How to Access Juvenile Records

Juvenile records are presumed confidential

Legal Authority and Resources

- **Welf. & Inst. Code** §§ 105, 204, 300.2, 362.5, 827, 827.10, 827.12, 828, 831, 832, 10850
- **CA Rules of Court** 5.552, 5.553
- **S.D. Local Rules** 6.6.1 – 6.6.13
- **San Diego Juvenile Court Policy for Inspection and Copying of Juvenile Case File Documents**
  http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/JUVENILE3/POLICIESPROCEDURESANDPROTOCOLS/JUVPOLICIESPROCEDURESANDPROTOCOLSFORMS/827%20PROCEDURE%206-23-20.PDF

What are Juvenile Case Files?

WIC 827(e); CRC 5.552(a); Local rule 6.6.1A

- Juvenile Court File (anything filed in a juvenile court proceeding)
- HHSA/CWS records
- Probation records
- Court Appointed Special Advocate (CASA) records
- Transcripts of juvenile proceedings
- Evidence admitted at juvenile court hearings
  - (i.e. photos, videos, audio, exhibits)
- Testimony of HHSA/CWS or Probation personnel

What are NOT Juvenile Case Files?

(These records are governed by different access rules.)

- Adoption records
- Sealed records, unless an exception authorized by law applies
- DMV records
- Law enforcement agency records – see WIC 828, CRC Rule 5.552(f), JV-575 and JV-580
- Records regarding offenses tried in criminal division

Juvenile Case Files Are Not Subject to Subpoena

- **Juvenile case files may not be obtained or inspected by civil or criminal subpoena. (Rule 5.552(b); SDSC Local Rule 6.6.1D)**

- **HHSA/CWS or Probation personnel may not be subpoenaed to testify about juvenile case file information without a juvenile court order. (*City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239.)**

Exclusive Jurisdiction of Juvenile Court

Only the Juvenile Court has the authority to disclose juvenile case file information.

- ***In re Elijah S.*** **(2005) 125 Cal.App.4th 1532, 1548-1551**
  - **…"the juvenile court has the exclusive authority to determine whether the records may be released and the extent to which juvenile case records can be disclosed."**
- ***In re Anthony H.*** **(2005) 129 Cal.App.4th 495**
  - **Juvenile court erred in delegating disclosure responsibilities to federal court judge.**

However, the Presiding Judge of the Juvenile Court may cross-designate a trial judge in another division to review and authorize the disclosure of juvenile case file information.

Inspect or Copy Without a Court Order

- Some individuals may inspect the juvenile case file <u>without</u> a court order.
  - WIC 827(a)(1)(A)-(R) & (f); WIC 827.10
- Some, *but not all*, who may inspect can also obtain copies.
  - WIC 827(a)(5)
- All disclosure is subject to a protective order.

Inspect or Copy Without a Court Order

Local Rule 6.6.4

Provides access to/copies of dependency files for specified individuals if:

- disclosure will be in the best interest of the child, and
- the information is necessary and relevant to a proceeding or investigation listed in the rule.

EXAMPLE

- A defense attorney represents a client in an ongoing criminal case.
- The client has HHSA/CWS or Probation records, or a Juvenile Court file.
- The attorney has the right to inspect and make copies of his/her client's records without a court order.
- A court order is required *only* if the attorney wishes to further disseminate the information from the case file for other purposes, including use of the information in a court proceeding. (See Welf. & Inst. Code § 827(a)(4).)

Inspect or Copy Without a Court Order

- **HHSA/CWS documents** - Contact CWS Legal Services Unit, 858-616-5950.
- **Probation documents** – Contact Probation Operations Support Manager, 858-987-3897.
- **Juvenile Court File** – Go to Juvenile Court Business Office at 2851 Meadow Lark Drive
  - Need to complete:
    - JUV-004 Petition to View Records and/or Request for Copies
    - JUV-237 Stipulation Regarding Inspection, Copying and Non-Dissemination of Juvenile Records without Court Order

Disclosure By Court Order

A COURT ORDER IS REQUIRED TO:

- **Inspect or copy a juvenile case file** (if not allowed by statute/rule).
- **Inspect/copy information that is confidential under other state or fed laws.**
  Ex: reporting party info. (WIC 827(a)(3)(A).)
- **Use the information in a proceeding outside of the juvenile court.**
  - Includes juvenile probation officer/social worker testimony.
  - See WIC 827.10 for use in Family and Probate Ct.
- **Share information** with anyone who is not legally entitled to it. (WIC 827(a)(4).)

Overview of the Disclosure Process

1. Petitioner provides notice of request.
2. Petitioner files Request for Disclosure (JV-570).
3. Court orders CWS and/or Probation files.
4. A hearing may be set, but is not required.
5. Court conducts in camera review.
6. Court rules on request and issues disclosure orders and/or any necessary protective order.
7. Redacted copies are prepared by Court, CWS and/or Probation.

Notice of Disclosure Request

- At least 10 days before the petition is submitted to Court, petitioner must personally or by first class mail serve to proper persons or agencies:
  - Petition (JV-570),
  - Notice of Request (JV-571), and
  - Objection (blank JV-572) must be served on the parties before the petition is filed with the court.

<u>NOTE</u>: If information is requested regarding a person who has both a dependency and a delinquency record, two separate requests must be filed and served.

If you do not know the identity or address of any of the parties to be served, mark the appropriate box on the JV-569.

Notice of Disclosure Request

Who to serve if records pertain to <u>delinquency</u> case:

- Person who is subject of record
- Attorney for person who is subject of record, if that person is still a ward
- Parent or guardian of person who is subject of record, if that person is under 18
- District Attorney
- Juvenile Probation
- Indian tribe, if any

Notice of Disclosure Request

Who to serve if records pertain to a <u>dependency</u> case:

- Person who is subject of record if 10 years of age or older
- Attorney for person who is subject of record, if that person is still a dependent (normally Children's Legal Services of San Diego)
- Parents or guardian of person who is subject of record
- Attorney for parent/guardian if open dependency case (normally Dependency Legal Services of San Diego)
- CASA, if any
- County Counsel
- HHSA/CWS
- Indian tribe, if any

Notice of Disclosure Request

Who to serve if records pertain to a <u>nonminor dependency</u> case:

- Person who is subject of record
- Attorney for person who is subject of record, if that person is still an NMD
- The parent(s) and their attorneys if the parents are still receiving reunification services
- CASA, if any
- County Counsel
- HHSA/CWS
- Indian tribe, if any

CONTACT INFORMATION

District Attorney - Juvenile Division
2851 Meadow Lark Drive
San Diego, CA 92123

Juvenile Probation Department
Attn: Probation Support Manager
2901 Meadow Lark Drive
San Diego, CA 92123

County Counsel
5530 Overland Avenue, Suite 170
San Diego, CA 92123

Health and Human Services Agency/CWS
Attn: Legal Support Services
8965 Balboa Avenue
San Diego, CA 92123

Children's Legal Services of San Diego
4801 Viewridge Avenue
San Diego, CA 92123

Dependency Legal Services of San Diego
1660 Hotel Circle North
Suite 200
San Diego, CA 92108

Voices for Children, Inc. (CASAs)
2851 Meadow Lark Drive
San Diego, CA 92123

Public Defender – Juvenile Division
5530 Overland Ave., Suite 110
San Diego, CA 92123

Filing a Request for Disclosure

A disclosure request must include:

- **JV-569 Completed Proof of Service**
  - Indicate you served JV-570, JV-571, and JV-572 on proper persons and agencies.

    NOTE: For "Case Number," use the Juvenile Court Case Number, not your civil or criminal case number.
- **JV-570 Request for Disclosure of Juvenile Case File**
  - When legally justified, the request for disclosure can be filed under seal.
  - NOTE: For "Case Number," use the Juvenile Court Case Number, not your civil or criminal case number.
- **JV-571 Notice of Request for Disclosure**
- **JUV-263 Protective Order - signed by all proposed recipients**

NOTE: Please use the most recent version of these forms.

There are additional requirements for use of records in outside proceedings. See next slide.

Filing a Request for Disclosure – Proceedings Outside of Juvenile Court

If seeking records for use in a legal action that is NOT a juvenile court proceeding:

- Also notice all parties in that action
- Attach a copy of the complaint or charging document to the Request for Disclosure
- Provide the next hearing date for your matter (if there is one) in the Request for Disclosure

Filing a Request for Disclosure

Request must be filed with the Juvenile Court Business Office:

San Diego Superior Court
Juvenile Division
2851 Meadow Lark Drive
San Diego CA 92123
(858) 634-1600

However, see next slide regarding de facto parent requests.

DE FACTO PARENTS

- A de facto parent's request for disclosure of court records will be handled by the judge in the home department for the underlying dependency case and must be filed in the business office for the court where the dependency case is located.
- Item 1 on the JV-570 must clearly state "de facto parent" for the relationship to the child.
- A de facto parent's request for disclosure of HHSA records will be handled by the judge assigned to hear WIC § 827 petitions for disclosure and must be filed in the Meadow Lark business office.
- A request for disclosure of both court records and HHSA records must be filed in the Meadow Lark business office.

Filing a Request for Disclosure: Practice Tips

Common reasons requests are denied:

- Improper service
- Failure to provide completed proof of service
- Failure to submit all the forms
- Not specifically stating what records you are seeking and why you need them
- Not stating your relationship to the child

Filing a Request for Disclosure: Practice Tips

Be specific!

What records are you asking for?

- Specify whether you need Probation, HHSA/CWS, and/or Court records.

- What types of documents or information are you seeking?
  - Ex: "Any and all documents in CWS, probation, juvenile court file pertaining to minor X" or “any documents helpful to my client” is too vague and broad.

Filing a Request for Disclosure: Practice Tips

Be specific!

Why do you need them?

- **Why do you want the documents?**
- **What are the issues in your matter prompting you to make the request?**
  - **Ex: "All documents are necessary to adequately prepare my client's defense" does not provide adequate guidance.**

Filing a Request for Disclosure: Practice Tips

Requests that are not precise will either be denied or set for a hearing.

Being specific will help you avoid drawing objections, and will help the court find the information that you need.

SUPPLEMENTAL REQUESTS

After an initial request for disclosure has been granted, any supplemental request for disclosure may be filed on the SDSC JUV-276 form.

Notice must be given to all parties, just as it would be for an initial request for disclosure, and a completed JV-569 (proof of service) must accompany the JUV-276.

The party filing the supplemental request for disclosure may request a waiver of the ten-day notice requirement upon a showing of good cause.

Objections to Disclosure

- All persons and agencies entitled to notice must be served with the JV-572 objection form.
- An objecting party must file the JV-572 with the Juvenile Court and serve it on all parties within 10 days after the objecting party is served with the request.
- The Court will set a hearing if an objection is received and a hearing requested.

Disclosure Hearings

The court may grant or deny a request for disclosure without a hearing.

- **If no objections are received, the court may conduct an in camera review and issue an order without a hearing.**
- **If the court requires clarification of the request, the court may set a hearing to obtain additional information.**
- **If the request is unclear or procedurally deficient, the court may also deny the request without a hearing.**

In Camera Review – Good Cause

See CRC rule 5.552(d)

- The court begins by reviewing the petition for good cause.
- If the court determines that the petitioner may be entitled to information in the records sought, then the court must conduct an in camera review.

In Camera Review – Considerations

See CRC rule 5.552(d)

During the in camera review, the court will:

- Assume all legal privileges are asserted.
- Consider any objections filed.
- Balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.

In Camera Review – Burden of Proof

See CRC rule 5.552(d)

Burden of Proof:

Petitioner must show, by a preponderance of the evidence, that the records requested are *necessary* and have *substantial relevance* to the legitimate need of the petitioner.

In Camera Review – Findings

See CRC rule 5.552(d)

- The court may permit disclosure of juvenile case files only insofar as is necessary.
- If the court grants the petition, the court must find that the need for disclosure outweighs the policy considerations favoring confidentiality of juvenile case files.

Confidential or Privileged Information

- Information that is privileged or confidential under state or federal law will be redacted.

- To access confidential information, the petitioner must meet the legal standard governing disclosure of that information under the relevant state or federal law.
  - WIC 827(a)(3)(A): "If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or any portions thereof shall prevail."

Confidential or Privileged Information

Examples of privileged or confidential information:

- **Reporting party information (PC 11165 et seq.)**
- **Attorney-client privilege, work product**
- **Identifying information of other minors**
- **Psychotherapist-patient privilege**
- **Social security numbers, driver license numbers**
- **Medical information (HIPAA), HIV information**

If your case resolves or you no longer need the Petition reviewed by the Court, immediately notify the Juvenile Court at (858) 634-1548.

Contacts

Juvenile Court Disclosure Clerk

- 858-634-1548

Child Welfare Services

- 858-616-5950

Probation Department

- Email inquiry preferred
- Lucy Tatoy: 858-987-3897, Lucy.Tatoy@sdcounty.ca.gov
- Theresa Hanson: 858-694-4321, Theresa.Hanson@sdcounty.ca.gov

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