

## **Part 1**

# **A LEGAL MAP OF YOUTH DIVERSION IN CALIFORNIA**

**This tool is part of a series designed to map key legal requirements at various stages in California’s juvenile delinquency system. The purpose of these maps is to enable community members and system stakeholders to navigate the legal landscape of juvenile justice and move towards system transformation. For other maps in this series, please visit Youth Law Center’s website, [yhc.org/navigate-juvenile-justice-law](http://yhc.org/navigate-juvenile-justice-law).**

This map provides an overview of California law related to youth diversion. Generally, diversion refers to a wide range of interventions and supports that can be implemented in lieu of a law enforcement or delinquency system response to youth behavior. Recently, California has expanded the funding resources available for youth diversion programming, including through the statewide “Youth Reinvestment Grant” launched in 2019.<sup>1</sup> As jurisdictions expand and deepen their diversion programming, this tool maps the legal requirements related to youth diversion in California. Below is a summary of the key legal guideposts of diversion, followed by a detailed explanation of each point of law.<sup>2</sup>


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<sup>1</sup> For more information, see <https://a59.asmdc.org/youth-reinvestment-grant> and [http://www.bscc.ca.gov/s\\_youthreinvestmentgrant/](http://www.bscc.ca.gov/s_youthreinvestmentgrant/).

<sup>2</sup> Disclaimer: The information provided in this tool does not constitute legal advice. All content is for general informational purposes only.

# YOUTH DIVERSION LAW

## KEY GUIDEPOSTS FOR REFORM:

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- ✦ In line with current research and best practices, diversion should be implemented at the earliest point possible to minimize contact with the juvenile delinquency system. The best, most flexible opportunities for diversion are those led and implemented by community members, families, schools, community-based organizations, and social service agencies.
  - ✦ The community, law enforcement, Probation, the District Attorney, and the Court are all decision-makers with the power to minimize a young person's contact with the juvenile delinquency system.
  - ✦ Once law enforcement has been contacted, every effort should be made to implement diversion before referral to Probation, at which point diversion options can become more limited.
  - ✦ In general, law enforcement has discretion regarding whether or not to take formal action, and can decline to take temporary custody of a youth, choosing instead to counsel the youth or provide resources. If law enforcement decides to take temporary custody, there must be a lawful basis for doing so, such as reasonable cause to believe that the minor has committed a delinquent act.
  - ✦ When law enforcement takes temporary custody of a youth, there are several options for diversion. Law enforcement may counsel and release the youth, or may refer or deliver the young person for diversion services.
  - ✦ In a specified subset of cases, the law does not allow law enforcement to initiate diversion, instead requiring that youth in this category be retained in custody and delivered to Probation. This subset only includes youth who are 14 years of age or older, and taken into custody for the personal use of a firearm in an attempt or commission of a felony or for any offense listed in Welf. & Inst. Code section 707(b).
  - ✦ If law enforcement decides not to implement a diversion program, a youth can still be released by law enforcement with a "Notice to Appear" before Probation.
  - ✦ If law enforcement decides to refer the case to Probation, law enforcement may either release the minor and provide them a "Notice to Appear" before Probation for an intake, or deliver the young person to Probation's custody.

- Once Probation takes custody, Probation must release the youth unless certain factors are present. There are certain specified cases where the youth must first be brought before a judicial officer before he or she can be released.
- For youth delivered to Probation's custody who are age 14 and over and have been taken into custody for an attempt or commission of a felony, neither the police nor Probation may release such youth until the youth signs a "Promise to Appear" before Probation.
- If Probation retains a youth in detention in juvenile hall, the case will be referred automatically to the District Attorney and the minor will be brought to court for a detention hearing.

- ✦ Once Probation receives a delinquency case referral, Probation must investigate and conduct an intake.
- ✦ For certain categories of cases, if law enforcement submits an application to Probation to begin formal proceedings, Probation must refer the case to the District Attorney within 48 hours. For example, this requirement applies to any felony charge where the youth is at least 14 years of age.
- ✦ If Probation is not obligated by law to refer a case to the District Attorney, Probation may decide to settle the case at intake, including by referring the youth and family to services. Court rules dictate that Probation should settle a case at intake where there is not sufficient evidence to show that the youth actually committed a delinquent act.
- ✦ If Probation does not settle a case at intake, Probation can initiate a term of "informal supervision" for a maximum of six months. Such informal supervision requires consent from the youth and their family, and can include referral for sheltered care, a crisis resolution home, and/or education and counseling services. If the informal supervision is completed successfully, the records are sealed.
- ✦ When a case is referred to the District Attorney, the decision whether to file a court petition is in the discretion of the District Attorney. The District Attorney may decline to file or may return the case to Probation for informal supervision or other appropriate action.
- ✦ Even after a delinquency petition is filed in court, a judge can order that the youth be referred back to Probation for informal supervision, instead of going forward on the case in court. If the informal supervision is completed successfully, the delinquency case is dismissed and the records are sealed.



# YOUTH DIVERSION LAW



**Youth diversion encompasses a variety of non-legal responses to a youth's behavior. Implementing diversion prior to law enforcement involvement offers the greatest opportunity to utilize positive, non-punitive strategies.**

Schools, community-based organizations, and local communities can establish positive youth development interventions that do not rely on law enforcement involvement.<sup>3</sup> Such interventions are not governed by the Welfare & Institutions Code, which applies to responses by law enforcement, Probation, the District Attorney, and the courts. Current research supports implementing diversion at the earliest point possible to minimize contact with the juvenile delinquency system.<sup>4</sup> Implementing diversion prior to law enforcement involvement offers the greatest opportunity to utilize non-punitive strategies to promote positive youth development.



**Law enforcement officers have significant discretion to divert youth away from the juvenile delinquency system.**

A wide range of diversion options remain available even after law enforcement becomes involved in an incident. The law gives peace officers discretion in deciding what course to take prior to any type of custodial action. Generally, when responding to an incident, law enforcement has the discretion not to take any formal action at all, and instead can simply “admonish” or counsel the young person and then allow him or her to leave.<sup>5</sup> Counseling can occur even after a youth has been initially detained by law enforcement.<sup>6</sup>

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<sup>3</sup> For more information on positive youth development, see <https://youth.gov/youth-topics/positive-youth-development>. Note that in certain circumstances, schools are required to notify law enforcement regarding offenses committed by students and/or on school grounds. See Educ. Code §§ 48902, 44014; Pen. Code §§ 626.9, 626.10.

<sup>4</sup> The Annie E. Casey Foundation (2018). “Transforming Juvenile Probation: A Vision for Getting It Right.” Baltimore, Maryland, available at: <https://www.aecf.org/m/resourcedoc/aecf-transformingjuvenileprobation-2018.pdf>.

<sup>5</sup> One exception to this discretion is the requirement that officers make an arrest where there is probable cause to believe that a person has committed an act in violation of a domestic violence protective or restraining order. See Pen. Code § 836(c).

<sup>6</sup> See e.g., San Francisco Police Department General Order 7.01, Rev. 05/07/08.



**Law enforcement officers hold great power to improve outcomes for youth because they have expansive discretion as to whether to take youth into temporary custody, and then as to whether to formally process youth. As a starting point, law enforcement may take temporary custody of a youth only if there is reason to believe that he or she has committed a delinquent act, or if there is another legal basis for temporary custody.**

If a law enforcement officer decides to take temporary custody of a young person, there must be a lawful basis for doing so. Law enforcement may take temporary custody only when there is reasonable cause to believe that a minor has committed a delinquent act, or there is another basis for temporary custody.<sup>7</sup>

The legal bases for temporary custody of a minor are:

- ✦ Minor is under the age of 18, and the officer has reasonable cause for believing that he or she has committed a “delinquent act” (i.e. a “criminal offense”);<sup>8</sup>
- ✦ Minor is currently a ward under the jurisdiction of the juvenile court, or is subject to a juvenile court order; or
- ✦ Minor is under the age of 18 and is found in a public place suffering from sickness or injury requiring care.<sup>9</sup>

A youth held in temporary custody will not necessarily be formally processed by the law enforcement agency.<sup>10</sup> When a minor is in temporary custody, law enforcement may exercise its discretion as to whether or not to refer the minor to Probation for formal proceedings.<sup>11</sup>

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<sup>7</sup> Welf. & Inst. Code § 625.

<sup>8</sup> Note that this standard for arrest is lower than the standard for adults. In general, for an adult, a peace officer may only make a warrantless arrest for a misdemeanor when the offense has been committed in the officer’s presence. See Pen. Code § 836(a)(1). In 1978, California repealed the statute that imposed this requirement for arrests of minors, allowing officers to arrest minors for misdemeanors even when not committed in the officer’s presence. See *In re Samuel V.*, 225 Cal. App. 3d 511, 516 (Ct. App. 1990), reh’g denied and opinion modified (Dec. 13, 1990).

<sup>9</sup> Welf. & Inst. Code § 625.

<sup>10</sup> See *In re R.W.*, 24 Cal. App. 5th 145, 150 (Ct. App. 2018), review denied (Sept. 12, 2018).

<sup>11</sup> Welf. & Inst. Code §§ 626, 626.5.



**Even after taking temporary custody of a young person, law enforcement retains the discretion to initiate diversion in most cases. Law enforcement is required to choose the least restrictive option that is compatible with the best interests of both the young person and the community.**

After taking temporary custody of a young person, law enforcement can choose to:

- ✦ Release the minor.
- ✦ Deliver or refer the minor to a public or private agency with which the city or county has an agreement or plan to provide shelter care, counseling, or diversion services.
- ✦ Issue a written “Notice to Appear,” directing the minor to go to Probation at the time, date, and location specified in the notice.
- ✦ Deliver the minor to the custody of Probation. The minor may be delivered to Probation in any of the following places: the county where the minor was arrested, the county where the minor resides, or the county where the delinquent acts took place.<sup>12</sup>

When deciding between these options, law enforcement must choose the alternative that least restricts the minor’s freedom of movement, provided that alternative is compatible with the best interests of the minor and the community.”<sup>13</sup>

For some youth, law enforcement does not have discretion to divert, and instead must take custody of the youth and bring the youth to Probation. Specifically, law enforcement must deliver the following youth to Probation’s custody:

- ✦ Youth who are at least 14 years old, and
- ✦ Charged with either:
  - Personal use of a firearm in the attempt or commission of a felony; or
  - Any offense listed in Welfare and Institutions Code section 707(b).<sup>14</sup>

Outside of these categories, law enforcement may exercise its discretion in how to proceed.

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<sup>12</sup> Welf. & Inst. Code § 626.

<sup>13</sup> Id.

<sup>14</sup> Welf. & Inst. Code §§ 625.3, 626.6.



## Law enforcement can opt for either informal or formal diversion for youth in temporary custody.

After taking temporary custody of a minor, law enforcement can initiate either informal or formal diversion. Informal diversion can consist of providing the minor and his or her family or caretakers with resources and referrals, and then releasing the minor.<sup>15</sup>

Formal diversion can consist of law enforcement connecting the youth with shelter care, counseling, or diversion services.<sup>16</sup> Law enforcement can either refer or deliver a minor for such services.<sup>17</sup> To refer a minor generally means that law enforcement will provide a formal communication to the family and the agency to begin a services program. To deliver a minor generally means that law enforcement will transport the child to the agency providing the services. The services can be provided by either a public or private agency that has an agreement or plan with the city or county for such services.<sup>18</sup>

When law enforcement makes a formal referral for diversion, the diversion agency must immediately conduct any investigation it deems necessary to decide what action it will take, and must initiate a service program when appropriate.<sup>19</sup> The service program must include “constructive assignments” to help the youth learn to be responsible for his or her actions.<sup>20</sup>

If the diversion agency does not initiate a service program—either within 20 days if the minor was referred, or within 10 days if the minor was delivered—the diversion agency must notify the referring law enforcement officer in writing.<sup>21</sup> The referring law enforcement officer may then apply to Probation for a review of the decision not to initiate a service program.<sup>22</sup>

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<sup>15</sup> See Welf. & Inst. Code § 626(a).

<sup>16</sup> Welf. & Inst. Code § 626(b).

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Welf. & Inst. Code § 652.5(a).

<sup>20</sup> Welf. & Inst. Code § 652.5(b).

<sup>21</sup> Welf. & Inst. Code § 652.5(c). The agency must retain a copy of the written notice for 30 days.

<sup>22</sup> Welf. & Inst. Code § 655.5.



## Even when law enforcement decides that referral to Probation is necessary, law enforcement can make that referral and then release the youth.

When law enforcement decides not to divert, and instead decides to refer the youth to Probation, the youth can still be released with a written “Notice to Appear” before Probation at a specified time and place.<sup>23</sup> The notice must state why the minor was taken into custody, and a copy must be given to the minor or their parent/guardian or responsible relative.<sup>24</sup> Additionally, the minor and/or their adult may be required to sign a written “Promise to Appear.”<sup>25</sup> A “Promise to Appear” is stronger than a “Notice to Appear” because a willful violation of a promise to appear is a misdemeanor.<sup>26</sup> Law enforcement must file a copy of the notice with Probation as soon as practicable.<sup>27</sup>



## If law enforcement decides not to initiate diversion or release the youth, law enforcement will deliver the youth to the custody of Probation. Probation then decides whether to release the youth.

If law enforcement decides not to release a youth, law enforcement will deliver the youth to the custody of Probation in either the county where the youth was taken into custody, the county where the youth resides, or the county where the delinquent acts took place.<sup>28</sup> Once Probation receives custody of the youth, Probation must investigate the circumstances and release the youth unless certain factors for detention are present.<sup>29</sup> For a certain subset of cases, the law requires that the youth be held in custody until the youth can be brought before a judicial officer.<sup>30</sup> Additionally, once a youth is delivered to the custody of Probation, any minor who is at least 14 years old and charged with an attempt or commission of a felony cannot be released without signing a written “Promise to Appear.”<sup>31</sup>

For all cases where Probation holds a youth in detention, Probation will refer the case to the District Attorney for the filing of a petition.

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<sup>23</sup> Welf. & Inst. Code §§ 626(c), 626.5(a).

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Welf. & Inst. Code § 214.

<sup>27</sup> Welf. & Inst. Code § 626(c).

<sup>28</sup> Welf. & Inst. Code § 626(d).

<sup>29</sup> Welf. & Inst. Code § 628(a). For more information, see Youth Law Center’s publication, *Navigating the Legal Landscape towards Juvenile Justice Transformation: A Legal Map of Youth Detention in California*.

<sup>30</sup> Welf. & Inst. Code §§ 625.3, 626.6, 629.1. This subset includes youth who are 14 years of age or older and taken into custody for the personal use of a firearm in an attempt or commission of a felony or for any offense listed in Welf. & Inst. Code section 707(b).

<sup>31</sup> Welf. & Inst. Code § 629(b).

Note that Welfare and Institutions Code section 629 applies only after delivery of the youth to the custody of Probation. Subsection (a) of section 629 requires that if Probation decides to release a minor under Home Supervision, pursuant to section 628.1, the minor must be required to sign a “Promise to Appear.” Subsection (b) of section 629 requires that if Probation decides to release a minor without Home Supervision, pursuant to section 628, the minor must be required to sign a “Promise to Appear” if the minor is at least 14 years old and charged with attempt or commission of a felony. Section 629 has no impact on law enforcement’s discretion under section 626 to release a minor who has been held only in temporary custody, and has not been delivered to Probation.

<sup>32</sup> Welf. & Inst. Code § 630(a).





**If law enforcement decides to refer a minor to Probation to begin juvenile court proceedings, law enforcement can submit an affidavit to Probation setting forth supporting facts in support of its application to begin proceedings. When Probation receives such an affidavit, there are certain categories of cases that then must be referred to the District Attorney's office.**

If law enforcement decides that a young person should be brought to the attention of the juvenile court, law enforcement may apply to Probation to begin proceedings.<sup>33</sup> The application consists of an affidavit alleging that the minor has committed a delinquent act, and setting forth the facts that support the allegation.<sup>34</sup> When Probation receives such an application, it must immediately conduct an investigation and determine how to proceed.<sup>35</sup>

In some cases, Probation does not have discretion on next steps after it receives an application from law enforcement. If Probation concludes that the youth falls within one of the following categories, Probation must refer the case to the District Attorney within 48 hours:

- ✦ If it appears that the minor has been referred for any violation of an offense listed in Welfare and Institutions Code sections 707(b), 707(d)(2), or 707(e).
- ✦ If it appears that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.
- ✦ If it appears that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer
- ✦ If it appears that the minor has been referred to the probation officer for the sale or possession for sale of a specified controlled substance.
- ✦ If it appears that the minor has been referred for specified school-related offenses:
  - Drug possession under Health and Safety Code section 11350 or 11377 (where the violation takes place at a school);
  - A violation of Penal Code sections 245.5 (assault with a deadly weapon or by means likely to produce great bodily injury upon a school employee), 626.9 (possession of a gun in a school zone), or 626.10 (possession of specified weapons on school grounds).

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<sup>33</sup> Welf. & Inst. Code §§ 626.5, 653.5(a).

<sup>34</sup> Welf. & Inst. Code § 653.5(a).

<sup>35</sup> Id.

- ✦ If it appears that the minor has been referred to the probation officer for a violation of Penal Code section 186.22 (active participation in criminal street gang).
- ✦ If it appears that the minor has previously been placed in a program of informal probation pursuant to Welfare and Institutions Code section 654.
- ✦ If it appears that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000).<sup>36</sup>

For cases that fall in the above categories, if Probation receives an application to begin proceedings, Probation does not have discretion to implement diversion prior to referring a case to the District Attorney. However, the District Attorney may decline to file a petition or may refer the case back to Probation.<sup>37</sup>

Note that Probation's obligation to refer the case to the District Attorney arises only if it receives an application to begin proceedings, as set out in the statute.<sup>38</sup> When Probation receives any other type of referral, these requirements do not apply.

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<sup>36</sup> Welf. & Inst. Code § 653.5. An additional section, section 653.1, also requires Probation to refer a case to the District Attorney if it receives an affidavit alleging that the minor is 14 or older and committed an offense listed under section 707(b). Welf. & Inst. Code § 653.1. This requirement is encompassed by the requirement under section 653.5(c)(1).

<sup>37</sup> Welf. & Inst. Code §§ 653.1, 653.5(c).

<sup>38</sup> See Welf. & Inst. Code § 653.5(a).



**In any case where Probation has cause to believe a minor has committed a “delinquent act,” Probation must conduct an investigation and intake. If a referral to the District Attorney is not required by law, Probation can decide not to take any further formal action.**

When Probation has cause to believe that a minor has committed a “delinquent act,” Probation must immediately investigate to determine whether juvenile court proceedings should be started.<sup>39</sup> As explained above in #8, if Probation has received an application to begin proceedings, there are certain categories of cases in which Probation does not have discretion as to next steps, and must refer the case to the District Attorney’s office. If the case does not fall into one of these categories, or if the case comes to Probation not as an application to begin proceedings, Probation must conduct an intake and determine how to proceed.

Depending on the nature of the case, Probation may have the option to “settle a case at intake,”<sup>40</sup> meaning the case would not be referred to the District Attorney or filed in court. The California Rules of Court indicate that settlement at intake should occur in the following circumstances:

- ✦ When the juvenile court does not have jurisdiction over the matter;
- ✦ When there is not enough evidence to support filing a delinquency petition;
- ✦ When the case is suitable for referral to a non-judicial agency or program in the community.<sup>41</sup>

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<sup>39</sup> Welf. & Inst. Code § 652.

<sup>40</sup> Cal. Rule of Court, rule 5.514(b)(1).

<sup>41</sup> Id.

The California Rules of Court set out a list of factors for Probation to consider when determining whether to settle a case at intake.<sup>42</sup> If Probation decides to settle at intake, Probation can do any of the following:

- ✦ Take no action;
- ✦ Counsel the youth; or
- ✦ Refer the youth and the family to agencies or programs in the community.<sup>43</sup>

If Probation decides to settle a case an intake after receiving an affidavit application from law enforcement to commence proceedings, then Probation must “endorse” its decision not to proceed further on the affidavit.<sup>44</sup> Probation must state the reasons for its decision on the affidavit and notify the law enforcement officer of the decision, then retain the affidavit for a period of 30 business days.<sup>45</sup> The law enforcement officer may then, within 10 business days of receiving Probation’s notice, apply directly to the District Attorney to review Probation’s decision.<sup>46</sup>

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<sup>42</sup> See Cal. Rule of Court, rule 5.516(a). Under court rules, Probation must consider the following factors for settlement at intake:

- Whether there is sufficient evidence to bring the child within the jurisdiction of the court;
- If the alleged conduct is not considered serious, whether the child has previously presented significant problems in the home, school, or community;
- Whether the matter appears to have arisen from a temporary problem within the family that has been or can be resolved;
- Whether any agency or other resource in the community is available to offer services to the child and the child’s family to prevent or eliminate the need to remove the child from the child’s home;
- The attitudes of the child, the parent or guardian, and any affected persons;
- The age, maturity, and capabilities of the child;
- The dependency or delinquency history, if any, of the child;
- The recommendation, if any, of the referring party or agency; and
- Any other circumstances that indicate that settling the matter at intake would be consistent with the welfare of the child and the protection of the public.

<sup>43</sup> Cal. Rule of Court, rule 5.514(c)(1).

<sup>44</sup> Welf. & Inst. Code § 653.7.

<sup>45</sup> Id.

<sup>46</sup> Welf. & Inst. Code § 655(a).



## If Probation decides not to settle a case at intake, Probation can implement a program of “informal supervision” instead of referring the case to the District Attorney to proceed in court.

If Probation does not settle a case at intake, then Probation may have the option of “informal supervision,” depending on the nature of the case.<sup>47</sup> Court rules indicate that informal supervision should only be used if Probation concludes that there is enough evidence of a delinquent act that the youth would fall within the jurisdiction of the court. Under “informal supervision,” Probation can create a program of supervision not to exceed six months instead referring the case to the District Attorney to file a petition in court.<sup>48</sup> Both the youth and the parent/guardian must consent to the informal supervision.<sup>49</sup>

If Probation determines that the interests of the youth and the community can be protected under a program of informal supervision, Probation must make a “diligent effort” to implement such program.<sup>51</sup> However, if the youth does not participate in the program within 60 days, Probation must refer the case to the District Attorney, unless Probation determines that the interests of the child and the community can be adequately protected by continuing the informal supervision program.<sup>52</sup> Probation can refer the case to the District Attorney at any time within the six-month period, and up to 90 days after the period ends.<sup>53</sup>

Informal supervision must include a requirement that the youth and their parent/guardian participate in counseling or education programs.<sup>54</sup> It may also include a requirement that the youth obtain treatment related to controlled substance abuse from a county mental health service or other appropriate community agency.<sup>55</sup> Probation can also provide the following services:

- ✦ Placement in a sheltered-care facility for a maximum of 90 days, with counseling services to the minor and their family. Such facilities may be operated by Probation, or through a contract with private or public agencies to provide these services.<sup>56</sup>
- ✦ Residence in a crisis resolution home for a maximum of 20 days, with counseling services to the minor and their family.<sup>57</sup>
- ✦ Services from counseling and education centers. Probation may contract with private or public agencies whose purpose is to provide vocational or skills training. Probation may also make referrals to existing private or public agencies offering similar services.<sup>58</sup>

Probation shall maintain a report of the actual program measures taken at the conclusion of the informal supervision.<sup>59</sup> If the program is completed satisfactorily, Probation must seal its records and notify all other agencies to do the same.<sup>60</sup>

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<sup>54</sup> Welf. & Inst. Code §§ 654, 654.6. Certain types of offenses carry additional requirements as part of the term of informal supervision. See Welf. & Inst. Code §§ 654.1, 654.4.

<sup>55</sup> Id.

<sup>56</sup> Welf. & Inst. Code § 654(a). Note that referrals for sheltered-care diversion can come from the minor, their family, schools, law enforcement, or any other private or public social service agency.

<sup>57</sup> Welf. & Inst. Code § 654(b). Note that referrals to the crisis resolution home can come from the minor, their family, schools, law enforcement, or any other private or public social service agency.

<sup>58</sup> Welf. & Inst. Code § 654(c).

<sup>59</sup> Id.

<sup>60</sup> Welf. & Inst. Code § 786.5.



## **The District Attorney's office has discretionary power in determining whether to file a court petition to initiate juvenile delinquency proceedings.**

If Probation decides or is required by law to refer a case to the District Attorney, the District Attorney has discretion as to whether to file a delinquency petition in juvenile court. In the exercise of this discretion, the District Attorney may decline to file a petition. If the District Attorney decides to file, the petition can be filed in the juvenile court of the county where the youth lives, where the youth was found, or where the delinquent acts took place.

Instead of filing a petition, the District Attorney can return a referred case to Probation for appropriate action. Reasons for returning a case to Probation can include if the District Attorney finds that the case was not properly referred, that the offense should be charged as a misdemeanor, or that the youth may benefit from informal supervision. In this way, the District Attorney's office retains broad authority to initiate diversion proceedings in lieu of filing a delinquency petition in juvenile court.



## Even after the District Attorney files a juvenile delinquency petition, the judge may order informal supervision, instead of moving forward on the filed petition in court.

If the District Attorney files a petition in Juvenile Delinquency Court, the judge may still order a term of “informal supervision” by Probation, with the consent of the youth and the parent/guardian.<sup>68</sup> However, there are some cases that are presumptively ineligible for informal supervision.<sup>69</sup> That presumption, though, can be overcome if the Court finds that it is an unusual case where the interests of justice would best be served by informal supervision.<sup>70</sup>

Importantly, if the judge orders a term of “informal supervision,” the youth’s charges remain “unadjudicated.”<sup>71</sup> In other words, the youth does not make any admission (or “plea”) on the charges, and the judge makes no juvenile court “wardship” findings. Instead, the hearing on the petition is continued (i.e. “postponed”) to allow the youth to complete the informal supervision program.<sup>72</sup> The judge cannot require the youth to consent to a search as a condition of the informal supervision.<sup>73</sup>

Once the informal supervision is satisfactorily completed, the judge must order the petition dismissed and the records sealed.<sup>74</sup>

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<sup>68</sup> Welf. & Inst. Code § 654.2.

<sup>69</sup> Welf. & Inst. Code § 654.3. The cases that are presumptively ineligible are:

- a) A petition alleges that the minor has violated an offense listed in section 707(b).
- b) A petition alleges that the minor has sold or possessed for sale specified controlled substances.
- c) A petition alleges that the minor has violated specified school-related offenses:

Drug possession under Health and Safety Code section 11350 or 11377 (where the violation takes place at a school); or

A violation of Penal Code sections 245.5 (assault with a deadly weapon or by means likely to produce great bodily injury upon a school employee), 626.9 (possession of a gun in a school zone), or 626.10 (possession of specified weapons on school grounds).

d) A petition alleges that the minor has violated Penal Code section 186.22.

e) The minor has previously participated in a program of informal supervision.

f) The minor has previously been adjudged a ward of the court under section 602.

g) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000).

<sup>70</sup> Id. Another option for diversion after a juvenile delinquency petition has been filed is “Deferred Entry of Judgment,” which is generally available in cases with felony charges that are not listed in Welfare and Institutions Code section 707(b). See Welf. & Inst. Code § 790.

<sup>71</sup> Welf. & Inst. Code § 654.2.

<sup>72</sup> Id.

<sup>73</sup> Derick B. v. Superior Court, 180 Cal. App. 4th 295, 305-306 (Ct. App. 2009).

<sup>74</sup> Welf. & Inst. Code § 786(a).



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[ylc.org/navigate-juvenile-justice-law](http://ylc.org/navigate-juvenile-justice-law)

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