

WIC 329 Referrals

(Revised 9/20/24)

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Related Policies

Additional information can be found in the following policies:

- Probate Court Protocol
- ER - Investigations
- CYPM-Dual Status Protocol
- Undocumented Children

Forms

The following forms are referenced in this policy:

- JV-210 Application to Commence Juvenile Court Proceedings and Decision of Social Worker
- JV-212 Application to Review Decision by Social Worker Not to Commence Proceedings
- 04-265 Attachment 12 to Application to Commence Juvenile Court Proceedings and Decision of Social Worker

Background

A guardian may be appointed for a child through probate or the juvenile dependency court. Each court has its own process, level of oversight, and differs in the rights and services offered to children, parents, and families. Families who are seeking guardianship of a child are often referred to probate court without any interaction with Child Welfare Services or the juvenile courts. Often this is a family's preferred path of action. However, it is important to note that families who go through the probate court process often lack information regarding the differences between the courts and may lack financial or legal aid. Families seeking guardianship through probate court may not be eligible to receive the level of supportive and reunification services available to children and families who are in juvenile court proceedings. In addition, children may not be entitled to the same levels of financial support for their care.

**Background
(cont.)**

Under PROB §1513(b), probate court can refer the matter, in writing, to the local child welfare agency to initiate an investigation if there is concern that a child subject to a guardianship petition may be described by Section 300 of the Welfare and Institutions Code. Probate court must request an investigation unless the courts decide in good cause to waive the investigation. If, based on the investigation by probate court, or any other information, there is any indication that the child may currently be experiencing abuse and/or neglect or has in the past experienced abuse/neglect, then probate court may refer the matter to the county child welfare agency for an investigation pursuant to WIC §329.

See the Probate Court Protocol For more information on probate court's role in guardianship or to help determine when a referral to probate court for guardianship may be appropriate.

WIC §329

WIC §329 allows "any person" to apply to commence proceedings in Juvenile Court. The application is in the form of an affidavit alleging that the child comes within the provisions of WIC Section 300. Most WIC §329 investigations are requested by court-affiliated personnel, such as a District Attorney, Public Defender, or minor's counsel, or the Probation Department. On some occasions, the request may come from Dependency, Probate, or Family Court.

Per WIC §329, the SW is to **immediately investigate** the allegations and determine if the child comes within the provision of WIC §300 and whether a WIC §300 petition should be filed.

All WIC §329 requests **must** be investigated, and a response submitted to the applicant who requested the investigation within 3 weeks from the date file stamped by the court or the date received by the hotline (whichever is earlier).

Applicants submit requests for investigation via an Application to Commence Juvenile Court Proceedings and Decision of Social Worker (JV-210) to the Hotline, usually via fax with a WIC §329 Request Fax Coversheet.

All County Letter (ACL) [22-47](#) prohibits probate court from hearing and determining the petition to appoint a guardian until the child welfare agency has completed the WIC 329 investigation and submitted the JV-210 to the courts.

NOTE: SWs will not attend or submit reports for any court hearings that may be calendared in Delinquency, Probate, or Family Court. Although an applicant may note an upcoming hearing on their request for WIC §329 investigation, the SW is only responsible for investigating and providing a response to the applicant. The SW may attend a [WIC §331](#) Hearing, if calendared in Dependency Court.

**WIC §329
Investigation
Procedures**

The majority of WIC §329 requests are from Delinquency Court and Probate Court. Very few WIC §329 requests come from Family Court. However, all WIC §329 requests are treated the same.

Pending completion of the child welfare investigation and/or juvenile court review, the probate court may take any reasonable steps it deems appropriate to protect the child’s safety, including, but not limited to, appointing a temporary guardian. Any temporary issuance of orders by probate court will not influence the investigation outcome of the SW.

The investigation of the SW must consider whether the child(ren) named in the WIC §329 investigation are described by WIC § 300 (a) through (j), in the parental home, not whether the child is safe in the home of the prospective guardian. The decision not to file a WIC §300 petition must not be based upon the SW’s opinion that the child should be made a ward because of his/her delinquent behavior. If further clarification is needed as to this decision, the SW will consult with County Counsel (CC).

When a WIC § 329 investigation involves an Indian child, the SW will consult with the child’s tribe and include any information from the tribe in the report.

The assigned investigating SW will complete a full investigation (see ER - Investigations). Based on the investigation, the SW can only recommend one of two things:

1. A petition be filed, which should be done immediately OR
2. The child does not come within WIC §300 and no petition will be filed.

A response **MUST** be submitted to the applicant who requested the investigation within 3 weeks from the date file stamped by the court or the date received by the hotline (whichever is earlier).

If the recommendation is to...	And the Applicant Is...	Then the SW will...
file a petition	N/A	<ul style="list-style-type: none"> • screen the petition immediately with CC and if able to file the petition, THEN • complete the Decision of Social Worker or Child Welfare Agency section of page 2 of the JV-210: check item 11(a) on the JV-210, and return this response to the original applicant via fax • e-mail completed copy of JV-210 to County Counsel • close referral and promote to a case <p>NOTE: If the youth is a WIC §600 Ward (delinquency dependent), the SW must consult with the Dual Status Unit PSS when filing a petition to ensure that provision of services aligns with the CYPM-Dual Status Protocol.</p>

**WIC §329
Investigation
Procedures
(cont.)**

If the recommendation is to...	And the Applicant Is...	Then the SW will...
not file a petition	court-affiliated personnel, (such as District Attorney, Public Defender, minor’s counsel, or Probation Officer)	<ul style="list-style-type: none"> • complete “Attachment 12” (04-265) • complete page 2 of the JV-210: <ul style="list-style-type: none"> ○ check item 11(b) on JV-210 ○ write in text box: <i>“Pursuant to WIC §331, the applicant may request the Juvenile Court to review the SW’s decision by completing a JV-212 and filing it with the Juvenile Court.”</i> ○ check box 12 to indicate findings are included in Attachment 12. • fax completed JV-210 and Attachment 12 (04-265) to applicant. • e-mail completed copy of JV-210 and Attachment 12 (04-265) to County Counsel • wait 10 days prior to closing referral.
not file a petition	NOT court-affiliated personnel	<ul style="list-style-type: none"> • complete the JV-210 and only submit the Decision of Social Worker or Child Welfare Agency portion of page 2 to the applicant: <ul style="list-style-type: none"> ○ check item 11(b) on JV-210 ○ in the text box, write: ○ a general response stating that <i>during the course of the investigation, the child, reporting party, and other collaterals were interviewed and evidence was not found to support child abuse or neglect that would bring the youth within section 300 and “Pursuant to WIC §331, the applicant may request the Juvenile Court to review the social worker’s decision by completing a JV-212 and filing it with the Juvenile Court”</i> fax or mail completed JV-210 to applicant. • include any recommendation to the applicant to consider commencing a probate guardianship for the child. <p>(continued on the next page)</p>

**WIC §329
Investigation
Procedures
(cont.)**

If the recommendation is to...	And the Applicant Is...	Then the SW will...
not file a petition (cont.)	NOT court-affiliated personnel	<ul style="list-style-type: none"> • submit the entire JV-210 to the courts (an 04-265 will not be completed/submitted unless a 331 is requested then an 04-265 will be submitted to the courts). e-mail completed copy of JV-210 to County Counsel • wait 10 days prior to closing the referral.

**Probate Court
WIC §329
Requests**

When a WIC § 329 referral comes from Probate Court, there are specific questions that need to be considered during the investigation:

- If parents are unable to meet the child's needs or there are concerns of abuse or neglect, should a dependency petition be filed instead of pursuing guardianship in Probate Court?
- Is there a protective issue? Does the child come under section 300? This analysis is separate from whether there is a safety issue. Just because the child may be safe in the care of the proposed guardian does not mean a protective issue does not exist.
- Are the parents supportive of the guardianship? If so, why? (The answer can't be that they don't want their child removed).
- Are the proposed guardians able to meet the child's needs? Do the proposed guardians have a child welfare history? Are there any worries or concerns relating to the safety of the child with the proposed guardians?
- If the proposed guardians have criminal/justice involvement, what factors were considered to address this issue?
- Does the child have special needs? Can the proposed guardian meet the child's special needs without supports in place?
- Would the child benefit from a more permanent plan? If so, why?

NOTE: If it is determined that a child comes within WIC §300 due to the conduct of the parent(s), then a dependency petition should be filed. If the parent is opposed to guardianship, or a parent wants to reunify with their child at some point, a referral to Probate Court for guardianship is NOT appropriate. If a parent supports guardianship, is not seeking reunification services AND the proposed guardian is assessed to be able to meet to meet the child's needs and there are no concerns for safety, a referral to Probate Court to establish guardianship is appropriate.

**WIC §329
Post-
Investigation
Procedures**

After the SW has completed the investigation and submitted a response to the original applicant, one of two outcomes may occur:

1. The applicant receives the response, and no further action is taken OR
2. The applicant can request the Juvenile Court to review the SW's decision.

If an applicant requests a review of the SW's decision, the applicant submits a JV-212 to Juvenile Court. A judge will review the JV-212 and may summarily deny the request or schedule a WIC §331 Hearing. If a petition is not filed or the courts do not receive a request within 3 weeks, probate court may appoint a minor's council. Minor's council may petition to the court for an order directing the Agency to commence dependency proceedings or to review the SW's findings. If during this time, the court appoints a temporary probate guardianship, it will not limit juvenile's court from beginning dependency proceedings. See WIC §331 Hearings for additional information.

The PSS will wait 10 calendars days from the date the ER SW's response was submitted to the applicant prior to approving the closure of a WIC §329 referral. This is to provide the courts time to review the information and respond to any requests for a WIC §331 Hearing.

**WIC §331
Procedures**

If a SW is assigned a WIC 331 Hearing on an already open WIC 329 referral, the SW or PSS will amend the "Referral Name" field to include "/331" after 329 for tracking purposes.

The assigned SW must attend the WIC §331 Hearing or contact County Counsel if they are unable to attend in person.

Follow all policies and procedures related to investigations (see ER - Investigations).

There is no need to submit a report to the Juvenile Court for the WIC §331 Hearing. The person requesting judicial review should have attached the original JV-210 and attachments to their JV-212 request, providing all necessary information to the judge's clerk.

One of two things can happen at the WIC §331 Hearing:

1. The judge can affirm the SW's decision that the child does not fall within the provisions of WIC §300 and the matter is concluded OR
2. The judge can order the Agency to file a petition.

If the judge affirms the SW's decision, the referral can be closed after investigation is complete. If the judge orders the Agency to file a petition and the WIC §329 referral was closed prior to the WIC §331 Hearing, then the following procedures will be followed:

Step	Who	Action
1	SW	Notify the PSS of the order to file a petition
2	ER PSS	Re-open the closed WIC §329 investigation.
3	SW	Complete the investigation and file the petition in the WIC §329 investigation.
4	SW	Follow the steps listed in the Juvenile Court Orders OCS to File section of this policy.

Juvenile Court Orders OCS to File

If the Juvenile Court orders the SW to file a petition and the SW's recommendation was not to file the petition, the SW will:

- Contact CC to file the petition.
 - In the Detention Report, the SW will address specific facts as to why the SW does not believe the petition should be filed.
 - In the Summary Recommendation section (not the recommendation set), the SW will write: **“The Health and Human Services Agency respectfully recommends that a petition is not filed, but was ordered by the court to file a petition because [state the court’s rationale for why they believe the child comes within the WIC §300 code].”**
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WIC §329 and Undocumented Children

For information regarding children who are undocumented, see Undocumented Children.

Alignment with SET

This policy supports SET (Safety Enhanced Together) [Value 5](#) – A Strong Working Relationship with the Legal System by working toward improving court processes to ensure that they are supportive of mutual goals.
