

Part 3

A LEGAL MAP OF YOUTH DETENTION HEARINGS 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.

This map provides an overview of California law regarding detention hearings for youth being held in custody. When law enforcement takes formal custody of a youth based on a belief that he or she has committed a delinquent act, law enforcement has the option to deliver the youth to the Probation Department—the county agency responsible for the custody of youth. In certain cases, Probation cannot release a young person until he or she is brought before the court for a detention hearing. In all other cases, Probation must release the youth unless certain statutory requirements have been met. For more information on the legal requirements for youth detention, please see Youth Law Center’s publication, *Navigating the Legal Landscape towards Juvenile Justice Transformation: A Legal Map of Youth Detention in California*.

After taking custody of a youth, Probation is responsible for either releasing the young person or bringing him or her to court for a “detention hearing,” where a judge will decide whether the youth will be detained while his or her case is pending. This tool provides a map of the legal requirements for youth detention hearings. Below is a summary of the key legal guideposts of detention hearings, followed by a detailed explanation of each point of law.¹

¹ Disclaimer: The information provided in this tool does not constitute legal advice. All content is for general informational purposes only.

YOUTH DETENTION HEARINGS

KEY GUIDEPOSTS FOR REFORM:

- ✦ For all detained youth, the court could hold immediate detention hearings to significantly reduce the amount of time that a youth is held in custody. California law requires that detention hearings be held “as soon as possible,” but also allows detention hearings to be delayed for several days.
- ✦ Because California law allows detention hearings to be conducted several days after arrest, there is tension between state law and the federal constitutional requirement that a court must review an arrest within 48 hours. Under the Fourth Amendment, an arrest must be supported by evidence amounting to “probable cause” to believe that the person committed the offense charged. If a county does not have separate procedures for reviewing probable cause prior to the detention hearing, it is likely that the county is routinely violating this constitutional requirement.
- ✦ Detention hearings must be conducted by a judge or juvenile court referee. Court sessions need not take place in a courthouse. Counties could explore creative options for satisfying the hearing requirements outside of the traditional courthouse process.
- ✦ There are no statutory requirements that the court detain a youth for certain types of cases or charges. Instead, this determination is made on a case-by-case basis and it is discretionary with the court.
- ✦ Unless certain factors are present, the law presumes that the court must order release. In addition, if there are factors present to justify detention, but services could eliminate the need for detention, the court must order those services and release the young person.



- ✦ When the court orders a young person to be detained, that detention is time-limited to 15 court days, and the detention does not have to be in juvenile hall. The court may designate another “suitable place” for detention, including a non-secure detention facility, or the court may release the minor on “Home Supervision.”
- ✦ If a young person is detained, the court must order Probation to provide the services necessary to safely return the young person home to their parent/guardian.
- ✦ If a young person is detained and at risk of entering foster care, Probation must develop a case plan, and must include services to be provided to both the youth and family if such services will enable the youth to return home safely.



YOUTH DETENTION HEARINGS



All youth who are held by Probation—whether as required or allowed by law—must be brought as soon as possible before a judicial officer for a detention hearing. If the detention hearing is not held within the required timeline, the youth must be released.

After a youth is detained, he or she must be brought before a judge or referee of the juvenile court for a hearing to decide whether the youth should continue to be detained (unless he or she is released before the hearing). *By law, the hearing must happen “as soon as possible.”*²

Although the law states that the hearing must be held as soon as possible, the typical practice is to delay the hearing until the latest point allowed under the statute. According to the statute, the latest time to hold the hearing is the “next judicial day” after the District Attorney’s office files a court petition alleging that the young person has committed a “delinquent act” (i.e. a “criminal offense”).³ Because “next judicial day” means that weekends and holidays do not count, and because the District Attorney’s office has 48 hours from arrest to file the delinquency petition, the detention hearing often takes place several days after arrest.⁴ It should be noted that the District Attorney must file the delinquency petition within 48 hours of arrest, excluding non-court days, or the minor will be released from detention.⁵ For certain misdemeanor cases, the time period for the detention hearing is slightly shorter: if a youth is not on probation at the time of a warrantless arrest for a misdemeanor charge (that does not involve violence/threats of violence, and does not involve possession/use of a weapon), the youth must have a detention hearing within 48 hours of arrest, but, again holidays and weekends do not count.⁶ If the detention hearing does not occur within the specified timeframes, the child must be released.⁷

The result of this procedure is that youth frequently spend several days in custody without any judicial review of Probation’s decision to detain the youth. For example, when a youth is arrested on a Wednesday, a delinquency petition might not be filed by the District Attorney’s office until Friday, and a detention hearing might not be held until the following Monday—meaning that the youth would spend five days in custody before judicial review of the detention decision. While state law permits this approach, it is in tension with the Supreme Court’s holding, under the Fourth Amendment to the U.S. Constitution, that a

² Welf. & Inst. Code § 632(a).

³ *Id.*

⁴ *See id.*

⁵ Welf. & Inst. Code § 631(a).

⁶ Welf. & Inst. Code § 631(b).

⁷ Welf. & Inst. Code § 632(c).

judicial officer must make a determination of probable cause on all detentions no later than 48 hours after a warrantless arrest.⁸ If a county delays its detention hearings until after the District Attorney's office files a delinquency petition, it will need an additional procedure for judicial review of probable cause in order to ensure that this review takes place within the constitutionally required time period.

Courts could expedite detention hearings to ensure that the constitutionally required probable cause review takes place, and also to comply with the statutory requirement that these hearings be held "as soon as possible."⁹ Although courts typically delay the detention hearing until after a petition has been filed by the District Attorney's office, this practice is allowed by statute, but not required.¹⁰ Instead, a court could hold an immediate detention hearing, even without a filed delinquency petition, for the sole purpose of reviewing the detention decision.

At the detention hearing, the court has the power to release any youth, regardless of the type of charge. However, before making the decision to detain a youth, the court must first make certain findings about the need for detention,¹¹ as detailed in #3 below.

⁸ See *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56, 58-59 (1991). In any case where Probation will not bring the minor to court for a hearing within 48 hours of arrest, there is still a requirement under federal constitutional law for a judge to review whether the detention complies with the Fourth Amendment's probable cause standard. *Id.* For a longer discussion of probable cause reviews, see Youth Law Center's publication *Navigating the Legal Landscape towards Juvenile Justice Transformation: A Legal Map of Youth Detention*.

⁹ See Welf. & Inst. Code § 632.

¹⁰ In fact, the Supreme Court's decision in *McLaughlin* indicated that it is permissible to delay court review of probable cause in order to combine it with other pre-trial proceedings, but only if these proceedings occur within 48 hours of arrest. *Id.*

¹¹ See Welf. & Inst. Code §§ 635-636.



A detention hearing must meet certain procedural requirements.

Under the law, the detention hearing must comply with certain requirements, including procedures regarding notice, conduct of the hearing, advisement of rights, and presentation of evidence.



Notice:

Notice of the time and date of the hearing must be given to the minor and each parent or guardian and can be given orally.¹²



Conduct of hearing:

The detention hearing must be conducted by a judge or referee of the juvenile court.¹³ However, an order of a referee removing a child from home is not effective until expressly approved by a juvenile court judge.¹⁴

The judge of the juvenile court controls all proceedings, with the goal of effectively and quickly determining all information relevant to the present and future welfare of the young person.¹⁵ In line with this goal, the juvenile court judge can designate a location for detention hearings that is not within a courthouse.¹⁶



Advisement of rights:

At the hearing, the youth and the parent/guardian must be informed of: the reasons the minor was taken into custody, the nature of the juvenile court proceedings, and the right of the minor and the parent/guardian to be represented at every stage by counsel.¹⁷



Presentation of evidence:

The youth has a privilege against self-incrimination and the right to cross-examine any witness who is examined by the court.¹⁸ The court can examine the minor, his/her parent, guardian, or other person having relevant evidence, and hear any relevant evidence that the youth, parent(s), or counsel wish to present.¹⁹

¹² Welf. & Inst. Code § 630(a).

¹³ Welf. & Inst. Code § 632(a). For the laws governing juvenile court “referees,” see Welfare and Institutions Code sections 247.5-254.

¹⁴ Welf. & Inst. Code § 249.

¹⁵ Welf. & Inst. Code § 680.

¹⁶ Under Welfare and Institutions Code section 727.4, the hearing must occur in a “courtroom.” However, under Government Code section 69740, court sessions need not be conducted in a courthouse. In determining the location for a session, the court must consider several factors, including “availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public.” See Gov. Code § 69740(a).

¹⁷ Welf. & Inst. Code § 633.

¹⁸ Welf. & Inst. Code § 630(b).

¹⁹ Welf. & Inst. Code § 635(a).



There is no statute that requires the court to detain any particular youth. At the detention hearing, the court must order release of the youth unless certain factors are present. Even when these factors are present, the court’s decision to detain a youth is discretionary. The court must determine whether to detain a youth on a case-by-case basis.

The law presumes that, unless certain factors are present, the court must order that a young person be released.²⁰

In order to order a youth detained, the court must find all of the following:

- ✦ **A) That a “prima facie” showing has been made that there is evidence to believe that the youth committed the charged criminal offense;**²¹
- ✦ **B) That continuance in the home is contrary to the youth’s welfare;²² AND**
- ✦ **C) That one of the following grounds for detention exists:**²³
 - a. The child has violated an order of the court;
 - b. The child has escaped from a commitment of the court;
 - c. The child is likely to flee the jurisdiction of the court;
 - d. Detention is a matter of immediate and urgent necessity for the protection of the child; or
 - e. Detention is reasonably necessary for the protection of the person or property of another.

Even when the required factors are present, the law states that the court “may” order the youth detained.²⁴ The court is not required to order detention in any case.

If a young person is a “dependent”—meaning that the young person has previously been placed in foster care—the court cannot decide to detain the young person based on their status as a dependent, or based on the child welfare department’s inability to provide a placement for the young person.²⁵

²⁰ See Welf. & Inst. Code § 635(a).

²¹ Welf. & Inst. Code § 635(c)(1); Cal. Rules of Court, rule 5.758(a)(1).

²² Welf. & Inst. Code § 636(a); Cal. Rules of Court, rule 5.758(a)(2).

²³ Welf. & Inst. Code § 636(a); Cal. Rules of Court, rule 5.760(c).

²⁴ Welf. & Inst. Code § 636(a).

²⁵ Welf. & Inst. Code § 635(b).



Before detaining a youth, the court must consider whether services could prevent the need for further detention. If so, the court must order the child released home with those services.

Even if the court finds that there are legal grounds for detention, the court must consider whether there are available services that would prevent the need for further detention.²⁶ If such services are available, the *court must release the child to the parent and order that those services be provided.*²⁷ Services may include therapeutic services, enrichment programs, or other educational or community-based supports, including diversion programs that provide community-based programming in lieu of formal court processing.



If the court orders detention, the detention may be in juvenile hall or other suitable place determined by the court. The detention cannot exceed 15 court days. The court must also order Probation to provide services as soon as possible to enable the minor to return home.

When the court decides that a young person should be detained, the court may order detention in juvenile hall or “other suitable place designated by the juvenile court.”²⁸ One such place can be a “nonsecure detention facility.”²⁹ Probation may operate a nonsecure detention facility, or may contact with a public or private agency to do so.³⁰

The detention must not exceed 15 “judicial” days (i.e. 15 business days, or 3 weeks).³¹ The court must also order the Probation Department to provide services as soon as possible to enable the minor’s parent or legal guardian to effectively provide the care and control necessary for the minor to return to the home.³²

²⁶ Welf. & Inst. Code § 636(d)(1); Cal. Rules of Court, Rule 5.760(d).

²⁷ *Id.*

²⁸ Welf. & Inst. Code § 636(a). For a full discussion of these laws, see Youth Law Center’s publication, Navigating the Legal Landscape towards Juvenile Justice Transformation: A Legal Map of Non-Custodial Residential Options for Youth in California (forthcoming).

²⁹ Welf. & Inst. Code § 636.2.

³⁰ *Id.*

³¹ Welf. & Inst. Code § 636(a).

³² Welf. & Inst. Code § 636(d)(3).



Even if the court orders a youth to be detained, the youth can still be released on “Home Supervision.”

Even if the court finds that a minor should be detained, the court must consider whether 24-hour secure detention is required to protect the minor or the person or property of another, or to ensure that the minor does not flee the jurisdiction of the court.³³ If not, and the court finds that the requirements of “Home Supervision” are otherwise met, the court must order the youth released on “Home Supervision.”³⁴

Home Supervision is a program that allows youth who would otherwise be detained in juvenile hall to remain in their homes, under the supervision of a deputy probation officer, probation aide, community worker, or probation volunteer.³⁵ The purpose of Home Supervision is to make sure that the young person shows up at court hearings and probation appointments, and to make sure that the young person obeys the conditions of release and commits no public offenses.³⁵ The law requires that, “whenever possible,” the young person must be assigned to a deputy probation officer, probation aide, community worker, or volunteer *who resides in the “same community” as the minor*.³⁵ Probation aides and community workers may be compensated for their Home Supervision services, but do not qualify for peace officer status.³⁸

While on Home Supervision, a youth can be required to follow certain conditions of release.³⁹ These conditions can be related to the protection of the minor or the person or property of another, or to the minor’s appearances at court hearings.⁴⁰

³³ Welf. & Inst. Code §§ 636(b), 628.1.

³⁴ *Id.*

³⁵ Welf. & Inst. Code § 840.

³⁶ Welf. & Inst. Code § 841.

³⁷ *Id.*

³⁸ Welf. & Inst. Code § 842.

³⁹ Welf. & Inst. Code § 628.1.

⁴⁰ *Id.* Examples of Home Supervision conditions include curfew and school attendance requirements.



If the court orders a youth detained, Probation must initiate the development of a case plan for the youth. The case plan must include a plan for delivering services to the youth and family so that the youth can reside at home or so that a youth can be returned home as soon as possible.

If the court orders that a young person must be detained, the young person’s placement and care become the responsibility of the Probation Department until further order of the court.⁴¹ If the child is at risk of entering foster care, then by the date of the dispositional hearing in the case (or within 60 days, whichever comes first), Probation must create a “case plan” for the youth.⁴² If Probation believes that with reasonable efforts by the young person, their family, and Probation, the young person will be able to return home, the case plan must focus on that goal.⁴³

The case plan must include a description of the strengths and needs of the youth and his or her family, and identify services that will be provided to the youth and his or her family in order to make it possible for the young person to go home safely.⁴⁴

⁴¹ Welf. & Inst. Code § 636(d)(3)(B).

⁴² Welf. & Inst. Code § 636.1(a). The “dispositional hearing” is similar to a “sentencing hearing” in adult criminal court. It takes places only if the court finds that the delinquency charges are true, and orders a hearing to determine the proper disposition for the case. See Welf. & Inst. Code §§ 702, 706.

⁴³ Welf. & Inst. Code § 636.1(b).



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