

PROCEDURES FOR REQUESTS UNDER WIC §§ 329 AND 331
(Revised 6-12-20)

1. An APPLICATION TO COMMENCE PROCEEDINGS BY AFFIDAVIT AND DECISION BY SOCIAL WORKER (Judicial Council Form JV-210, available on-line at <http://www.courts.ca.gov/documents/jv210.pdf>) may be filed by any person, including a judicial officer, who wishes to request an investigation by HHS Child Welfare Services to determine whether a child in San Diego County comes within the provisions of WIC § 300 and should be the subject of juvenile dependency proceedings.¹ (See also Cal. Rules of Court, rule 5.520(c).)

If Form JV-210 is not used, the application must be in the form of an affidavit [1] alleging that there was or is within the county, or residing therein, a child who falls within the definition of a dependent child (WIC § 300) and [2] setting forth facts in support of that allegation.

The application should include as much detailed information as possible. The applicant should provide the names, addresses, and telephone numbers of family members, teachers, schools, service providers, or others who may have information about the case. If the child is detained in Juvenile Hall, that information should be on the application. The applicant should also attach any relevant documents.

If the applicant is a judicial officer, an attorney representing a party in a juvenile court case, or a probation officer, the completed Form JV-210 or affidavit may be faxed to the County's Child Abuse Hotline at **(858) 467-0412**. The telephone numbers for the Hotline are (858) 560-2191 and (800) 344-6000. If the child resides in another county, the application must be directed to the child protective services agency of the county where the child lives.

2. WIC § 329 requires the HHS social worker to investigate "immediately" upon receiving the application. Such investigations will be given priority, particularly if the child is detained in Juvenile Hall. As soon as possible but no later than **three weeks** after the application, the social worker must [1] decide whether to commence proceedings in juvenile court, [2] complete the declaration at the bottom of Form JV-210, and [3] notify the applicant of the social worker's decision. If the social worker declines to file a WIC § 300 petition, sufficient detail must be included on Form JV-210 and attachment 9 to explain the decision. Form JV-210 and any attachments must be provided to the applicant and to the child's defense attorney in a juvenile justice case.

WIC § 329: *"Whenever any person applies to the social worker to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a child within the provisions of [WIC §] 300, and setting forth facts in support thereof. The social worker shall immediately investigate as he or she deems necessary to determine whether proceedings in the juvenile court should be*

¹ Neither judicial officers nor court employees are listed as mandated reporters. (Pen. Code, § 11165.7.) However, under Penal Code § 11166(g), "Any other person who has knowledge of or observes a child whom the person knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to any agency specified in Section 11165.9 [police department, sheriff's department, county probation department, or county welfare department]." Also, "[p]ersons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names." (Pen. Code, § 11167(f).)

commenced. If the social worker does not take action under [WIC §] 301 and does not file a petition in the juvenile court within three weeks after the application, he or she shall endorse upon the affidavit of the applicant his or her decision not to proceed further, including any recommendation made to the applicant, if one is made, to consider commencing a probate guardianship for the child, and his or her reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered by him or her under this section. The social worker shall retain the affidavit and his or her endorsement thereon for a period of 30 days after notifying the applicant."

3. If the WIC § 329 application comes out of a juvenile justice case, the judicial officer hearing that case may set a hearing in Department 1 on the next Wednesday afternoon calendar that is at least three weeks out. The judicial officer in Department 1 will only review the decision of the social worker if a JV-212 form has been filed.
4. If the social worker declines to file a WIC § 300 petition or fails to notify the applicant of the decision within three weeks, the applicant may, within one month of making the WIC § 329 application, request that the juvenile court review the social worker's decision. The child's attorney may file a request under WIC § 331 even if the attorney was not the WIC § 329 applicant. The procedure described in WIC § 329 must be utilized before the juvenile court will consider any request for review pursuant to WIC § 331.

WIC § 331: "When any person has applied to the social worker, pursuant to [WIC §] 329, to commence juvenile court proceedings and the social worker fails to file a petition within three weeks after the application, the person may, within one month after making the application, apply to the juvenile court to review the decision of the social worker, and the court may either affirm the decision of the social worker or order him or her to commence juvenile court proceedings."

5. To make a request under WIC § 331, the applicant should complete an APPLICATION TO REVIEW DECISION BY SOCIAL WORKER NOT TO COMMENCE PROCEEDINGS (Judicial Council Form JV-212, available on-line at <http://www.courts.ca.gov/documents/jv212.pdf>) and file it in the Juvenile Court Business Office. If a hearing has not already been set, the application will be assigned to Department 1 on the next available Wednesday afternoon calendar. When the WIC § 331 request is made, the applicant shall attach the JV-210 to the JV-212, along with any attachment, response, or report prepared by the social worker as a result of the WIC § 329 request.

If the applicant is a judicial officer in the Family Division or the Probate Division, the matter will be set for hearing in Department 1 of the Juvenile Court; contact the clerk in Department 1 (extension **1501**) or clerical support (extension **1537**) to obtain a hearing date on the next available Wednesday afternoon calendar. Fax the JV-212, along with the JV-210 and any attachments, to the Juvenile Court (extension **1533**)². Send the Family or Probate Division case file by interoffice mail to Juvenile Court Department 1 (mailstop P-299).

When a WIC § 331 request is filed, the court clerk will fax the JV-212, along with the JV-210 and any attachments, to the Child Abuse Hotline with a fax cover sheet that

² **Note:** This fax number is only used for new dependency petitions and the WIC § 331 requests from judicial officers. Do not list it as Juvenile Court's generic fax number or use it for any other purpose.

includes the hearing date, time, and department. The Hotline Supervisor will notify County Counsel of the hearing.

6. Upon receiving the application, the Juvenile Court may "either affirm the decision of the social worker or order him or her to commence juvenile court proceedings." (WIC § 331.) *If no prior application was made under WIC § 329, the Juvenile Court will summarily deny an application filed pursuant to WIC § 331.*

In ruling on the application, the Juvenile Court will make an independent assessment to determine whether there is a prima facie showing the child comes within the dependency statute and whether a dependency petition is required to protect the child. In doing so, the Juvenile Court will give due consideration to the social worker's determination and may rely upon the agency's expertise for guidance. (In re Michael H. (2014) 229 Cal.App.4th 1366, 1372.)

7. If HHSA is ordered to commence proceedings, the social worker has a duty to further investigate the matter and submit reports to the court as directed. (WIC § 281.) If, after further investigation, the social worker still concludes that jurisdiction is not justified and/or recommends that jurisdiction not be exercised, the Juvenile Court must make its own independent determination of whether jurisdiction exists.
8. If the Juvenile Court assumes jurisdiction under WIC § 300, "no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the child or proceedings under Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, except as otherwise authorized in this code, regarding the establishment of a guardianship for the child. While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court." (WIC § 304.)