

TIME IN CUSTODY COMPUTATION - JUVENILE

- AUTHORITY:** Sections 726 and 731, Welfare and Institutions Code;
Section 667.5, 667.51, 667.6, 1170.1(a), 1170.1(g), 1170.1(i) and 1170.95
of the California Penal Code (PC).
In re Eric J (1979) 25CAL. 3d. 522; In re Deborah C (1981) 30CAL, 3d.
125; In re Fausto S (1985) 175CAL. App 3d. 909; In re Michael W (1980)
CA 3d. 946; In re Claude J (1990) 217CAL App 3d 760; In re Luis H
(1986) 187CAL. App 3d. 546.
- RESCINDS:** Procedure Manual Item 2-6-107, dated 07/07/16
- FORMS:** Custody Time Computation Form (F057-5033)
- PURPOSE:** To establish a uniform method of computing and recording custody time
served (CTS) and exposure time available.

I. GENERAL INFORMATION

- A. Pursuant to 726 WIC, a **youth** may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed on an adult convicted of the offense or offenses which brought or continued the **youth** under the jurisdiction of the Court.
- B. When custody time is based on a single sustained count, the total custody time allowable is the maximum felony term or the maximum misdemeanor term plus any enhancement(s) set by the Court (726 of the Welfare and Institutions Code [WIC]).
- C. Maximum custody time (exposure) based on multiple offenses (counts or petitions) is generally determined by the rules of aggregation set forth in 1170.1(a) PC.
1. Although the Court sets the maximum custody (exposure) time when multiple petitions are involved (aggregation), it is Probation's responsibility to provide the Court with an accurate, up-to-date accounting of CTS on each **youth** at the time of each sentencing.

This information is computed by the assigned Deputy Probation Officer (DPO) via the Custody Time Computation form (F057-5033.2). The form is kept in the **youth's** file on the left side and is updated on a continuous basis and always brought up to date before each court date.

2. The following definitions are to be used for key terms contained in 1170.1 PC and throughout this manual item.

Offense: a law violation enumerated as a sustained count in a 602 WIC petition.

Base Term: the maximum allowable period of confinement set by Court or

specified by statute for an offense.

Principal Term: generally, the sustained petition or count which carries the highest confinement period (including enhancements). The Court determines which petition or count becomes the principal term.

Enhancement: a term added to the “offense” term as a consequence for activities or factors associated with the offense but not constituting an element of the offense itself (an enhancement is often imposed if the victim suffers great bodily injury during a crime). **Enhancements are filed by the district attorney’s office and must be sustained** by the Court pursuant to specific penal code sections.

Subordinate Term: a term consisting of one-third the middle term (mid-term) specified by statute for felony offenses or one-third the maximum allowable term for misdemeanor offenses (plus allowable enhancements). Exceptions will be by court order. The Court determines which counts become subordinate terms and their worth.

Additional Term: a term imposed by the Court as a result of specified prior sustained felony offenses.

Aggregate Term: the total exposure resulting from the combination of base and subordinate terms.

II. PROCEDURE

Tracking of Total Custody Exposure Time Available (Exposure) and Tracking of CTS.

The Custody Time Computation form is to be used to record exposure time available based upon sustained petitions and to record all custody time spent on sustained subsequent petitions and/or sustained or dismissed probation violations (PVs). This form is to be kept on the left side of the J/DL file.

A. Initiating the Form

After a petition is sustained, and the case is received, the assigned DPO should immediately initiate a Custody Time Computation/Exposure form. Make entries based on the Minute Order. Using the Custody Time Computation form, record for each petition:

- **Petition date**
- **Sustained/dismissal date**
- **Code for each offense as sustained**
- **Available custodial time (i.e., exposure), set by the Court or set by the code in the felony or misdemeanor column as appropriate.**

If an enhancement is ordered, enter the code section specified on a separate line, directly under the corresponding offense and record the enhancement exposure.

Remember that sustained probation violations do not increase available custody time; however, time served on these petitions, sustained or not, does count toward the CTS total and does decrease the available exposure time.

B. Computing Actual CTS

Following along on the Custody Time Computation form, under the appropriate column, the assigned DPO will record the custody time ordered and then the custody time served noting in the comments section the in and out dates for all locations where time was served (i.e., identify Juvenile Hall, Youth Guidance Center, **Youth Leadership Academy**, and list early release, ACP information).

1. The assigned DPO should access ICMS. [REDACTED] For wards that have spent time in Orange County Jail for Probation Violations, the assigned DPOs can access the AJS for dates in custody.
2. In computing CTS, only count time actually served in a custodial setting.
 - a. Do not count the following in computing CTS:
 - (1) **PPP (Pre-detention, Pre-disposition Program).**
 - (2) ACP (Accountability Commitment Program).
 - (3) SER (Intensive Supervision Early Release program is no longer available but may factor in on older cases).
 - (4) Time served on any initial or subsequent petition which is dismissed (however, time served on any PV which is dismissed, does count towards total CTS).
 - (5) Time in a non-secure community setting pending placement.
 - b. Do count the following in computing CTS:
 - (1) Any time the **youth** has served in other jurisdictions on matters that are eventually accepted and **dispositioned** in Orange County and any time served in other jurisdictions on an Orange County warrant pending transfer to Orange County.
 - (2) Time served in a secure setting pending placement (includes camps)
 - (3) Time served on any probation violation even if it is eventually dismissed.
 - (4) Institutional Population Management (IPM).
 - (5) Commitment time served in jail **related to a juvenile probation violation petition.**
3. Be sure that appropriate comments are made in the comments column to clarify any discrepancy between number of days ordered and the time

actually spent in custody (ACP release, time stayed – older cases).

4. Particular care should be taken with Placement cases to assure that credit for time served in secure setting while awaiting placement, even when no petition has been filed (i.e., Court Replacement [CR]), is noted. The DPO must assure that the exposure time is not exceeded.
5. Separately add the Custody Time Ordered column and the Actual Custody Days Served column and enter the total in pencil and then date and sign the form.

C. Exposure Time Computation (Subordination and Aggregation Issues)

In general, exposure time is computed the same for Division of Juvenile Justice (DJJ) commitments and local commitments. In the past, the Probation Department has attempted to provide the Court with detailed aggregation and subordination totals under the Exposure Section. The current position of the Juvenile Court Bench Officers and District Attorney is that this determination of a **youth's** exposure time is a technical legal matter and is to be determined by the **attorneys** and the Court. Therefore, it is not necessary for the Probation Department to determine exactly the **youth's** exposure time; however, the assigned DPO should continue to fill out the exposure sections of the form (left columns) and be cognizant of the approximate total exposure time and time available on each individual case in order that a **youth** not be held in custody longer than he has legal time available. It is no longer necessary for assigned DPOs to research all aggregation and subordination factors. The **Court's** position is, however, that Probation is mandated to provide an accurate and up to date accounting of actual custodial days served (CTS). Refer to the backside of the computation form for details in completing the form.

The important thing to remember is that when a **youth** has sustained petitions for more than one offense, the longest maximum sentence is generally determined to be the principal term. Each subsequent felony is then computed at one-third of the mid-term. **Each** misdemeanor is computed at one-third the maximum sentence. (There is some controversy regarding computation of cases in which all sustained matters are misdemeanors. In these cases, the DPO should feel free to contact the assigned District Attorney for clarification as to the maximum exposure.)

REFERENCES:

Procedures:	2-5-002 3-1-035	Probation Officer's Report to the Juvenile Court Computation of Commitments
Policies:	F-2 E-3	Recommendations to the Court for Dispositions/Sentencing and Commitments for Minors Disclosure of Court Recommendations

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APPROVED BY: