

Article 1. Initial Appearance

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Rule 5.752. Initial hearing; detention hearings; time limit on custody; setting jurisdiction hearing

(a) Child not detained; filing petition, setting hearing

If the child is not taken into custody and the authorized petitioner (district attorney or probation officer) determines that a petition or notice of probation violation concerning the child should be filed, the petition or notice must be filed with the clerk of the juvenile court as soon as possible. The clerk must set an initial hearing on the petition within 15 court days.

(Subd (a) amended effective January 1, 2007.)

(b) Time limit on custody; filing petition (§§ 604, 631, 631.1)

A child must be released from custody within 48 hours, excluding noncourt days, after first being taken into custody unless a petition or notice of probation violation has been filed either within that time or before the time the child was first taken into custody.

(Subd (b) amended effective January 1, 2007.)

(c) Time limit on custody—willful misrepresentation of age (§ 631.1)

If the child willfully misrepresents the child's age to be 18 years or older, and this misrepresentation causes an unavoidable delay in investigation that prevents the filing of a petition or of a criminal complaint within 48 hours, excluding noncourt days, after the child has been taken into custody, the child must be released unless a

petition or complaint has been filed within 48 hours, excluding noncourt days, from the time the true age is determined.

(Subd (c) amended effective January 1, 2007.)

(d) Time limit on custody—certification of child detained in custody (§ 604)

A child must be released from custody within 48 hours, excluding noncourt days, after certification to juvenile court under rules 4.116 and 5.516(d) unless a petition has been filed.

(Subd (d) amended effective January 1, 2007.)

(e) Time limit for detention hearing—warrant or nonward charged with nonviolent misdemeanor (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child has been taken into custody, if:

- (1) The child has been taken into custody on a warrant or by the authority of the probation officer; or
- (2) The child is not on probation or parole and is alleged to have committed a misdemeanor not involving violence, the threat of violence, or the possession or use of a weapon.

(Subd (e) amended effective January 1, 2007.)

(f) Time limit for detention hearing—felony, violent misdemeanor, or ward (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than the expiration of the next court day after the petition or notice of probation violation has been filed, if:

- (1) The child is alleged to have committed a felony;
- (2) The child is alleged to have committed a misdemeanor involving violence, the threat of violence, or the possession or use of a weapon; or
- (3) The child is a ward currently on probation or parole.

(Subd (f) amended effective January 1, 2007.)

(g) Time limit for hearing—arrival at detention facility (§ 632)

A detention hearing must be set and commenced as soon as possible, but no later than 48 hours, excluding noncourt days, after the child arrives at a detention facility within the county if:

- (1) The child was taken into custody in another county and transported in custody to the requesting county;
- (2) The child was ordered transported in custody when transferred by the juvenile court of another county under rule 5.610; or
- (3) The child is a ward temporarily placed in a secure facility pending a change of placement.

(Subd (g) amended effective January 1, 2007.)

(h) Time limit for hearing—violation of home supervision (§§ 628.1, 636)

A child taken into custody for a violation of a written condition of home supervision, which the child has promised in writing to obey under section 628.1 or 636, must be brought before the court for a detention hearing as soon as possible, but no later than 48 hours, excluding noncourt days, after the child was taken into custody.

(Subd (h) amended effective January 1, 2007.)

(i) Time limits—remedy for not observing (§§ 632, 641)

If the detention hearing is not commenced within the time limits, the child must be released immediately, or, if the child is a ward under section 602 awaiting a change of placement, the child must be placed in a suitable, nonsecure facility.

(Subd (i) amended effective January 1, 2007.)

Rule 5.752 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1471 effective January 1, 1998.

Rule 5.754. Commencement of initial hearing—explanation, advisement, admission

(a) Explanation of proceedings (§ 633)

At the beginning of the initial hearing, whether the child is detained or not detained, the court must give the advisement required by rule 5.534 and must inform the child and each parent and each guardian present of the following:

- (1) The contents of the petition;
- (2) The nature and possible consequences of juvenile court proceedings; and
- (3) If the child has been taken into custody, the reasons for the initial detention and the purpose and scope of the initial hearing.

(Subd (a) amended effective January 1, 2007.)

(b) Admission of allegations; no contest plea

If the child wishes to admit the allegations of the petition or enter a no contest plea at the initial hearing, the court may accept the admission or plea of no contest and must proceed according to rule 5.778.

(Subd (b) amended effective January 1, 2007.)

Rule 5.754 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1472 effective January 1, 1998.

Rule 5.756. Conduct of detention hearing

(a) Right to inspect (§ 827)

The child, the parent, the guardian, and counsel are permitted to inspect and receive copies of police reports, probation reports, and any other documents filed with the court or made available to the probation officer in preparing the probation recommendations.

(Subd (a) amended effective January 1, 2007.)

(b) Examination by court (§ 635)

Subject to the child's privilege against self-incrimination, the court may examine the child, the parent, the guardian, and any other person present who has

knowledge or information relevant to the issue of detention and must consider any relevant evidence that the child, the parent, the guardian, or counsel presents.

(Subd (b) amended effective January 1, 2007.)

(c) Evidence required

The court may base its findings and orders solely on written police reports, probation reports, or other documents.

Rule 5.756 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1473 effective January 1, 1998.

Rule 5.758. Requirements for detention; prima facie case

(a) Requirements for detention (§§ 635, 636)

The court must release the child unless the court finds that:

- (1) A prima facie showing has been made that the child is described by section 601 or 602;
- (2) Continuance in the home is contrary to the child's welfare; and
- (3) One or more of the grounds for detention stated in rule 5.760 exist. However, except as provided in sections 636.2 and 207, no child taken into custody solely on the basis of being a person described in section 601 may be detained in juvenile hall or any other secure facility.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 2002.)

(b) Detention in adult facility

A child must not be detained in a jail or lockup used for the confinement of adults, except as provided in section 207.1.

(Subd (b) amended effective July 1, 2002.)

Rule 5.758 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1474 effective January 1, 1998; previously amended effective July 1, 2002.

Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders

(a) Conduct of detention hearing (§§ 635, 636)

The court must consider the written report of the probation officer and any other evidence and may examine the child, any parent or guardian, or any other person with relevant knowledge of the child.

(Subd (a) adopted effective January 1, 2007.)

(b) Written detention report (§§ 635, 636)

If the probation officer has reason to believe that the child is at risk of entering foster care placement, the probation officer must submit a written report to the court that includes the following:

- (1) The reasons the child has been removed;
- (2) Any prior referral for abuse or neglect of the child and any prior filing of a petition regarding the child under section 300;
- (3) The need, if any, for continued detention;
- (4) Available services to facilitate the return of the child;
- (5) Whether there are any relatives able and willing to provide effective care and control over the child;
- (6) Documentation that continuance in the home is contrary to the child's welfare; and
- (7) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home and documentation of the nature and results of the services provided.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a) effective January 1, 2001; previously amended effective July 1, 2002.)

(c) Grounds for detention (§§ 625.3, 635, 636)

- (1) The child must be released unless the court finds that continuance in the home of the parent or legal guardian is contrary to the child's welfare, and one or more of the following grounds for detention exist:
 - (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) It is a matter of immediate and urgent necessity for the protection of the child; or
 - (E) It is reasonably necessary for the protection of the person or property of another.
- (2) If the child is a dependent of the court under section 300, the court's decision to detain must not be based on the child's status as a dependent of the court or the child welfare services department's inability to provide a placement for the child.
- (3) The court may order the child placed on home supervision under the conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a suitable place designated by the court.
- (4) If the court orders the release of a child who is a dependent of the court under section 300, the court must order the child welfare services department either to ensure that the child's current caregiver takes physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.

(Subd (c) amended effective January 1, 2016; adopted as subd (a); previously amended effective July 1, 2002; previously amended and relettered as subd (b) effective January 1, 2001, and as subd (c) effective January 1, 2007.)

(d) Required determinations before detention

Before detaining the child, the court must determine whether continuance in the home of the parent or legal guardian is contrary to the child's welfare and whether there are available services that would prevent the need for further detention. The

court must make these determinations on a case-by-case basis and must state the evidence relied on in reaching its decision.

- (1) If the court determines that the child can be returned to the home of the parent or legal guardian through the provision of services, the court must release the child to the parent or guardian and order that the probation department provide the required services.
- (2) If the child cannot be returned to the home of the parent or legal guardian, the court must state the facts on which the detention is based.

(Subd (d) amended effective January 1, 2016; adopted as subd (c) effective July 1, 2002; previously amended and relettered as subd (d) effective January 1, 2007.)

(e) Required findings to support detention (§ 636)

If the court orders the child detained, the court must make the following findings on the record and in the written order. The court must reference the probation officer's report or other evidence relied on to make its determinations:

- (1) Continuance in the home of the parent or guardian is contrary to the child's welfare;
- (2) Temporary placement and care is the responsibility of the probation officer pending disposition or further order of the court; and
- (3) Reasonable efforts have been made to prevent or eliminate the need for removal of the child, or reasonable efforts were not made.

(Subd (e) amended effective January 1, 2016; adopted as subd (b); previously relettered as subd (c) effective January 1, 2001; previously amended and relettered as subd (d) effective July 1, 2002, and as subd (e) effective January 1, 2007.)

(f) Required orders to support detention (§ 636)

If the court orders the child detained, the court must make the following additional orders:

- (1) As soon as possible, the probation officer must provide services that will enable the child's parent or legal guardian to obtain such assistance as may be needed to effectively provide the care and control necessary for the child to return home; and

- (2) The child's placement and care must be the responsibility of the probation department pending disposition or further order of the court.

(Subd (f) relettered effective January 1, 2007; adopted as subd (e) effective July 1, 2002.)

(g) Factors—violation of court order

Regarding ground for detention (c)(1), the court must consider:

- (1) The specificity of the court order alleged to have been violated;
- (2) The nature and circumstances of the alleged violation;
- (3) The severity and gravity of the alleged violation;
- (4) Whether the alleged violation endangered the child or others;
- (5) The prior history of the child as it relates to any failure to obey orders or directives of the court or probation officer;
- (6) Whether there are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- (7) The underlying conduct or offense that brought the child before the juvenile court; and
- (8) The likelihood that if the petition is sustained, the child will be ordered removed from the custody of the parent or guardian at disposition.

(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (c); previously relettered as subd (d) effective January 1, 2001; previously amended and relettered as subd (f) effective July 1, 2002.)

(h) Factors—escape from commitment

Regarding ground for detention (c)(2), the court must consider whether or not the child:

- (1) Was committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice; or a county juvenile home, ranch, camp, forestry camp, or juvenile hall; and

- (2) Escaped from the facility or the lawful custody of any officer or person in which the child was placed during commitment.

(Subd (h) amended and relettered effective January 1, 2007; adopted as subd (d); previously relettered as subd (e) effective January 1, 2001; amended and relettered as subd (g) effective July 1, 2002; previously amended effective January 1, 2006.)

(i) Factors—likely to flee

Regarding ground for detention (c)(3), the court must consider whether or not:

- (1) The child has previously fled the jurisdiction of the court or failed to appear in court as ordered;
- (2) There are means to ensure the child's presence at any scheduled court hearing without detaining the child;
- (3) The child promises to appear at any scheduled court hearing;
- (4) The child has a prior history of failure to obey orders or directions of the court or the probation officer;
- (5) The child is a resident of the county;
- (6) The nature and circumstances of the alleged conduct or offense make it appear likely that the child would flee to avoid the jurisdiction of the court;
- (7) The child's home situation is so unstable as to make it appear likely that the child would flee to avoid the jurisdiction of the court; and
- (8) Absent a danger to the child, the child would be released on modest bail or own recognizance were the child appearing as an adult in adult court.

(Subd (i) amended and relettered effective January 1, 2007; adopted as subd (e); previously relettered as subd (f) effective January 1, 2001; previously amended and relettered as subd (h) effective July 1, 2002.)

(j) Factors—protection of child

Regarding ground for detention (c)(4), the court must consider whether or not:

- (1) There are means to ensure the care and protection of the child until the next scheduled court appearance;

- (2) The child is addicted to or is in imminent danger from the use of a controlled substance or alcohol; and
- (3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (j) amended and relettered effective January 1, 2007; adopted as subd (f); previously relettered as subd (g) effective January 1, 2001; previously amended and relettered as subd (i) effective July 1, 2002.)

(k) Factors—protection of person or property of another

Regarding ground for detention (c)(5), the court must consider whether or not:

- (1) The alleged offense involved physical harm to the person or property of another;
- (2) The prior history of the child reveals that the child has caused physical harm to the person or property of another or has posed a substantial threat to the person or property of another; and
- (3) There exist other compelling circumstances that make detention reasonably necessary.

(Subd (k) amended and relettered effective January 1, 2007; adopted as subd (g); previously relettered as subd (h) effective January 1, 2001; previously amended and relettered as subd (j) effective July 1, 2002.)

(l) Restraining orders

As a condition of release or home supervision, the court may issue restraining orders as stated in rule 5.630 or orders restraining the child from any or all of the following:

- (1) Molesting, attacking, striking, sexually assaulting, or battering, or from any contact whatsoever with an alleged victim or victim's family;
- (2) Presence near or in a particular area or building; or
- (3) Associating with or contacting in writing, by phone, or in person any adult or child alleged to have been a companion in the alleged offense.

(Subd (l) amended effective January 1, 2016; adopted as subd (i); previously relettered as subd (j) effective January 1, 2001; previously amended and relettered as subd (k) effective July 1, 2002, and as subd (l) effective January 1, 2007.)

Rule 5.760 amended effective January 1, 2016; repealed and adopted as rule 1475 effective January 1, 1998; previously amended effective January 1, 2001, July 1, 2002, and January 1, 2006; previously amended and renumbered as rule 5.760 effective January 1, 2007.

Rule 5.762. Detention rehearings

(a) No parent or guardian present and not noticed

If the court orders the child detained at the detention hearing and no parent or guardian is present and no parent or guardian has received actual notice of the detention hearing, a parent or guardian may file an affidavit alleging the failure of notice and requesting a detention rehearing. The clerk must set the rehearing within 24 hours of the filing of the affidavit, excluding noncourt days. At the rehearing, the court must proceed under rules 5.752 5.760.

(Subd (a) amended effective January 1, 2007.)

(b) Parent or guardian noticed; parent or guardian not present (§ 637)

If the court determines that the parent or guardian has received adequate notice of the detention hearing, and the parent or guardian fails to appear at the hearing, a request from the parent or guardian for a detention rehearing must be denied, absent a finding that the failure was due to good cause.

(Subd (b) amended effective January 1, 2007.)

(c) Parent or guardian noticed; preparers available (§ 637)

If a parent or guardian received notice of the detention hearing, and the preparers of any reports or other documents relied on by the court in its order detaining the child are present at court or otherwise available for cross-examination, there is no right to a detention rehearing.

(Subd (c) amended effective January 1, 2007.)

Rule 5.762 amended and renumbered effective January 1, 2007; repealed and adopted as rule 1476 effective January 1, 1998.

Rule 5.764. Prima facie hearings

(a) Hearing for further evidence; prima facie case (§ 637)

If the court orders the child detained, and the child or the child's attorney requests that evidence of the prima facie case be presented, the court must set a prima facie hearing for a time within three court days to consider evidence of the prima facie case.

(b) Continuance (§ 637)

If the court determines that a prima facie hearing cannot be held within three court days because of the unavailability of a witness, a reasonable continuance not to exceed five court days may be granted. If at the hearing petitioner fails to establish the prima facie case, the child must be released from custody.

Rule 5.764 adopted effective January 1, 2007.

Article 2. Hearing on Transfer of Jurisdiction to Criminal Court

Rule 5.766. General provisions

Rule 5.768. Report of probation officer

Rule 5.770. Conduct of transfer of jurisdiction hearing under section 707

***Rule 5.772. Conduct of fitness hearings under sections 707(a)(2) and 707(c)
[Repealed]***

Rule 5.766. General provisions

(a) Hearing on transfer of jurisdiction to criminal court (§ 707)

A child who is the subject of a petition under section 602 and who was 14 years or older at the time of the alleged felony offense may be considered for prosecution under the general law in a court of criminal jurisdiction. The district attorney or other appropriate prosecuting officer may make a motion to transfer the child from juvenile court to a court of criminal jurisdiction, in one of the following circumstances:

- (1) The child was 14 years or older at the time of the alleged offense listed in section 707(b).
- (2) The child was 16 years or older at the time of the alleged felony offense.