

## WIC § 827 Quick Reference Guide

### Juvenile Case File Disclosure

Welfare & Institutions Code (WIC) § 827

#### Statutory Scheme:

Juvenile Court records are confidential to protect the privacy rights of the child. WIC § 827 and California Rules of Court (CRC) 5.552 control the *inspection and dissemination* of a "juvenile case file." Juvenile case files are not discoverable by subpoena. Certain persons or entities are authorized by law to inspect the records without petition. §827, sub. (a)(1). Such persons or entities must inspect the records before submitting a petition. All other persons or entities must petition the Juvenile Court to inspect the records. All persons must seek Juvenile Court authorization to disseminate the records or information (this includes DAs and other persons permitted to inspect records without petition). § 827, subd. (a)(4).

Additionally, the juvenile case file may contain material that is privileged pursuant to state or federal law, which prevails. § 827, subd. (a)(3)(A). These include:

- Privileges under Evidence Code, Division 8 (§900 et seq.)
- Health Insurance Portability and Accountability Act (HIPAA)
- Penal Code §11167 (confidentiality of child abuse reporter)

#### The "juvenile case file" - § 827(e):

The "juvenile case file" are dependency or delinquency records maintained by the court, probation, social services agency, and law enforcement; they may contain personal information – psychological assessments, education records, medical records, drug test results, and California Information and Identification (CII) information for the minor, the parents or extended family. WIC § 827 controls disclosure even if a case was not filed. The juvenile case file may include:

- Court Delinquency (WIC § 601, *et seq.*) or Dependency (WIC § 300, *et seq.*) files
- Probation Department files - containing: risk/needs assessments, case management notes, and drug test results
- Social Services Agency files - containing: SSA reports, medical records, case management notes, school records, parent & relative information, psychotropic medication information, psychological assessment and treatment information, visitation logs, police reports, CASA reports, witness statements

#### The § 827 Petition:

A petition seeking disclosure of the juvenile case file must describe in detail - CRC 5.552(b):

- The specific records sought
- The reasons and relevance to the purpose they are sought

#### Judicial Ruling on an § 827 Petition for records:

Relevance - CRC 5.552(d)(6): disclosure, only if petitioner shows by a preponderance of the evidence the records "are *necessary* and have *substantial relevance* to the legitimate needs of the petitioner" (including credibility of the minor and other witnesses).

Balancing test - CRC 5.552(d)(4): disclosure also requires the Court balance:

- The interests of the child and other parties to the juvenile court proceeding
- The interests of the petitioner seeking discovery
- The interests of the public

#### Hearing & In-Camera Review:

Hearing - CRC 5.552(d)(2): "If petitioner shows good cause, the court *may* set a hearing."

In-Camera Review -CRC 5.552(d)(3): "Whether or not the court conducts a hearing, [if there are records the petitioner may be entitled to],the court *must* conduct an in-camera review of the juvenile case file and any objections and assume that all legal claims of privilege are asserted."

#### Redaction and Protective Orders:

Redaction - the court may order information redacted from records to be disclosed, including:

- Social security numbers
- Driver's license numbers
- Identity of other minors revealed in the records
- Other identity or contact information
- Irrelevant information

Protective Orders -CRC 5.552 (d)(8): court may issue order controlling disclosure, dissemination, access, and copying.

## Merced County Juvenile Court 827 Procedures

### Procedural Path:

WIC § 827 petitions will follow an established procedural path:

1. Any pre-filing inspections by counsel should be made at:
  - a. Juvenile Delinquency (WIC § 601, *et seq.*) case files: 2840 W. Sandy Mush Road, Merced, CA 95341.
  - b. Juvenile Dependency (WIC § 300, *et seq.*) case files: 627 W. 21<sup>st</sup> Street, Merced, CA 95340.
2. Juvenile Court staff will obtain the court's juvenile case file, and when appropriate, the Social Services Agency or Probation case file. The Social Services Agency or Probation will be required to provide un-redacted and proposed redacted copies of its file.
3. Juvenile Court staff will review the petition for sufficiency and service of notice - CRC 5.552(c).
4. If the petitioning party does not know the identity or address of a necessary party, Juvenile Court staff will provide the proper notice- CRC 5.552(c)(3).
5. Once proper notice is provided, Juvenile Court staff will provide the file to the Judicial Officer to determine whether the assistance of the Court Staff Attorney is needed.
6. The Judicial Officer or the Court Staff Attorney will review the petition to determine whether petitioner provided sufficient detail to engage in the balancing test. The petition must be denied and returned if insufficient detail is provided.
7. If sufficient detail is provided, the Judicial Officer or the Court Staff Attorney will perform an initial review of the file and identify:
  - a. Records clearly relevant that should be produced.
  - b. Records clearly irrelevant and should not be produced.
8. The Court Staff Attorney will prepare his/her decision recommendations for the appropriate Judicial Officer to review.
9. The Court Staff Attorney will send the file, the petition, any objections, decision recommendations, and blank JV forms for granting or denying the petition to the appropriate Judicial Officer.
10. The Judicial Officer will conduct a review of the case file, per § 827 & CRC 5.552.
11. The Judicial Officer will issue a ruling, by completing and signing or directing the completion of Judicial Council form JV-574 (or form JV-573 for a total denial of the petition).
12. Staff for the assigned Judicial Officer will return the signed and completed JV-574 or JV-573 form, the juvenile case file, the petition, and objections to Juvenile Court staff
13. Juvenile Court staff will provide all interested parties with notice of the Court's ruling, and when necessary, with a court date for a hearing.
14. When a petition is granted, redactions will be made as directed by the Judicial Officer pursuant to WIC § 827(a)(3)(A) before release.
15. When a petition is granted, the Judicial Officer will provide instructions as to where and how the petitioner may obtain copies of the records ordered disclosed from the custodian of the records.

**Exigent circumstance:** In the event of a time critical need for compliance with WIC § 827 on an expedited basis, the trial judge or Supervising Judge may phone or email the Juvenile Court Presiding Judge for special handling. (CRC 5.552(c)(1), requires ten days' notice, which may be shortened for good cause - subd. (c)(4).)

### Judicial Council Form JV-574:

The Court's ruling on a § 827 petition will be made on Judicial Council form JV-574 (or form JV-573 for a total denial of the petition), including identification of the records to disclose, redaction orders, and protective orders. Guidelines for completion of JV-574:

- Section 3-a: identify the records to be released.
- Section 3-b: information for obtaining copies from the Custodian of Records will be provided by Juvenile Court staff.
- Section 4 & 5: are generally not applicable for cases filed in other case types.
- Section 6: check box to bar unauthorized dissemination.
- Section 7: protective orders - (limitation only to specific litigation, no unauthorized viewing, copying or dissemination, return/destruction upon conclusion of litigation, etc.).
- Section 8: check box if partial production of the records is ordered.
- Section 9: check box if redaction orders are made.
- Section 10: make any orders requiring the custodian of the records to redact certain identified information. [The reviewing Court may wish to identify information to be redacted by making a copy of the document and highlighting the section(s).]