

PROCESSING JUVENILE CITATIONS AND OUT OF CUSTODY APPLICATIONS FOR PETITION

- AUTHORITY:** California Rules of Court, Rule 4.421 (Circumstances in aggravation), Rule 4.423 (Circumstances in mitigation), Rule 5.512 (Joint Assessment Procedure), Rule 5.514 (Intake; guidelines), Rule 5.516 (Factors to consider); Rule 5.520 (Filing the petition; application for petition), Rule 5.522 (Remote filing), Rule 5.524 (Form of petition; notice of hearing), and Rule 5.526 (Citation to appear; warrants of arrest; subpoenas)
 County of Orange Senate Bill 439 Protocol – Diversion for Youth Under 12 Years of Age
 Superior Court of California, County of Orange, Orange County Juvenile Filing Guidelines
 Welfare and Institutions Code (WIC) Sections 236, 258-286, 601-604, 602.1, 625.6, 650, 651, 651.5, 652, 653, 653.1, 653.5, 653.7, 654, 654.1, 654.2, 654.3, 654.4, 654.6, 655, 655.5, and 656
- RESCINDS:** New Item
- FORMS:**
- | | |
|---|------------------|
| Application for Petition | (F057-4024) |
| DA Reject Letter | (ICMS Generated) |
| Dismissal-Other Reason | (CI Form) |
| Family Engagement FAQs (English, Spanish, and Vietnamese) | (Probnet) |
| Juvenile Data Sheet | (F057-4193) |
| Juvenile Justice Guidebook | (Probnet) |
| Juvenile Intake Assessment Report | (ICMS Generated) |
| Notification to Law Enforcement | (CI Form) |
| Notification to School District | (CI Form) |
| Out of County Application | (CI Form) |
| Warn and Dismiss | (CI Form) |
| WIC 602.1 Under 12-Year-Old Programs | (CI Form) |
| WIC 786.5 Sealing of Record Letter | (ICMS Generated) |
- PURPOSE:** To provide an overview of the processing of juvenile citations and out of custody WIC 601 and 602 Applications for Petition in which a youth is not booked into Juvenile Hall.

I. GENERAL INFORMATION

As mandated by Welfare and Institutions Code (WIC) Section 653.5, the Custody Intake (CI) Unit Juvenile Assessment Deputy Probation Officer (DPO) processes citations and out of custody Applications for Petition to:

- A. Determine if this Application for Petition should be referred directly to the District Attorney's (DA) Office within forty-eight (48) hours as mandated by WIC 653.5.
- B. Assess the significant factors which led to the referral.
- C. Determine whether the youth's case should be handled as follows:

1. WIC 601 Truancy cases are referred to the DA's Truancy Response Program as probation does not supervise truancy cases. Exception: If the youth is on WIC 654.2 informal probation, WIC 725 non-ward probation, WIC 790 Deferred Entry of Judgment, or WIC 602 wardship, the matter will be referred to the assigned DPO for processing with the active case.
2. Dismiss – If the report clearly demonstrates that no crime was committed or the report is returned to the police agency due to incomplete paperwork, the Application for Petition can be dismissed and is sealed pursuant to WIC 786.5
3. Dismiss – Counsel, warn, and then seal the matter pursuant to WIC 786.5.
4. Dismiss and refer to another agency and seal pursuant to WIC 786.5.
5. Dismiss with a sanction and seal pursuant to WIC 786.5.
6. Warning Letter – If the police report does not clearly indicate the youth's involvement in the commission of a crime or the circumstances do not warrant further response from probation or the court, a warning letter can be sent to the youth and the matter sealed pursuant to WIC 786.5.
7. Refer and Dismiss – If the circumstances do not appear to warrant a formal interview by a Non-Custody Intake/Diversion (NCID) DPO, but there appears to be a need for services, the youth and their family will be referred to appropriate resources and the petition will be dismissed and sealed pursuant to WIC 786.5.
8. Refer to the NCID Unit to be handled informally or placed on an informal probation contract pursuant to WIC 654. If the case appears to be appropriate based on certain factors including the seriousness of the offense, prior delinquency history, school performance, parental supervision, etc., then the case will be referred for an NCID intake interview.
9. If the youth is a WIC 602 ward and subject to supervision, if appropriate, the matter can be referred to the assigned field DPO for informal handling or inclusion in a probation violation. Upon satisfactory completion, the assigned DPO will seal the matter pursuant to WIC 786.5.
10. Discretionary referral to the DA for filing with the court if the youth has already been afforded the opportunity for informal handling (record not sealed), fits the criteria for WIC 790 Deferred Entry of Judgment (DEJ), or circumstances suggest that the case would best be handled formally.
11. Referred to Juvenile Traffic Court – If necessary, citations can be referred to Juvenile Traffic Court: however, on citations submitted to Probation as listed in the Superior Court of California, County of Orange, Orange County Juvenile Filing Guidelines every effort must first be made by Probation to first handle the matter (either with a warning, sanction, or informally) prior to referring to court.

12. Refer to Custody Intake – If the youth is in custody for a separate offense at the time the Application for Petition is received, the Application for Petition will be referred to Custody Intake to be processed and referred to the DA for filing with the offense for which the youth is in custody.
13. Refer to the Juvenile Warrant DPO – If the youth has an outstanding warrant, the Application for Petition will be referred to the Warrant DPO for further investigation and handling.
14. Staff with the Social Services Agency liaison if the youth is a WIC 300 dependent.
15. Application for Petition returned to submitting law enforcement agency if youth is under that age of twelve (12) as outlined in the Orange County Senate Bill 439 Protocol (Attachment). Pursuant to WIC 602, the only exception to this age requirement is if a youth under the age of twelve (12) is alleged to have committed on of the following offenses:
 - a. Murder
 - b. Rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury
 - c. Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury
 - d. Oral copulation force, violence, duress, menace, or fear of immediate and unlawful bodily injury
 - e. Sexual penetration force, violence, duress, menace, or fear of immediate and unlawful bodily injury

II. PROCEDURE

- A. The [REDACTED] receives juvenile citations and out of custody Applications for Petition from the referring agency and time stamps them.
- B. The Records Intake Clerk processes the Applications for Petition, enters them into the [REDACTED]. Most cases have the [REDACTED] record sheet attached. If no [REDACTED] record exists, [REDACTED] is stamped on the Application for Petition. All Applications for Petition are then forwarded to the Juvenile Assessment DPO.
- C. The Juvenile Assessment DPO is responsible for the identification and processing of out of custody Applications for Petitions that have been submitted to Probation by law enforcement. The Juvenile Assessment DPO must ensure that in each case: 1) an affidavit has been submitted with a police report that sets forth the facts alleging that a youth within the provisions of WIC 602 has violated any California law, United States law, or any city or county ordinance, 2) that the offense occurred in Orange County, and 3) that the youth is twelve (12) years of age or older. If the offense occurred in another jurisdiction and the youth resides in Orange County, the case will be returned to the originating county for processing.

Processing out custody Applications for Petitions generally encompasses three separate functions:

1. Identification and processing of WIC 653.5 cases for submission to the DA's Office for potential filing. This piece is crucial due to the mandated time limits for processing and filing. This step involves the identification and processing of out of custody WIC 653.5 Applications for Petition prior to forwarding them to the DA's Office. Pursuant to WIC 653.5 and California Rules of Court, Rule 5.514 (Intake; guidelines), no youth shall be eligible for a program of WIC 654 informal probation or WIC 654.2 court ordered informal probation in the following instances, except in an unusual case where the interest of justice would best be served and the court specifies on the record the reasons for its' decision. These offenses must be forwarded to the DA's Office within forty-eight (48) hours.
 - a. All WIC 707(b) cases regardless of age
 - b. Felonies
 - (1) If fourteen (14) years of age or older on date of offense.
 - (2) If under fourteen (14) years of age on date of offense and there is a prior felony referred to Probation.
 - (3) Initial screening for eligibility for Deferred Entry of Judgment (DEJ).
 - c. Sale or possession for sale of controlled substance as defined in Chapter 2 (commencing with Health and Safety (H&S) Code Section 11053 of Division 10).
 - d. The youth has previously been adjudged a WIC 602 ward of the court.
 - e. The youth has previously participated in a program of WIC 654 informal probation and their record was not sealed due to unsatisfactory completion.
 - f. Regardless of age
 - (1) H&S 11350 and H&S 11377 where the violation takes place at school
 - (2) Penal Code (PC) 245.5 (Assault with deadly weapon on school employee)
 - (3) PC 626.9 (Bringing or possession of firearm on campus)
 - (4) PC 626.10 (Knives, razors, tasers, stun guns, etc. on school grounds)
 - (5) PC 186.22 (Gang activity)

- (6) Previous WIC 654 Probation case
- (7) Over \$1,000 of restitution owed to any victim

All WIC 653.5 cases are routed to the designated unit clerk and are handled with the highest priority. The Juvenile Assessment DPO will complete the "To DA" section of the Application for Petition, put the packet together, and provide it to the unit clerk. The unit clerk will then process and route the packet to Juvenile Contested cases and documents the transfer in ICMS.

If the case is sent to the DA, complete the "To DA" section of the Application for Petition.

- 2. Dissemination and processing of non-WIC 653.5 cases – If a case is determined to be non-WIC 653.5 the Juvenile Assessment DPO designates it as one of the following categories and routes it accordingly.
 - a. Citations – The Juvenile Assessment DPO has the option to handle citations informally if appropriate (e.g., dismiss, refer to Youth and the Law paper test or in-person class, etc.) or refer to Juvenile Traffic Court depending on case dynamics as outlined in the Superior Court of California County of Orange Juvenile Filing Guidelines.
 - b. WIC 601 Truancy Applications for Petitions and packets are routed directly to the DA for processing by the DA's Truancy Response Program.
 - c. Cases to be assigned to NCID for intake are routed to the NCID Unit clerk for assignment to an NCID DPO.
 - d. Cases that are wards or court ordered WIC 654.2 or non-ward WIC 725 are routed to unit clerk for referral to the assigned DPO for handling and WIC 786.5 record sealing if handled informally. Please refer to PMI 2-5-010 (Sealing/Release/Destruction of Juvenile Records Pursuant to Welfare and Institutions Code 786 and 786.5).
 - e. Unsupervised ward cases
 - (1) If the case has been unsupervised per the court order date for less than six (6) months, the Application for Petition is returned to the last assigned field DPO.
 - (2) If it has been more than six (6) months since the youth has been declared unsupervised, the case is assigned for intake or handled by the Juvenile Assessment DPO as case dynamics dictate.
 - f. Cases with warrants (pending or active warrant cases) are given to the Warrant Unit clerk.
 - g. When a youth is in custody at juvenile hall or another probation

facility, the Juvenile Assessment DPO shall indicate the case is an out of custody case on the Application for Petition. The case is then routed to the DA's Office for review.

- h. For all remaining Applications for Petition, as indicated by the case dynamics, the Juvenile Assessment DPO can personally handle the cases in the following manner:
 - (1) Submit to the DA for filing
 - (2) Dismiss and refer to an appropriate counseling agency
 - (3) Dismiss with a warning letter (with the Custody Intake Supervising Probation Officer (SPO) approval)
 - (4) Dismiss and refer to Informal Juvenile Traffic Court
 - (5) Dismiss for other reasons
 - (a) Best interest of justice
 - (b) Past "Statute of Limitations"
 - (c) The defendant was an adult at the time of the offense
 - (d) Duplicate Application for Petition
 - (e) Police error
3. Dissemination and processing of DA Rejects – NCID cases rejected by the DA are returned to the Juvenile Assessment DPO. Cases rejected by the DA fall into one of the following categories.
4. Cases submitted pursuant to WIC 653.5 in which the DA deems that the offense does not rise to the level of a felony, but that it appears to the DA that the affidavit was not properly referred, but that the offense for which the youth was referred should be charged as a misdemeanor, or that the youth may benefit from a program of informal supervision, they shall refer the matter to Probation to handle as deemed appropriate (e.g., handle through informal probation, refer to DA for filing as misdemeanor, etc.).
 - a. WIC 653.5 and non-WIC 653.5 cases which have been returned by the DA for whatever disposition deemed appropriate by Probation (dismissal or informal handling).
 - b. WIC 653.5 WIC and non-WIC 653.5 cases returned by the DA in which they decline to prosecute.
5. Rejected cases that were referred to the DA by an NCID DPO will be returned to the assigned DPO via the unit clerk.
6. Certifications from the Court

- a. The Juvenile Assessment DPO will proceed with all the same options that are available for any other case.
 - b. Note that if there is a citation without a narrative, the DA will not proceed.
7. The Juvenile Assessment DPO will review the DA Reject Letter to determine why the case has been rejected and process the case in one of the following ways.
- a. Those cases that cannot be remedied are dismissed and returned to the referring agency.
 - b. Those cases that can be remedied and resubmitted by the referring agency are dismissed and returned to the referring agency with annotation to resubmit when remedied to satisfy deficiencies as stated in the DA Reject Letter. If the referring agency has questions about additional information that is needed, they can contact the DA as noted in the District Attorney Rejection Letter.
8. Sealing of Records

For cases in which the Juvenile Assessment DPO handles the matter informally without referring to the DA as listed in above section II. C. 2. a. and h. 2-5 (a-c), the record will be sealed pursuant to WIC 786.5. Refer to Procedure Manual Item (PMI) 2-5-010 (Sealing/Release/Destruction of Juvenile Records Pursuant to Welfare and Institutions Code 786 and 786.5).

REFERENCES:

Procedures:	1-1-106	Los Angeles County Record Checks
	1-5-305	Retention and Destruction of Case Files
	2-1-212	Contested Cases Petition Filing and Pretrial Functions
	2-4-101	Custody Intake Referrals
	2-5-001	WIC 241.1 Joint Assessment Procedure and Probation Officer's WIC 241.1 Dual Status Report to the Juvenile Court
	2-5-010	Sealing/Release/Destruction of Juvenile Court Records Pursuant to Welfare and Institutions Code 786 and 786.5
	2-6-101	Juvenile Probation Violations
Policy:	A-1	Policy, Procedure and the Law
	A-2	Upholding Departmental Philosophy and Principles
	E-4	Clients with Legal Residence Outside of Orange County
	F-11	Sealing of Juvenile Court Records

C. Ronald

APPROVED BY:



Senate Bill (SB) 439

**County of
Orange
PROTOCOL**

County of Orange

SB 439 Protocol – Diversion for Youth Under 12 Years of Age

Purpose:

To provide consistent diversion and services for eligible youth under the age of 12 who become involved in the juvenile justice system.

Background:

In an effort to protect young children from the adverse effects of being involved in the criminal justice system at an early age and to encourage effective interventions or programs to benefit the child and public safety, Senate Bill (SB) 439 was enacted in September 2018 by Governor Brown. This bill prevents California's juvenile court system from assuming jurisdiction over youth under the age of 12 unless specific crimes are committed with the use of force, violence, menace or threat of bodily injury.

SB 439 went into effect January 1, 2020 and required counties to develop a process for determining the least restrictive responses to use instead of or in addition to releasing the youth to their parents, guardian, or caregiver.

The County of Orange had an existing protocol for dependent youth requiring specialized services which, when analyzed, was determined to meet the requirements for the least restrictive alternative under SB 439. When analyzing the potential population and availability of resources, it is estimated that approximately 10 or less youth under 12 would require these services annually which can be accommodated with the current capacity of the programs.

Authority:

Welfare and Institutions Code (WIC) Sections (§§§) 601, 602, and 602.1.

Process:

Law Enforcement Encounter:

In response to a public service call or through an investigation, law enforcement officers and deputies encountering a youth believed to be involved in a criminal act should follow department protocols to determine the age of the youth.

If the age of the youth is determined to be 12 years of age or older, current procedures are to be followed regarding the processing of the youth through the juvenile justice system.



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If the age of the youth is determined to be under the age of 12 and the offense is murder, rape, sodomy, oral copulation, or sexual penetration by means of force, violence duress, menace, and threats of bodily injury, then current procedures are to be followed regarding the processing of the youth through the juvenile court process. (WIC § 602(b))

If the age of the youth is determined to be under the age of 12 and the offense is other than those mentioned in the previous scenario, then the youth is to either be counseled and released to their parent/guardian/caregiver or if applicable, temporary custody can be imposed to provide specialized services or programs to benefit the youth's well-being and public safety.

Note: Orangewood Children & Family Center (OCFC) is not an option for youth alleged or adjudged to come within the description of WIC § 602, per WIC § 206 and In re Jaime M. (2001) 87 Cal.App.4th 320, 324. WIC § 300 children are entitled to separate and segregated facilities.

Least Restrictive Alternative - Counsel and Release:

Upon contacting the youth's parents/guardian/caregiver, the law enforcement officer or deputy may provide information (about the following resources) if parents/guardian/caregiver request further assistance:

- Orange County 2-1-1 Line:
- Prevention and After Care Networks:
- Probation/Community Based Organizations:

More Restrictive Alternatives:

If counseling the youth and releasing them is not appropriate, circumstances should be assessed to determine whether there is a need to place the child in temporary custody for any of the following reasons:

A. Medical/Mental Health Needs:

If a youth has an urgent need for medical or mental health care, the youth should be taken to:

Children's Hospital of Orange County (CHOC)

1201 W. La Veta Ave.

Orange, CA 92868



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For instances where the child presents as a harm to themselves or others, then the protocol per WIC § 5585.50 should be followed.

B. Missing/Abducted:

If it is discovered that the youth is identified as missing from another jurisdiction and there is a Missing Child Report on file with the National Crime Information Center (NCIC), then the NCIC Hotline should be called. This is a 24/7 line and can be accessed by calling (304) 625-2000.

C. Child Abuse/Neglect:

If there is knowledge or reason to believe the youth is –

- a victim of abuse or neglect;
- in immediate danger of physical or sexual abuse; or
- in a physical environment which poses an immediate threat to the child's health or safety

then, SSA's Child Abuse Registry should be notified at (800) 207-4464.

The law enforcement officer will determine if it is safe to return the youth to their home or if the youth should be brought into temporary custody per WIC § 305.

Note: OCFC is not an option for youth alleged or adjudged to come within the description of WIC § 602, per WIC § 206 and In re Jaime M. (2001) 87 Cal.App.4th 320, 324. WIC § 300 children are entitled to separate and segregated facilities.

D. Active Warrant:

For youth found to have an active warrant from another county or state, OC Probation should be notified to determine if the youth should be detained further. OC Probation can be reached at (714) 935-7411.



**County of
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Protocol
Flowchart**

Senate Bill (SB) 439

Guiding Principles of Senate Bill (SB) 439:

- End arrest, detention and prosecution of children, under 12, except in cases of murder, and forcible rape.
- Avoid interventions wherever possible; counsel and release to family should be the default in many cases.
- Responses thereafter should be the least restrictive alternatives through services.

