

## TIME IN CUSTODY COMPUTATION - JUVENILE

- AUTHORITY:** Sections 726 and 731, Welfare and Institutions Code;  
Section 667.5, 667.51, 667.6, 1170.1(a), 1170.1(g), 1170.1(i) and 1170.95 of  
the California Penal Code (PC).  
In re Eric J (1979) 25CAL. 3d. 522; In re Deborah C (1981) 30CAL, 3d. 125;  
In re Fausto S (1985) 175CAL. App 3d. 909; In re Michael W (1980) CA 3d.  
946; In re Claude J (1990) 217CAL App 3d 760; In re Luis H (1986)  
187CAL. App 3d. 546.
- RESCINDS:** Procedure Manual Item 2-6-107, dated 12/21/11
- FORMS:** Custody Time Computation Form (F057-5033)  
Aggregation Rule Exceptions-2009 (Attachment)
- PURPOSE:** To establish a uniform method of computing and recording Custody Time  
Served (CTS) and Exposure Time available

### I. GENERAL INFORMATION

- A. Pursuant to 726 WIC, a minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed on an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the Court.
- B. When custody time is based on a single sustained count, the total custody time allowable is the maximum felony term or the maximum misdemeanor term plus any enhancement(s) set by the Court (726 of the Welfare and Institutions Code [WIC]).
- C. Maximum custody time (exposure) based on multiple offenses (counts or petitions) is generally, determined by the rules of aggregation set forth in 1170.1(a) PC.

1. Although the Court sets the maximum custody (exposure) time when multiple petitions are involved (aggregation) it is Probation's responsibility to provide the Court with an accurate, up-to-date accounting of CTS on each minor at the time of each sentencing.

This information is computed by the assigned Deputy Probation Officer (DPO) via the Custody Time Computation form (F057-5033.2). The form is kept in the minor's file on the left side and is updated on a continuous basis and always brought up to date before each court date.

2. The following definitions are to be used for key terms contained in 1170.1 PC and throughout this manual item.

Offense: a law violation enumerated as sustained count in a 602 WIC petition.

Base Term: the maximum allowable period of confinement set by Court or specified by statute for an offense.

**Principal Term:** generally, the sustained petition or count which carries the highest confinement period (including enhancements). The Court determines which petition or count becomes the principal term.

**Enhancement:** a term ordered added to the “offense” term as a consequence for activities or factors associated with the offense but not constituting an element of the offense itself (an enhancement is often imposed if the victim suffers great bodily injury during a crime). Enhancements must be ordered by the Court pursuant to specific Penal Code sections.

**Subordinate Term:** a term consisting of one-third the middle term (mid-term) specified by statute for felony offenses or one-third the maximum allowable term for misdemeanor offenses (plus allowable enhancements). Exceptions will be by court order. The Court determines which counts become subordinate terms and their worth.

**Additional Term:** a term imposed by the Court as a result of specified prior sustained felony offenses.

**Aggregate Term:** the total exposure resulting from the combination of base and subordinate terms.

## II. PROCEDURE

### Tracking of Total Custody Exposure Time Available (Exposure) and Tracking of CTS.

The Custody Time Computation form is to be used to record exposure time available based upon sustained petitions and to record all custody time spent on sustained subsequent petitions and/or sustained or dismissed probation violations (PVs). This form is to be kept on the left side of the J/DL file.

#### A. Initiating the Form

After a petition is sustained, and the case is received, the assigned DPO should immediately initiate a Custody Time Computation/Exposure form. Make entries based on the Minute Order. Using the Custody Time Computation form, record for each petition:



- the petition date
- the sustained/dismissal date
- the code for each offense as sustained
- the available custodial time (i.e., exposure), set by the Court or set by the code in the felony or misdemeanor column as appropriate.

If an enhancement is ordered, enter the code section specified, on a separate line, directly under the corresponding offense and record the enhancement exposure.

Remember that sustained probation violations do not increase available custody time. However, time served on these petitions, sustained or not, does count toward the CTS total and does decrease the available exposure time.

#### B. Computing Actual CTS

Following along on the Custody Time Computation form, under the appropriate column, the assigned DPO will record the custody time ordered and then the custody time served noting in the comments section the in and out dates for all locations where time was served (i.e., identify Joplin, Juvenile Hall, Youth Guidance Center and list early release, ACP information).

1. **The assigned DPO should access ICMS.**   
  
**For wards that have spent time in Orange County Jail for Probation Violations, the assigned DPO's can access the AJS for dates in custody.**
2. In computing CTS, only count time actually served in a custodial setting.
  - a. Do not count the following in computing CTS:
    - (1) HSP (Home Supervision Program).
    - (2) ACP (Accountability Commitment Program).
    - (3) SER (Intensive Supervision Early Release program is no longer available but may factor in on older cases).
    - (4) Time served on any initial or subsequent petition which is dismissed (however, time served on any PV which is dismissed, does count towards total CTS).
    - (5) Time in a non-secure community setting pending placement.
  - b. Do count the following in computing CTS:
    - (1) Any time the minor has served in other jurisdictions on matters that are eventually accepted and dispo'd in Orange County and any time served in other jurisdictions on an Orange County warrant pending transfer to Orange County.
    - (2) Time served in a secure setting pending placement (includes camps)
    - (3) Time served on any probation violation even if it is eventually dismissed.
    - (4) Institutional Population Management (IPM).
    - (5) Commitment time served in jail.
3. Be sure that appropriate comments are made in the Comments column to clarify any discrepancy between number of days ordered and the time actually spent in custody (ACP release, time stayed – older cases).
4. Particular care should be taken with Placement cases to assure that credit for time served in secure setting while awaiting placement, even when no petition has been filed (i.e., Court Replacement [CR]), is noted. The DPO must assure that the exposure time is not exceeded.

5. Separately add the Custody Time Ordered column and the Actual Custody Days Served column and enter the total in pencil and then date and sign the form.

C. Exposure Time Computation (Subordination and Aggregation Issues)

In general, exposure time is computed the same for Division of Juvenile Justice (DJJ) commitments and local commitments. In the past, the Probation Department has attempted to provide the Court with detailed aggregation and subordination totals under the Exposure Section. The current position of the Juvenile Court Bench Officers and District Attorney is that this determination of a minor's exposure time is a technical legal matter and is to be determined by the Attorneys and the Court. Therefore, it is not necessary for the Probation Department to determine exactly the minor's exposure time. However, the assigned DPO should continue to fill out the exposure sections of the form (left columns) and be cognizant of the approximate total exposure time and time available on each individual case in order that a minor not be held in custody longer than he has legal time available. It is no longer necessary however, for assigned DPOs to research all aggregation and subordination factors. The court's position is; however, that Probation is mandated to provide an accurate and up to date accounting of actual custodial days served (CTS). Refer to the backside of the computation form for details in completing the form.

The important thing to remember is that when a minor has sustained petitions for more than one offense, the longest maximum sentence is generally determined to be the principal term. Each subsequent felony is then computed at one-third of the mid-term; each misdemeanor is computed at one-third the maximum sentence. (There is some controversy regarding computation of cases in which all sustained matters are misdemeanors. In these cases, the DPO should feel free to contact the assigned District Attorney for clarification as to the maximum exposure.)

**REFERENCES:**

Procedures:	2-5-002 3-1-035	Probation Officer's Report to the Juvenile Court Computation of Commitments
Policies:	F-2 E-3	Recommendations to the Court for Dispositions/ Sentencing Out-of-home Placement or Commitments for Minors Disclosure of Court Recommendations

Attachment

G.Wilkie

**APPROVED BY:**

### AGGREGATION RULE EXCEPTIONS-2009

**PENAL CODE  
667.5 (C):**

Violent Offenses

Murder, Voluntary Manslaughter, Mayhem, Rape as in paragraph (2) or (6) of Penal Code 261, subdivision (2) or paragraph (1) or (4) of subdivision (a) of Section 262.

Sodomy by force, violence, duress, menace or fear of immediate and unlawful bodily injury.

Oral copulation by force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person.

Lewd acts on a child under 14 (288 P.C.).

Any felony punishable by death or imprisonment for life.

Any felony in which the defendant used a firearm.

Any robbery.

Arson 451 PC (a) or (b).

Sexual Penetration per Section 289(a) or (j).

Attempted murder.

A violation of Section 12308, 12309 or 12310.

Kidnapping.

220 PC.

Carjacking 215 PC (a).

Extortion 518 PC.

Threats 136.1 PC.

Burglary 1<sup>st</sup> degree

12022.53 PC.

11418 (b) or (c) PC.

**PENAL CODE 667.51:** Any 288 P.C. with a prior 261, 264.1, 285, 286, 288, 288a or 289 P.C.

**PENAL CODE 667.6:** 261 PC, subdivision 2 or 3  
262 PC.

264.1 PC.  
288 PC. subdivision b  
289 PC.  
286 PC.  
288a PC.  
288.5 PC.  
With a prior of one of these offenses

**FREQUENTLY USED CUSTODY TIMES -- 2009**

**BUSINESS AND PROFESSIONS CODE**

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
B&P 4141	Retail Sale of Hypodermic Needle	6 months
B&P 4140	Possession Hypodermic Needle	6 months
B&P 4148	Unlawful Use Hypodermic Needle	6 months
B&P 25658(a)	Sale Liquor to Minors	<b>\$250 fine</b>
B&P 25658.5	Attempt by Minor to Purchase Alcohol	<b>\$250 fine</b>
B&P 25661	False Identification: Minor	\$250 fine
B&P 25662	Possession of Alcohol Minor	\$250 fine

**HEALTH AND SAFETY CODE**

H&S 11350	Possession of Narcotics	<b>1 year</b>
H&S 11351	Possession for Sale - Narcotics	2, 3 or 4 yrs
H&S 11352	Sale/Transport Narcotics	3, <b>6</b> or <b>9</b> yrs
H&S 11355	Sale In Lieu Of Narcotics	<b>1 year</b>
H&S 11357(a)	Possession Concentrated Cannabis	<b>1 year</b>
H&S 11357(b)	Possession Less 1oz. Marijuana	\$100 fine
H&S 11357(c)	Possession More 1oz. Marijuana	6 months

HEALTH AND SAFETY CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
H&S 11358	Cultivation Marijuana	16 mos, 2 or 3 yrs
H&S 11359	Possession Marijuana for Sale	16 mos, 2 or 3 yrs
H&S 11360	Sale/Transport Marijuana	2, 3 or 4 yrs
H&S 11364	Narcotic Paraphernalia	6 months
H&S 11366	Maintaining a Place	<b>1 year</b>
H&S 11377(a)	Possession of Drugs	<b>1 year</b>
H&S 11378	Possession of Drugs for Sale	16 mos, 2 or 3 yrs
H&S 11379	Sale/Transport Drugs	2, 3 or 4 yrs
H&S 11382	Sales In Lieu Of Drugs	1 yr or 16 mos, 2 or 3 yrs
H&S 11550	Under the Influence	1 year

PENAL CODE

P.C. 32/33	Accessory	<b>1 yr or 16 mos, 2 or 3 yrs</b>
P.C. 71	Threatening Public Officer/School Official	1 year
P.C. 72	Presenting False Claims	1 year
P.C. 126	Perjury	2, 3, or 4 yrs
P.C. 133	Deceiving a Witness	6 months
P.C. 135	Destroying Evidence	6 months
P.C. 136.1(b)	Dissuade Witness	<b>1 year</b>
P.C. 140	Threatening Crime Victim/Witness	1 yr or 2, 3, or 4 yrs

PENAL CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
P.C. 148	Resist Arrest	1 year
P.C. 148.1	False Bomb Report	1 yr or 16 mos, 2 or 3 yrs
P.C. 148.3(a)	False Report of Emergency	1 year
P.C. 148.4(a)	False Alarm	1 year
P.C. 148.5	False Crime Report	6 months
P.C. 148.9	False ID to Peace Officer	6 months
P.C. 166	Criminal Contempt	<b>1 year</b>
P.C. 171b	Poss. Weapon in Courtroom	1 yr or 16 mos, 2 or 3 yrs
P.C. 193(a)	Manslaughter-Voluntary	3, 6 or 11 yrs
P.C. 193(b)	Manslaughter-Involuntary	2, 3 or 4 yrs
P.C. 193(c)	Manslaughter-Vehicular	1 yr or 2, 4 or 6 yrs
P.C. 204	Mayhem	2, 4 or 8 yrs
P.C. 211	Robbery - 2nd Degree	2, 3 or 5 yrs
P.C. 211	Robbery - 1st Degree	3, 4 or 6 yrs
P.C. 219.1	Throwing Missiles at Common Carrier	2, 4 or 6 yrs
P.C. 220	Assault - Sexual	2, 4 or 6 yrs
P.C. 240	Assault - Simple	6 months
P.C. 241	Assault - Peace Officer	1 year
P.C. 242	Battery	6 months
P.C. 243(b)	Battery on Peace Officer	1 year
P.C. 243(c)	Battery on Peace Officer w/Injury	1 yr or 16 mos, 2 or 3 yrs



PENAL CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
P.C. 243(d)	Battery with Serious Injury	1 yr or 2, 3 or 4 yrs
P.C. 243.1	Battery Custodial Officer	16 mos, 2 or 3 yrs
P.C. 243.4	Sexual Battery	1 yr or 2, 3 or 4 yrs
P.C. 244.5	Assault w/Stun Gun/Taser	1 yr or 16 mos, 2 or 3 yrs
P.C. 245(a)	Assault with Deadly Weapon	1 yr or 2, 3 or 4 yrs
P.C. 245(c)	Assault with Deadly Weapon on Peace Officer	3, 4 or 5 yrs
P.C. 246	Shoot - Inhabited Dwelling	<b>1 yr or 3, 5 or 7 yrs</b>
P.C. 261	Forcible Rape	3, 6 or 8 yrs
P.C. 261.5	Unlawful Sexual Intercourse	<b>1yr or 2, 3 or 4 yrs</b>
P.C. 264.1	Rape in Concert	5, 7 or 9 yrs
P.C. 272	Contrib. Delinquency of Minor	1 year
P.C. 288	Lewd Act on Child	3, 6 or 8 yrs
P.C. 381	Influence of Toluene	6 months
P.C. 415	Fighting, Noise, Offensive Words	90 days
P.C. 415.5	Disturbance of Peace at School	90 days
P.C. 416	Unlawful Assembly	6 months
P.C. 417	Exhibiting a Weapon	<b>30days or 90 days or 1yr</b>
P.C. 451(a)	Arson Causing GBI	5, 7 or 9 yrs
P.c. 451(b)	Arson of Inhabited Structure	3, 5 or 8 yrs
P.C. 451(c)	Arson of Structure or Forest Land	2, 4 or 6 yrs

PENAL CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
P.C. 451(d)	Arson of Property	16 mos, 2 or 3 yrs
P.C. 452(b)	Structure Fire	1 yr or 2, 3 or 4 yrs
P.C. 452(c)	Fire - Forest	6 mos or 16 mos, 2 or 3 yrs
P.C. 452(d)	Fire - Property	6 months
P.C. 453	Poss. of Flammables	1 yr or 16 mos, 2 or 3 yrs
P.C. 459	Burglary - 1st Degree	2, 4 or 6 yrs
P.C. 459	Burglary - 2nd Degree	1 yr or 16 mos, 2 or 3 yrs
P.C. 466	Burglary Tools	6 months
P.C. 470/473	Forgery	1 yr or 16 mos, 2 or 3 yrs
P.C. 475	Poss. Forged Checks	1 yr or 16 mos, 2 or 3 yrs
P.C. 475a	Poss. w/Fraudulent Intent	1 yr or 16 mos, 2 or 3 yrs
P.C. 476	Making or Uttering Forged Instrument	1 yr or 16 mos, 2 or 3 yrs
P.C. 487	Grand Theft	1 yr or 16 mos, 2 or 3 yrs
P.C. 488	Petty Theft	6 months
P.C. 496	Receiving Stolen Property	1 yr or 16 mos, 2 or 3 yrs
P.C. 499b	Joyriding (Bicycle)	90 days
P.C. 514	Extortion-Embezzlement	16 mos, 2 or 3 yrs

PENAL CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
P.C. 537e(a)(1)	Poss. of Article w/o Serial Number	6 months
P.C. 537e(a)(2)	Poss. of Article w/o Serial Number	1 year
P.C. 594(b)(1)	Malicious Mischief More Than \$400	<b>1 year or 16mos, 2 or 3yrs</b>
P.C. 594(b)(2)(A)	Malicious Mischief Less Than \$400	<b>1 year</b>
P.C. 602	Trespass	6 months
P.C. 602.5	Trespass Dwelling	<b>1 year</b>
P.c. 626.10	Firearms - Public School	1 yr or 16 mos, 2 or 3 yrs
P.C. 627.7	Entering/Trespassing-School Grounds	6 months
P.C. 647(a)(b)	Lewd Conduct/Prostitution	6 months
P.C. 647(c)	Obstruction of Street	6 months
P.C. 647(e),(f),(g),(h)	Disorderly Conduct	6 months
P.C. 647.6	Child Molesters	1 year
P.C. 653b	Loitering About School	6 months
P.C. 653k	Possession Switchblade	6 months
P.C. 653m	Obscene Phone Calls	6 months
P.C. 12020	Possession Dangerous Weapon	1 yr or 16 mos, 2 or 3 yrs
P.C. 12025(a)	Concealed Firearm/Vehicle	<b>1 year</b>
P.C. 12025(b)	Concealed Firearm/Person	1 year
P.C. 12025(d)	Concealed Firearm	<b>1 year</b>
P.C. <b>25850</b>	Carrying Loaded Firearm	6 months
P.C. 12034(a)	Driver or Owner Knowing Passenger Carrying Gun	6 months
P.C. 12034(b)	Firing Gun From Vehicle	1 yr or 16 mos, 2 or 3 yrs

PENAL CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
P.C. 12303	Possession Destructive Device	1 year
P.C. 12320	Possession of Ammunition	<b>1 year</b>
P.C. 12420	Unlawful Possession Tear Gas	1 year

VEHICLE CODE

V.C. 31	False Information to Traffic Officer	6 months
V.C. 2800.1	Evading Police Officer	<b>1 year</b>
V.C. 10851	Vehicle Taking	<b>1yr or 16mo, 2yr or 3yr</b>
V.C. 10852	Vehicle Tampering	6 months
V.C. 10853	Malicious Mischief to Vehicle	6 months
V.C. 12500(a)	Unlicensed Driver	6 months
V.C. 14601	Driving on Suspended Drivers License	6 months
V.C. 20001	Hit & Run - Injury	<b>1 year</b>
V.C. 20001	Hit & Run - Death or Permanent Injury	1 yr or 2, 3 or 4 yrs
V.C. 23103	Reckless Driving	90 days
V.C. 23104	Reckless Driving Injury	<b>30 days to 6 mos</b>
V.C. 23109	Speed Contest 1st Offense 2nd Offense/Five Years	90 days 6 months
V.C. 23109(c)	Exhibition of Speed	90 days
V.C. 23110(a)	Throwing Substances at Vehicles	6 months
V.C. 23110(b)	Throwing Substance at Vehicles	16 mos, 2 or 3 yrs
V.C. 23153(a)/(b)	DUI/.08 Driving 1st Offense	6 months

VEHICLE CODE (Cont'd)

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
V.C. 23152(a)/(b)	DUI/.08 Driving with Injury	1 year
V.C. 40508(a)	Failure to Appear	6 months
V.C. 40508(b)	Failure to Pay Fine	6 months

WELFARE AND INSTITUTIONS CODE

<u>Code Section</u>	<u>Description</u>	<u>Sentence</u>
W&I 871	Escape	1 year

NOTE: All Misdemeanors are 6 months unless otherwise specified by Code.

All Felonies are 16 months, 2 years and 3 years unless otherwise specified by Code.

Counts that are mutually inclusive; e.g., 240-242 PC are merged for aggregation purposes.

Offenses punishable as either misdemeanors or felonies are prefaced in the Sentence column by "1 yr or".