 Ops. Atty.Gen.49."

Circumstances and gravity of an offense may be considered in conjunction with other factors in evaluating criteria.

If the Probation Officer releases the minor, the case proceeds as a non-detained case. After making a decision concerning the minor's continued detention, the Probation Officer will consider what further action should be taken in the matter, if any. The Probation Officer has the same options available as are applicable to non-detained cases, as stated above.

A field officer should consider all the factors surrounding the violation. A juvenile may be detained when it is necessary for his protection or for the protection of the public, 202(a) & (b) W&I. Minors coming within any of the categories of W&I 628, 707 and other statutory criteria, should be considered for continued custody and thereafter delivered to the Probation Officer, who should seriously consider continued detention if not already required to do so by law. Some of those additional factors include:

1. Witness intimidation as described in Penal Code 135-136 and/or Terrorist Threats - Penal Code 422, et. seq.
2. Minors arrested for an offense where they have, regardless of means used, caused permanent injuries or temporary injuries requiring hospitalization or incapacitation. However, all factors should be considered in addition to the existence of the injuries.
3. Minors arrested in possession of a loaded firearm at the time of the commission of the offense, or at the time of arrest.
4. Minors who have committed an offense against the person and/or property of another involving a substantial and un-recovered loss.
5. Minors who have previously been committed to CYA or remanded for prosecution in adult court.
6. Minors who have committed any offense relating to unlawful gang activities or organized crime.
7. Minors who have demonstrated a probability of continued serious anti-social conduct by the degree of involvement in such conduct as evidenced by the modus operandi, the tools used in the commission of the offense in question and criminal associates or other circumstances which indicate a high degree of sophistication based on the seriousness of the offense.
8. Minors demonstrating conduct which makes it apparent that their continued placement in the community will be highly problematic, making their commitment to a closed or secure setting outside the community very likely.

#### IV. Referral to District Attorney by Probation Officer

- A. The Probation Officer may refer the case to the district attorney with the request that a §602 W&I petition be filed in juvenile court, 653 W&I. If a petition is filed, the minor and his parents are usually notified by mail to appear in court for arraignment and further proceedings.

- B. The Probation Officer initially has sole discretion in dealing with the minor. A recommendation from arresting officers for referring the case to the District Attorney's Office does not alter the Probation Department's right to decide on the option needed (except where statutorily required to do so.) Marvin F. v. Superior Court, (1977) 75 Cal.App.3d 281.
- C. The duty of the Probation Officer under 652 and 653 W&I is to make whatever investigation "deemed necessary" to determine proceedings, 1405(c) Rules of Court. Police agencies may not refer petition requests directly to the District Attorney, however the decision not to refer the petition for prosecution may be reviewed W&I 655.

V. Detention (Arraignment) Hearing

- A. The court must conduct an detention hearing shortly after a §602 W&I petition is filed to advise the minor of the charges filed, and determine whether the minor should be further detained pending adjudication (trial). If the minor was arrested for a felony, the detention hearing must be held as soon as possible after the petition is filed but in any event before the expiration of the next court day after the petition is filed. If the minor was arrested for a misdemeanor, the detention hearing must be held as soon as possible but in no event beyond 48-hours or before the expiration of the next court day after the minor was taken into custody, whichever is later, 631 W&I and 1471(a) Rules of Court.
- B. At the Detention Hearing, the minor and his parents shall be informed of the reasons why the minor was taken into custody, the nature of the juvenile proceedings, and the right of the minor and parent to be represented by counsel at every stage. The minor must also be advised of his privileges against self-incrimination, confrontation, cross-examination of any person examined by the court, right to use the subpoena process, and the right to present relevant evidence, 632-635 W&I 1475 Rules of Court. Sections 633-634 W&I requires that the minor and guardian be advised of the right to appointed counsel, "where applicable."
- C. If the minor can't afford an attorney, the court may appoint counsel. If there is a conflict between the parent and the minor, the court may appoint additional counsel, 634 W&I .
- D. At the detention hearing, the minor is arraigned on the charges and asked to either admit or deny them. The Court further considers the issue of detention. Unless the Court determines that grounds for continued detention exist, the minor must be released pending further proceedings.

- E. The criteria for detention is necessarily restrictive since the minor is not entitled to bail. The criteria for continued detention as provided in §636 W&I Rule 1470-1475 are:
1. That the minor has violated an order of the court.
  2. That the minor has escaped from a commitment of the court.
  3. That the minor is likely to flee to avoid the jurisdiction of the court.
  4. That it is a matter of immediate and urgent necessity for the protection of the minor.
  5. That it is reasonably necessary for the protection of the person or property of another.
- F. An order for the detention of a minor may be based upon the Probation Officer's report and the written reports of police officers. Minors may cross-examine persons preparing reports. In re Dennis H., (1971) 19 Cal.App.3d 350.

Provisions governing detention of minors do not permit detention to last more than 15 judicial days past minor's detention hearing. If a hearing leading to finding of jurisdiction does not commence within that period then the minor is entitled to be released from custody whether hearing is continued or a new petition is filed based on the same transactions. In re Robin M., (1978) 21 Cal.3d 337.

- G. If the criteria for detaining the minor are met, the Court may, as an alternative to detaining the minor in juvenile hall, order the minor to remain at home under the close supervision of the Probation Officer pending further proceedings. This alternative is called the Home Supervision Program/628.1.
1. Home supervision is allowed where some form of restriction is desired on the minor's freedom of movement, but secure detention at the Juvenile Hall does not appear to be necessary. This usually requires a highly motivated parental or guardian figure willing to devote full time supervision of the minor. The minor may then be released to that person's custody under a written agreement setting forth terms and conditions that can include curfew, school attendance, and any reasonable term necessary for the protection of the person or property of another and deemed in the best interests of the minor for his/her own protection. The Probation Officer may employ the use of Electronic Monitoring to track the minor. Any violation of the home detention may result in the minor being returned to Juvenile Hall detention and a new hearing held (W&I 778) on the re-detention. W&I 628.1.

The grounds for detention as based on Sections W&I 635 and 636, seem to suggest that the court must detain if one of the grounds is found to exist, but it is discretionary, and continued custody detention is the exception, not the rule. (Experience has shown, since there are no bail provisions in Juvenile Court, the courts are reluctant to detain juveniles, unless a multiplicity of the factors cited exist in conjunction with the criteria used for detention at the field level.) In re William M., 3 Cal.3d 16 and 1404-1406 and 1470-1475 Rules of Court.

- H. If the minor admits the charges, the case is set for a disposition hearing. On the other hand, if he denies the charges, the case is set for adjudication (trial).

## VI Detention Rehearing

- A. If the minor challenges the Court's decision to detain, the minor may request a detention rehearing pursuant to §637 W&I . The rehearing will be set from three to five court days after the detention hearing. At the rehearing, the district attorney is required to present evidence of the prima facie case from the preparers of the reports on the grounds to detain the minor. (This requires submitting the police report and making the officer/preparer available for cross-examination.) If the prima facie case is not established, the minor must be released from detention. In re William M. (1970) 3 Cal.3d 16, and In re Dennis H., (1971) 19 Cal.App.3d 350.
- B. Time for rehearing is limited to three (3) judicial days, although if witnesses are not available the court may grant a reasonable continuance of up to five (5) judicial days. The sanctions for failure to comply with the foregoing are that the documents cannot be considered by the court in detention of the minor, and without additional evidence the minor must be released. In re Korry K. (1981) 120 Cal.App.3d 967.

It is the recommendation of the District Attorney's Office to law enforcement that, at the time of booking of a juvenile into Juvenile Receiving Center, the "reason for detention" portion of the booking sheet-San Luis Obispo County Juvenile Admission record be used to show adequate legal justification why continued detention in custody is required. The booking sheet record is then used as supporting documentation and filed with the Juvenile Court Petition, since police reports are not usually available.

A prima facie case has been loosely defined as the statement of facts and circumstances sufficient to establish that a crime has been committed, and gives reasonable cause to believe that the accused person committed such crime. Elements of a prima facie case generally include: (a) the charged code section with allegations setting our legal elements, (b) source of activity, (c)) observations with sufficient facts recited to bring the conduct within the charge

of the code section violated and (d) witnesses' names and addresses where available.)

NOTE: Experience has also shown if a police report is available, that continued detention is seldom challenged in detention/re-detention hearings. Thus, it is incumbent on the law enforcement agency involved to make every effort to give priority in the preparation of the police reports of juveniles involved in serious and/or violent offenses. This is especially applicable where the minor continues detained at juvenile hall and continued detention is in the best interests of the community and the minor or if the minor is a probation violator involved in a new criminal offense.

## Appendix A

### Proving Minors Under 14 Committed A Crime

Penal Code Section 26 provides that all persons are capable of committing crimes except those belonging to the following classes:

"Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." (Emphasis added).

In order to overcome this presumption of incapability of committing crimes, clear proof of their prior knowledge of right from wrong in terms of the act committed by them must be presented as part of the corpus delicti of the offense itself.

The California Supreme Court In re Gladys R., 1 Cal.3d 855, declared that only if the age, experience, knowledge, and conduct of a child demonstrates by clear proof that he knew the wrongfulness of his act can he be declared a ward under W&I Code §602. If this knowledge cannot be demonstrated, a minor is not capable of committing a crime.

The following procedure is therefore suggested as a way of satisfying the requirements of Penal Code Section 26:

(See "Gladys R. Questionnaire" attached)

#### 1st Alternative

##### A. Interview child's parent

1. Ask parent the following questions.
  - a. Do you send your child to school?
  - b. Can he read and write?
  - c. Does he watch TV?
  - d. Have you told him that it is wrong to steal burglarize, batter, or kill, etc., (whatever is applicable to the suggested crime?)
  - e. Do you think your son/daughter knows it is wrong to do the above (item d)?

## 2nd Alternative

### B. Interview Minor

1. Obtain Miranda waiver and then ask minor the following questions:
  - a. do you go to school?
  - b. Have they taught you in school that it is wrong to steal, burglarize, batter or kill, etc., (whatever is applicable to the suggested crime?)
  - c. Has your mother or father told you that it is wrong to steal, hit people, kill people, etc., (whatever is applicable to the suggested crime?)
  - d. Does your mother or father punish you for doing something they have told you is wrong?

These interviews should be included within the police report itself. The mother or father should also be listed as a witness. A questionnaire has been prepared to assist officers in their questioning.

NOTES

# GLADYS R. QUESTIONNAIRE

INCIDENT # \_\_\_\_\_

Minor's Name \_\_\_\_\_ Age at Offense \_\_\_\_\_ DOB \_\_\_\_\_

Date/Time \_\_\_\_\_ Officer \_\_\_\_\_ ID # \_\_\_\_\_

Instructions: Refer to In re Gladys R. (1970) 1 Cal.3rd 855 and Penal Code Section 26 for legal requirements. Complete for all arrestees who were under 14 years of age when the crime was committed and AFTER Miranda advisement (if applicable) has been given. Note: Extra care should be taken when advising young subjects of Miranda rights. Determine if subject knows the meaning of "lawyer," "judge," "court," and words such as "silent," "appointed," etc. Indicate the explanations used in advisement.

## QUESTIONS FOR MINOR (Note actual words used by minor)

1. Do you go to school? \_\_\_\_\_ What school? \_\_\_\_\_ What grade?
2. Do you know the difference between doing what's right and doing what's wrong?
3. Give me an example of something right to do.
4. Give me an example of something wrong to do.
5. What happens to you when you do something wrong?

(The following questions refer to the specific crime being investigated. Use simple words to describe the offense, i.e., "take something that doesn't belong to you" instead of "steal" or "petty theft"; "Go into a house without permission to take something that isn't yours" instead of "burglary"; "start a fight" or "hit someone" instead of "assault" or "battery"; "Take someone's property from them by hitting them or scaring them" instead of "robbery"; use "look-out" or "help" instead of "aiding" or "abetting." Ask about the specific sexual activity instead of "oral copulation" or "penetration." Try to have the minor explain his/her answers. Indicate the words used by Investigator to describe the crime.)

6. Do you know it is wrong to \_\_\_\_\_ (specific crime being investigated)?
7. Did you know it was wrong before the crime occurred?
8. Do you know it is wrong to help someone else \_\_\_\_\_ (specific crime)?
9. If someone did this to you, would it be wrong?
10. Were you ever taught it was wrong to \_\_\_\_\_ (specific crime)?  
\_\_\_\_\_ By whom?
11. What were you taught about it being wrong to \_\_\_\_\_ (specific crime)?

## QUESTIONS FOR PARENT/GUARDIAN/TEACHER/OTHER

Name of Person questioned \_\_\_\_\_ Relationship \_\_\_\_\_

1. What is \_\_\_\_\_ (minor's name) age and date of birth?
2. Have you taught \_\_\_\_\_ (minor's name) the difference between right and wrong?
3. Does \_\_\_\_\_ (minor's name) know it is wrong to \_\_\_\_\_ (specific crime)?  
Did \_\_\_\_\_ (minor's name) know it was wrong before the event?
4. Has \_\_\_\_\_ (minor's name) been taught that it is wrong to \_\_\_\_\_ (specific crime)?  
How and by whom? (i.e., parent, teacher, other)
5. Does \_\_\_\_\_ (minor's name) go to school? \_\_\_\_\_ Which school? \_\_\_\_\_ What grade?
6. Can \_\_\_\_\_ (minor's name) read? \_\_\_\_\_ Write?

APPENDIX A  
**AFFIDAVIT AND APPLICATION FOR FILING OF JUVENILE COURT PETITION**  
Welfare and Institutions Code Section 653

Officer's/Citizen's Name: \_\_\_\_\_  
\_\_\_\_\_ hereby state  
(Officer's Agency & Duty Station or Citizen's Address) \_\_\_\_\_  
\_\_\_\_\_ a minor, DOB \_\_\_\_\_  
(Juvenile suspect)

(Parents/Guardian Name and Address) \_\_\_\_\_

Committed an offense within Sections 601/602 within San Luis Obispo County, and that said minor comes within the provisions of Sections 601/602 of the Welfare and Institutions Code of the State of California as evidenced by the case reports and consisting of \_\_\_\_ pages, which are attached hereto and incorporated by reference herein. On the basis of this information, the undersigned requests that a Juvenile Court Petition be filed on the above named minor for the offense(s) of: \_\_\_\_\_

(State the name of the offense and the appropriate statutory authority)

I declare under penalty of perjury that the facts set forth in this affidavit and its attachments are true and correct to the best of my knowledge.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

Companions referred: \_\_\_\_\_  
Companions not referred: \_\_\_\_\_

**PROBATION DEPARTMENT REVIEW**

- ( ) Referred to Traffic Court
- ( ) Referral Recorded and Handled Informally \*\*
- ( ) Active Delinquent Ward (602 W&I)/Offense reported to Juvenile Court\*\*
- ( ) 6 Months Probation Supervision (654 W&I) \*\*

**\*\* REASONS(S)**

- |   |                                     |
|---|-------------------------------------|
| ( ) Active to another jurisdiction      | ( ) Family moving                   |
| ( ) Active Dependent Ward (300WI)       | ( ) Referred to Community Agency    |
| ( ) Minor Offense                       | ( ) PC 26 problem                   |
| ( ) No prior referral                   | ( ) Administrative exception        |
| ( ) No prior arrests (2 yr. period)     | ( ) Minor cannot be located         |
| ( ) Transient                           | ( ) Parents handling appropriately  |
| ( ) Restitution paid/property recovered | ( ) Law maturity/intellectual level |
- Other reasons/Additional Information (if any)

\_\_\_\_\_  
Date Please Print: Deputy Probation Officer Phone No. \_\_\_\_\_

**REPORT OF ACTION AND ENDORSEMENT**

The following action was taken on this application:

- ( ) Petition requested under section(s)
- ( ) D.A. Reject - See D.A. Referral

