

LEXSTAT CAL WELFARE AND INSTITUTIONS § 654

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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

WELFARE AND INSTITUTIONS CODE
Division 2. Children
Part 1. Delinquents and Wards of the Juvenile Court
Chapter 2. Juvenile Court Law
Article 16. Wards-Commencement of Proceedings

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Cal Wel & Inst Code § 654 (2007)

§ 654. Program of supervision of minor in lieu of filing petition; Care, counseling and educational services

In any case in which a probation officer, after investigation of an application for a petition or any other investigation he or she is authorized to make concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor a dependent child of the court or a minor or a ward of the court under Section 601 or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court under subdivision (e) of Section 601.3 or Section 602 and with consent of the minor and the minor's parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction. Nothing in this section shall be construed to prevent the probation officer from filing a petition or requesting the prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter. If the probation officer determines that the minor has not involved himself or herself in the specific programs within 60 days, the probation officer shall immediately file a petition or request that a petition be filed by the prosecuting attorney. However, when in the judgment of the probation officer the interest of the minor and the community can be protected, the probation officer shall make a diligent effort to proceed under this section.

The program of supervision of the minor undertaken pursuant to this section may call for the minor to obtain care and treatment for the misuse of or addiction to controlled substances from a county mental health service or other appropriate community agency.

The program of supervision shall require the parents or guardians of the minor to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court if the program of supervision is pursuant to the procedure prescribed in Section 654.2.

Further, this section shall authorize the probation officer with consent of the minor and the minor's parent or guardian to provide the following services in lieu of filing a petition:

(a) Maintain and operate sheltered-care facilities, or contract with private or public agencies to provide these services. The placement shall be limited to a maximum of 90 days. Counseling services shall be extended to the sheltered minor and his or her family during this period of diversion services. The minor and his or her parents may be required to make full or partial reimbursement for the services rendered the minor and his or her family during the diversion process. Referrals for sheltered-care diversion may be made by the minor, his or her family, schools, any law enforcement agency, or any other private or public social service agency.

(b) Maintain and operate crisis resolution homes, or contract with private or public agencies offering these services. Residence at these facilities shall be limited to 20 days during which period individual and family counseling shall be extended the minor and his or her family. Failure to resolve the crisis within the 20-day period may result in the minor's referral to a sheltered-care facility for a period not to exceed 90 days. Referrals shall be accepted from the minor, his or her family, schools, law enforcement or any other private or public social service agency. The minor, his or her parents, or both, may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of supervisors.

(c) Maintain and operate counseling and educational centers, or contract with private and public agencies, societies, or corporations whose purpose is to provide vocational training or skills. The centers may be operated separately or in conjunction with crisis resolution homes to be operated by the probation officer. The probation officer shall be authorized to make referrals to the appropriate existing private or public agencies offering similar services when available.

At the conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall prepare and maintain a followup report of the actual program measures taken.

HISTORY:

Added Stats 1982 ch 1088 § 18, effective January 1, 1985. Repealed Stats 1984 ch 1412 § 12. Amended Stats 1984 ch 1635 § 95; Stats 1989 ch 1117 § 10; Stats 1991 ch 1202 § 17 (SB 377).

NOTES:

Editor's Notes

The 1984 repeal of this section, as added Stats 1982 ch 1088 § 18, was rendered ineffective by its later amendment by Stats 1984 ch 1635 § 95. See *Gov C § 9605*.

Former Sections:

Former § 654, similar to the present section, was added Stats 1961 ch 1616 § 2, amended Stats 1970 ch 1129 § 2, Stats 1972 ch 781 § 1, Stats 1976 ch 1071 § 22, Stats 1977 ch 1241 § 5, effective October 1, 1977, Stats 1978 ch 380 § 156, and repealed Stats 1982 ch 1088 § 16.

Editor's Notes

There was another section of this number, similar to the present section, which was added Stats 1982 ch 1088 § 17, amended Stats 1984 ch 1412 § 11, and repealed Stats 1989 ch 1117 § 9.

Amendments:**1984 Amendment:**

Substituted "or addiction to controlled substances" for "restricted dangerous drugs or addiction to narcotics" in the second paragraph.

1989 Amendment:

(1) Amended the first paragraph by (a) deleting "or subsequent to dismissal of a petition already filed," after "Section 602" in the first sentence; and (b) adding "or a 90-day period thereafter" in the second sentence; (2) added the third paragraph; and (3) substituted "any law enforcement agency," for "law enforcement" in the last sentence of subd (a).

1991 Amendment:

Added "subdivision (e) of Section 601.3 or" before "Section 602 and with" in the first sentence of the first paragraph.

Editor's Notes

For legislative findings and declarations, see the 1989 note following *W & I C § 601.4*.

Cross References:

Facilities for care and detention of wards of court: *W & I C § 207*.

Probation department juvenile delinquency prevention services: *W & I C § 236*.

Similar provision as to dependent children: *W & I C § 301*.

Alternative procedures as to disposition of minor: *W & I C §§ 626, 626.5*.

Legal protection of minor on home supervision: *W & I C § 628.1*.

Determination by court at detention hearing whether county mental health services are required: *W & I C § 635.1*.

Duty of probation officer to investigate to determine whether proceeding should be commenced: *W & I C § 652*.

Order following disposition hearing placing minor under supervision of probation officer: *W & I C § 725*.

Notice of minor's rights regarding sealing or destruction of juvenile court record following dismissal, release, or termination of case: *W & I C § 826.6*.

Nonpeace officer status of probation aids, community workers, and volunteers assigned to home supervision: *W & I*

C § 842.

Application of order for support and maintenance to minor who was subject of program pursuant to this section and who is temporarily placed out of home by probation department: *W & I C § 900.*

Liability for cost of probation supervision: *W & I C § 903.2.*

"Narcotic drug": *H & S C § 11019.*

"Restricted dangerous drugs": *H & S C § 11032.*

Offenses involving controlled substances formerly classified as restricted dangerous drugs: *H & S C §§ 11377 et seq.*

Intake and informal supervision: *CRC Rule 1404.*

Collateral References:

Cal Jur 3d (Rev) Delinquent and Dependent Children § 73.

Forms:

Suggested forms are set out below, following notes of decisions.

Law Review Articles:

Special education and the juvenile court, delinquency. 23 CACJ Forum No. 3-4, p. 58.

Miranda guarantees in the California juvenile court. 7 *Santa Clara Law* 114.

Pre-offense Monitoring of Potential Juvenile Offenders: An Examination of the Los Angeles County Probation Department's Novel Solution to the Interrelated Problems of Truancy and (Juvenile) Crime. 73 *S Cal LR* 879.

Hierarchy Notes:

Div. 2, Pt. 1, Ch. 2, Art. 16 Note

NOTES OF DECISIONS 1. Generally 2. Affidavit Requirement 3. Investigation Requirement 4. Informal Probation Determination 5. Informal Probation and Restitution 6. Petition Dismissal 7. Petition Filing Limitation

1. Generally

W & I C § 654 (program of supervision of a minor in lieu of filing a petition to have him declared a ward of the court under *Welf. & Inst. Code, § 602*) reflects a legislative intent that minors be diverted from the court process when, in the judgment of the probation officer, such can be done in the interest of both the minor and society. *Marvin F. v.*

Superior Court (1977, Cal App 1st Dist) 75 Cal App 3d 281, 142 Cal Rptr 78, 1977 Cal App LEXIS 2011.

2. Affidavit Requirement

Though the 1976 amendment to the juvenile court law (*W & I C § 650*, subd. (b)) vested the prosecuting attorney rather than the probation department with responsibility for starting wardship proceedings for minor offenders (*W & I C § 602*), the statutory scheme was violated by an agreement between a county probation department and the county district attorney providing that, when a police officer requested that the district attorney review the report of an alleged misdemeanor by a minor offender, the juvenile probation department was obliged to refer the case to the prosecuting attorney for his review. The agreement disregarded the requirement (*W & I C § 653*) that the alleged public offense committed by the minor be supported by affidavit, and in effect removed the probation officer's subsequent options of taking no action (*W & I C § 653*), or of instituting alternative programs (*W & I C § 654*) in lieu of filing a wardship petition. *Marvin F. v. Superior Court (1977, Cal App 1st Dist) 75 Cal App 3d 281, 142 Cal Rptr 78, 1977 Cal App LEXIS 2011.*

Under the 1976 amendment to the juvenile court law (*W & I C § 650(b)*), vesting the prosecuting attorney rather than the probation department with responsibility for starting wardship proceedings for minor offenders (*W & I C § 602*), the prosecuting attorney does not have the sole and exclusive discretion to file such petition. Juvenile matters are properly before the prosecuting attorney for the exercise of his discretion as to whether to file a wardship petition only if the probation officer causes an affidavit requesting the commencement of such proceedings to be taken to the prosecuting attorney (*W & I C § 653*), or if an applicant for the commencement of such proceedings presents a timely request to the prosecuting attorney for a review of a probation officer's decision not to take such an affidavit to the prosecuting attorney (*W & I C § 655*). The statutory limitations on the discretion of the prosecuting attorney (including the nonreviewability of the probation officer's alternative dispositions (*W & I C § 654*) when satisfactory to the person bringing the original complaint), is not unconstitutional as violating the doctrine of separation of powers. *Marvin F. v. Superior Court (1977, Cal App 1st Dist) 75 Cal App 3d 281, 142 Cal Rptr 78, 1977 Cal App LEXIS 2011.*

3. Investigation Requirement

In a case involving a minor accused of a crime, a probation officer properly denied admittance to a program of supervision pursuant to *Welf. & Inst. Code, § 654*, and filed a petition, pursuant to *Welf. & Inst. Code, § 602*, to have the minor declared a ward of the court, where the probation officer exercised exclusive authority to file a petition and merely considered the recommendation of members of an interagency panel at a juvenile justice center. The probation officer complied with the requirements in *Welf. & Inst. Code, §§ 652, 653*, to "make such investigation as he deems necessary to determine whether proceedings in the juvenile court should be commenced" when he considered presentations and recommendations of the members of the panel who had information relating to the alleged offense, the accused minor's part in the offense, his school record, and his prior arrest record. The operation of the center's panel did not unlawfully divest the probation officer of his sole discretion regarding the intake function of the juvenile court. Nor did use of the panel, which was an experimental and innovative approach, amount to a denial of equal protection. Lack of notice as to time, place and purpose of the panel meeting, and the lack of minutes or written record of what occurred, did not deny the minor due process rights; such rights attached at the time of appearance before the juvenile court. *Alsavon M. v. Superior Court (1981, Cal App 2d Dist) 124 Cal App 3d 586, 177 Cal Rptr 434, 1981 Cal App LEXIS 2246.*

Any overall probation department policy eliminating informal supervision pursuant to *Welf. & Inst. Code, § 654*, of a minor charged with a crime would have the effect of also eliminating any investigation directed toward the exercise of discretion to place a juvenile in that preferable option, and would be in conflict with the statutory scheme. *Alsavon M. v. Superior Court (1981, Cal App 2d Dist) 124 Cal App 3d 586, 177 Cal Rptr 434, 1981 Cal App LEXIS 2246.*

4. Informal Probation Determination

Under *Welf. & Inst. Code*, § 654, the initial determination whether to institute informal probation against a minor or to file court proceedings is placed in the discretion of the probation officer and may not be delegated to the prosecuting attorney. *Charles S. v. Superior Court* (1982) 32 Cal 3d 741, 187 Cal Rptr 144, 653 P2d 648, 1982 Cal LEXIS 243.

Welf. & Inst. Code, § 654, provides for informal probation in lieu of seeking a wardship petition against a juvenile or subsequent to dismissal of a petition already filed. Thus, while only a probation officer may initially place a juvenile on informal probation, once wardship proceedings are commenced informal probation is to be based on a court determination. Further, a probation officer may not reject a court determination to dismiss a petition in favor of informal probation. *Charles S. v. Superior Court* (1982) 32 Cal 3d 741, 187 Cal Rptr 144, 653 P2d 648, 1982 Cal LEXIS 243.

The program of informal probation contemplated by *Welf. & Inst. Code*, § 654, requires the full cooperation and support of the minor's parents, who must be an integral part of any rehabilitative program. A requirement that they show their willingness to assist the program, including a willingness to assume their share of responsibility for the minor by contributing toward restitution, is neither unfair nor unreasonable. *Charles S. v. Superior Court* (1982) 32 Cal 3d 741, 187 Cal Rptr 144, 653 P2d 648, 1982 Cal LEXIS 243.

A requirement of restitution as part of a program of informal probation (*Welf. & Inst. Code*, § 654) may properly be imposed in such amount as is determined by the probation officer, since the statutory right to withhold consent to the program designed by the probation officer, coupled with the juvenile court's power to dismiss court proceedings and order informal probation after the matter is referred to it provide an effective safeguard against arbitrariness. *Charles S. v. Superior Court* (1982) 32 Cal 3d 741, 187 Cal Rptr 144, 653 P2d 648, 1982 Cal LEXIS 243.

A county probation department abused its discretion in refusing to consider a minor for informal supervision under *Welf. & Inst. Code*, § 654, on the ground the minor denied the misdemeanor battery charges against him, and department policy was not to consider § 654 supervision under such circumstances. No such admission of guilt is expressed within the statutory scheme as a precondition for eligibility for informal supervision and there is no compelling necessity to imply it within the statutory scheme. The departmental policy, therefore, was illegal. *Paul D. v. Superior Court* (1984, Cal App 2d Dist) 158 Cal App 3d 838, 205 Cal Rptr 77, 1984 Cal App LEXIS 2362.

Because a juvenile court has authority to direct the probation department to place a minor on informal supervision (*Welf. & Inst. Code*, § 654), it also has implied authority to order the department to determine a minor's eligibility for informal supervision. Although § 654 initially places the determination whether to institute informal probation or to file court proceedings in the discretion of the probation officer, that discretion ends once a petition is filed under *Welf. & Inst. Code*, § 602. After court proceedings are commenced, informal probation is to be based on a court determination. *Paul D. v. Superior Court* (1984, Cal App 2d Dist) 158 Cal App 3d 838, 205 Cal Rptr 77, 1984 Cal App LEXIS 2362.

Welf. & Inst. Code, § 654, and *Cal. Rules of Court*, rule 1307, unequivocally require the probation officer to conduct an independent and careful review of circumstances peculiar to each case in order to determine whether a particular accused juvenile would be a suitable candidate for informal probation. The requirement that each juvenile receive treatment as an individual is not satisfied by an administrative policy of rejecting application for informal probation upon the sole basis of the juvenile's offense. Thus, the juvenile court erred in denying the motion of a minor arrested for drunk driving for referral to informal probation, notwithstanding a county probation department policy which excluded drunk driving cases involving juveniles from such referral. *Mark F. v. Superior Court* (1987, Cal App 2d Dist) 189 Cal App 3d 206, 234 Cal Rptr 388, 1987 Cal App LEXIS 1388.

In a delinquency proceeding in which the juvenile court found that a minor had committed an assault and placed the minor on probation, the court did not err in failing to make an independent determination at the disposition hearing of the minor's eligibility for informal supervision under *Welf. & Inst. Code*, § 654.2, subd. (a), and instead relying solely upon the probation officer's formal probation recommendation. First, the minor waived the issue by failing to raise it in the juvenile court. In any event, while a *Welf. & Inst. Code*, § 654.2, informal supervision program is available after the filing of a petition, it is to be implemented before adjudication of the charges alleged in the petition. The purpose of the

Welf. & Inst. Code, § 654, informal supervision program is to avoid a true finding on criminal culpability that would result in a criminal record for the minor. The court cannot make true findings on allegations in the petition and then order an informal supervision program under *Welf. & Inst. Code*, § 654.2; the findings and the order are inherently inconsistent. In this case, since the minor failed to request informal supervision before adjudication, the court was not required to consider the issue at the disposition hearing. *In re Abdirahman S.* (1997, *Cal App 4th Dist*) 58 *Cal App 4th* 963, 68 *Cal Rptr 2d* 402, 1997 *Cal App LEXIS* 864.

Where a county probation department considered a minor suitable, after the filing of a misdemeanor petition under *W & I C* § 602, to participate in a program of informal supervision under *W & I C* § 654, it was improper to deny the minor the opportunity to participate in the program based solely on the department's policy of not allowing informal supervision if a minor refused to admit an offense; probation departments must make an individualized assessment of a minor's suitability for informal supervision after considering the relevant factors under *Cal. Rules of Court, Rule 1405(b)*. *Kody P. v. Superior Court* (2006, *Cal App 3d Dist*) 137 *Cal App 4th* 1030, 40 *Cal Rptr 3d* 763, 2006 *Cal App LEXIS* 398.

5. Informal Probation and Restitution

The Legislature has provided for restitution by juvenile offenders when appropriate (*Welf. & Inst. Code*, §§ 729-731), as well as for informal probation (*Welf. & Inst. Code*, § 654). Accordingly, the fact that restitution is appropriate should not disqualify a deserving juvenile from the benefits of the informal probation program. *Charles S. v. Superior Court* (1982) 32 *Cal 3d* 741, 187 *Cal Rptr* 144, 653 *P2d* 648, 1982 *Cal LEXIS* 243.

A minor cannot be denied formal or informal probation (*Welf. & Inst. Code*, §§ 654, 725) solely on grounds of his inability to pay restitution to his victim. Although a minor may have no vested right to receive probation, he cannot be denied such treatment because of his poverty. However, a juvenile offender may be required to pay that portion of restitution of which he is able or to make a good faith search for employment in order to make reparation. Thus, it was an abuse of discretion to deny informal probation to a juvenile charged with the theft of go-carts, where it was conceded that he was a proper candidate for such program, except that due to his and his family's indigency he was unable to pay the amount of restitution fixed by the probation officer. *Charles S. v. Superior Court* (1982) 32 *Cal 3d* 741, 187 *Cal Rptr* 144, 653 *P2d* 648, 1982 *Cal LEXIS* 243.

6. Petition Dismissal

It is apparent from the language of *W & I C* § 654, providing for the authority of a probation officer concerning a petition to declare a minor a ward of the court, that, although the probation officer may recommend a dismissal of a petition already filed and that the case be retained by the probation department for informal supervision, only the juvenile court can dismiss the petition. It is only after such dismissal that the probation officer has the power to divert the minor to informal probation supervision. Thus, in a proceeding to declare a minor a ward of the court, the juvenile court was not bound to accept the recommendation of the probation officer to divert the minor to informal probationary supervision and to dismiss the petition, and the court properly set the matter for an adjudication. The record indicated that the court made an independent determination to reject the probation officer's recommendation, and that in so doing it considered the opinions of the prosecutor and the minor's counsel, the probation officer's report, and the minor's police contacts which included reckless driving and resisting arrest and petty theft. *Raymond B. v. Superior Court* (1980, *Cal App 2d Dist*) 102 *Cal App 3d* 372, 162 *Cal Rptr* 506, 1980 *Cal App LEXIS* 1495.

7. Petition Filing Limitation

Where a minor participated in an event later alleged as a petty theft, and the People and the minor availed themselves of *Welf. & Inst. Code*, § 654 (program of supervision in lieu of filing of petition to declare minor dependent child or ward of court), by signing an informal probation agreement, the trial court properly dismissed as untimely the People's petition, filed 6 months and 10 days after the agreement was signed, for adjudication under *Welf. & Inst. Code*,

§ 602 (person under age 18 committing crime is within jurisdiction of juvenile court, which may adjudge person to be ward of court). By including in § 654 mention of a six-month limit as appropriate for the abandonment of the informal probation and the filing of a formal petition, the Legislature by implication excluded as inappropriate for filing the period beyond that limitation. *People ex rel. Kottmeier v. Superior Court* (1987, Cal App 4th Dist) 194 Cal App 3d 1536, 239 Cal Rptr 920, 1987 Cal App LEXIS 2152.

Welf. & Inst. Code, § 654, providing a six-month limitation within which the district attorney may file a petition under *Welf. & Inst. Code, § 601* or *602*, as to an offense for which summary probation was granted a minor pursuant to § 654, barred the filing of a petition against a minor on December 1, 1987, charging him with the burglary which formed the basis of the § 654 agreement that had been executed on June 1, 1987. Under the statute, a month was the unit of measurement to be used and no reference to days or hours need be made. A month includes its first and last day and does not include the first day of the following month. The date on which the agreement is executed is the first day of the first month, and the day before that date in the seventh succeeding month is the last day of the six-month period. June 1 was thus the first day of the first six months period, December 1 was the first day of the second six months period and, therefore, was beyond the period within which the district attorney could file the petition alleging the burglary. *In re Michael D.* (1989, Cal App 4th Dist) 211 Cal App 3d 1280, 260 Cal Rptr 30, 1989 Cal App LEXIS 672.

SUGGESTED FORMS

Consent of Parent or Guardian to Unofficial Supervision of Minor by Probation Officer-In Lieu of Wardship Petition

Request by Parent for Unofficial Supervision of Minor