

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT SPR14-10

Title	Action Requested
Family Law: Uniform Standards of Practice for Providers of Supervised Visitation	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Stds. Jud. Admin., std. 5.20; revise form FL-341(A)	January 1, 2015
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	Shelly LaBotte, 415-865-7565
Hon. Kimberly J. Nystrom-Geist, Cochair	shelly.labotte@jud.ca.gov

Executive Summary and Origin

Family Code section 3200.5 lists statutory requirements for providers of supervised visitation—requirements that must be incorporated into any standard for such providers adopted by the Judicial Council under Family Code section 3200. To ensure that standard 5.20 of the California Standards of Judicial Administration, governing providers of supervised visitation, conforms to Family Code section 3200.5, the Family and Juvenile Law Advisory Committee recommends amending the standard to incorporate the new statutory requirements. The committee also recommends making additional changes to standard 5.20 to enhance its internal consistency. In addition, the committee recommends revising the *Supervised Visitation Order* (form FL-341(A)) to eliminate references to “therapeutic visitation” to maintain consistency with the provisions of section 3200.5.

Background

Standard 5.20 was adopted (as section 26.2), effective January 1, 1998, to implement the provisions of Family Code section 3200, which was enacted by legislation in 1996.¹ The legislation required the Judicial Council to enact standards for supervised visitation providers and stated the issues that the council was required to consider in developing the standards of practice. In 2012, the Legislature enacted Assembly Bill 1674 (Stats. 2012, ch. 692), which added section 3200.5 to the Family Code. Section 3200.5 gives an array of mandatory provisions

¹ Sen. Bill 1643; Stats. 1996, ch. 387.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

that are required to be included in the standards for supervised visitation that implement section 3200. Much of the language of Family Code section 3200.5 is drawn from the current text of standard 5.20. The key difference is that where standard 5.20 presents all of its provisions as suggested policies and best practices that supervised visitation providers *should* comply with, many of the provisions of section 3200.5 are mandatory requirements for the providers of supervised visitation (using the term *shall*). The legislative history for section 3200.5 shows that the intent of the Legislature in enacting it was to identify those provisions of standard 5.20 that needed to be required of all providers and to add in requirements that the Legislature identified as missing in the standard (e.g., a specific number of hours of training for providers).²

The Proposal

Standard 5.20 would be revised to ensure that it appropriately conforms to the recently enacted provisions of Family Code section 3200.5. The necessary revisions include changing the language of suggestive provisions to mandatory provisions, as required; adding language to address the new requirements of section 3200.5; and providing that the types of supervised visitation providers are either nonprofessional or professional only, eliminating references to “therapeutic visitation” providers, consistent with the language in section 3200.5. In addition, existing provisions of standard 5.20 would be revised to enhance internal consistency of those provisions.

Existing suggested 5.20 provisions that would become mandatory

As described above, section 3200.5 codifies certain provisions of standard 5.20 and makes them mandatory.³ For the standard to conform to those provisions, it needs to be reorganized and revised to substitute the term *must* for *should* with regard to the mandatory statutory provisions stated under Family Code section 3200.5. Specifically, standard 5.20 would be revised as follows:

- Break up the current subdivisions regarding nonprofessional and professional providers and specify those requirements for nonprofessional providers that are mandatory and those that remain suggested.
- Make all of the eligibility requirements for professional providers mandatory.
- Make the training requirements for professional providers mandatory.
- Require that professional providers keep certain case records.
- Require all providers to implement appropriate terms and conditions during each visit.

² See, for example, the July 2, 2012, Senate Judiciary Committee analysis of AB 1674.

³ The committee recognizes that it is unusual to have mandatory provisions in a Standard of Judicial Administration, but section 3200.5 specifically uses the term “standards” with reference to what the council is required to adopt, thus the committee has opted to modify the standard to make mandatory those items required by the statute while leaving the remainder of the standard as a permissive best practice.

- Require professional providers to carry out specified legal obligations, including reporting suspected abuse and suspending or terminating visitation when required.
- Require all providers to make every effort to provide a safe visit, to make a record of any visit that is suspended or terminated, and to advise the parties of the reasons for the suspension or termination.
- Require professional providers to prepare a written statement of the reasons for suspension or termination of a visit and provide that written statement to the parties and the court.

New requirements incorporated into standard 5.20

Although the majority of the language in section 3200.5 comes verbatim from the current standard, section 3200.5 did add additional requirements that would be incorporated into standard 5.20 as follows:

- The requirement that the court specifically consider whether to use a professional or nonprofessional provider in any case in which the court has determined that domestic violence, child abuse, or neglect exists would be incorporated into subdivision (c).
- The requirement that all professional providers receive 24 hours of training in specified areas would be added.
- The areas for training would be expanded to include basic knowledge of family and juvenile law.
- All professional providers would be required to sign a declaration or a *Supervised Visitation Order* (form FL-324) stating that they have met all of the requirements to be a professional provider.

Elimination of references to therapeutic visitation providers

In its current form, standard 5.20 identifies three types of supervised visitation providers: nonprofessional, professional, and therapeutic. Family Code section 3200.5 identifies only two types of providers: professional or nonprofessional. To ensure that standard 5.20 is consistent with Family Code section 3200.5, this proposal would delete all references to therapeutic visitation providers. In addition, it would revise form FL-341(A) to delete the option to order therapeutic visitation because this option is not contemplated by the statute.

Additional changes to enhance internal consistency

In its review of standard 5.20, the committee identified a number of provisions that were internally inconsistent with the overall approach of the standard and proposes additional changes unrelated to Family Code section 3200.5 to ensure that the standard is clear and consistent. These changes are:

- Deleting the sentence excluding supervised exchange from subdivision (b) because supervised exchange clearly falls into the definition of supervised visitation described in the preceding sentence;
- Deleting “providers of supervised visitation” from the list of individuals in subdivision (c) who may make a recommendation to the court about the manner in which supervision is provided, and deleting from paragraph (3) of subdivision (j) the authority of the court to order a provider to give an opinion or recommendation regarding future visitation because the remainder of the standard makes clear that providers are to be neutral and thus should not be in the position of making recommendations;
- Changing the word “assess” in paragraph (2) of subdivision (g) to “understand” to make clear that providers are not in an evaluative role;
- Clarifying subdivision (g) to provide that all professional providers, and not just supervised visitation centers, should have written protocols addressing local law enforcement responses;
- In subdivision (i) on conflict of interest provisions, clarifying that the specific requirements about having no outside relationship with a client apply only to professional providers and not to nonprofessional providers, who are often related to the parties;
- Adding the court to the list of those who should be given a copy of a court ordered report of a visitation in paragraph (3) of subdivision (j) to make that section consistent with subdivision (q), which requires that the court along with the parties and their attorneys receive all reports of suspended or interrupted visits;
- Adding a provision to subdivision (l) concerning terms and conditions for supervised visitation to require that there be no contact between the parents unless ordered by the court; and
- In subdivision (m) regarding special considerations concerning sexual abuse allegation cases, deleting the word “prolonged” as a modifier of “hugging” to make clear that the parent should have no physical contact with the child, as the earlier clause indicates.

Alternatives Considered

The committee considered revising standard 5.20 to make it mirror Family Code section 3200.5 and leaving out any content that was not included in that section. It determined that addressing each of the issues stated in section 3200 (not all of which were included in section 3200.5) was necessary and that it would be preferable to leave intact suggested best practices in the current standard as continuing guidance to those providing supervised visitation services rather than reducing the standard to the provisions included in Family Code section 3200.5. The committee also refrained from adding new requirements for the courts to enforce compliance with the standard (e.g., requiring courts to have a process to document the declarations of the professional

providers), preferring instead to allow each court to make a determination of how best to proceed.

Implementation Requirements, Costs, and Operational Impacts

The committee recognizes that making many of the eligibility requirements for supervised visitation providers mandatory, rather than suggested best practices, may limit the available pool of supervised visitation providers. However, all of these changes are statutorily required and thus had to be included. The committee also notes that section 3200.5 and standard 5.20 do allow a court to order or the parties to stipulate to nonprofessional providers who do not meet these requirements, when appropriate. The ability of the court to maintain discretion to meet the unique needs of its local jurisdiction and the circumstances of particular cases should mitigate some of the impact of the legislative change incorporated into amended standard 5.20.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the committee consider any additional changes to the standard for supervised visitation providers?
- Is there value in preserving the suggested elements of the current standard in addition to those provisions made mandatory by Family Code section 3200.5?
- Is it appropriate to delete the exception for supervised exchange because it is a form of supervised visitation, or will the application of the standard to supervised exchange be problematic?
- Should supervised visitation providers be deleted from the list of those who may make recommendations to the court on the manner of visitation?
- Should references to therapeutic visitation providers be removed from standard 5.20 and form FL-341(A) for consistency with the statutory identification of only two types of providers, or is there a need to identify therapeutic providers as a subcategory of professional providers in the standards or on the family law form?
- Do the other changes made to enhance and clarify the standard succeed in making it more straightforward and internally consistent?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Stds. Jud. Admin., std. 5.20, at pages 8–15
2. Form FL-341(A), at page 16
3. Link to Family Code section 3200:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3200.
4. Link to Family Code section 3200.5:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3200.5.
5. Link to AB 1674 (Stats. 2012, ch. 692):
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1674&search_keywords=

Standard 5.20 of the California Standards of Judicial Administration would be amended, effective January 1, 2015, to read:

1 **Standard 5.20. Uniform standards of practice for providers of supervised**
2 **visitation**

3
4 **(a) Scope of service**
5

6 This standard defines the standards of practice, including duties and obligations, for
7 providers of supervised visitation under Family Code sections 3200 and 3200.5. Unless
8 specified otherwise, the standards of practice are designed to apply to all providers of
9 supervised visitation, whether the provider is a friend, relative, paid independent
10 contractor, employee, intern, or volunteer operating independently or through a supervised
11 visitation center or agency. The goal of these standards of practice is to assure the safety
12 and welfare of the child, adults, and providers of supervised visitation. Once safety is
13 assured, the best interest of the child is the paramount consideration at all stages and
14 particularly in deciding the manner in which supervision is provided. Each court is
15 encouraged to adopt local court rules necessary to implement these standards of practice.
16

17 **(b) Definition**
18

19 Family Code section 3200 defines the term "provider" as including any individual or
20 supervised visitation center that monitors visitation. Supervised visitation is contact
21 between a noncustodial party and one or more children in the presence of a neutral third
22 person. ~~These standards of practice and this definition do not apply to supervision of~~
23 ~~visitation exchanges only, but may be useful in that context.~~
24

25 **(c) Qualifications Determination of the type of provider**
26

27 Who provides the supervision and the manner in which supervision is provided depends on
28 different factors, including local resources, the financial situation of the parties, and the
29 degree of risk in each case. While the court makes the final decision as to the manner in
30 which supervision is provided and any terms or conditions, the court may consider
31 recommendations by the attorney for the child, the parties and their attorneys, Family
32 Court Services staff, evaluators, and therapists, and providers of supervised visitation. In
33 any case in which the court has determined that there is domestic violence or child abuse or
34 neglect, as defined in section 11165.6 of the Penal Code, and the court determines
35 supervision is necessary, the court must consider whether to use a professional or
36 nonprofessional provider based on the child's best interest.
37

38 **(d) Qualifications of nonprofessional providers**
39

40 (1) A "nonprofessional provider" is any person who is not paid for providing
41 supervised visitation services. Unless otherwise ordered by the court or stipulated
42 by the parties, the nonprofessional provider ~~should~~ must:
43

- 1 (A) ~~Be 21 years of age or older;~~
- 2 (B) ~~Have no conviction for driving under the influence (DUI) within the last 5~~
3 ~~years;~~
- 4 (C) ~~Not have been on probation or parole for the last 10 years;~~
- 5 ~~(D)~~(A) Have no record of a conviction for child molestation, child abuse, or other
6 crimes against a person;
- 7 ~~(E)~~(B) Have proof of automobile insurance if transporting the child;
- 8 (F) ~~Have no civil, criminal, or juvenile restraining orders within the last 10~~
9 ~~years;~~
- 10 ~~(G)~~(C) Have no current or past court order in which the provider is the person
11 being supervised; and
- 12 (H) ~~Not be financially dependent on the person being supervised;~~
- 13 (I) ~~Have no conflict of interest under (g); and~~
- 14 ~~(J)~~(D) Agree to adhere to and enforce the court order regarding supervised
15 visitation.

16
17 (2) Unless otherwise ordered by the court or stipulated by the parties, the
18 nonprofessional provider should:

- 19
20 (A) Be 21 years of age or older;
- 21 (B) Have no conviction for driving under the influence (DUI) within the last 5
22 years;
- 23
24 (C) Not have been on probation or parole for the last 10 years;
- 25
26 (D) Have no civil, criminal, or juvenile restraining orders within the last 10
27 years; and
- 28
29 (E) Not be financially dependent on the person being supervised.
- 30

31 (e) **Qualifications of professional providers**

32 ~~(2)~~ A “professional provider” is any person paid for providing supervised visitation
33 services, or an independent contractor, employee, intern, or volunteer operating
34 independently or through a supervised visitation center or agency. The professional
35 provider ~~should~~ must:

- 1 (A) The role of a professional ~~and therapeutic~~ provider;
- 2 (B) Child abuse reporting laws;
- 3 (C) Record-keeping procedures;
- 4 (D) Screening, monitoring, and termination of visitation;
- 5 (E) Developmental needs of children;
- 6 (F) Legal responsibilities and obligations of a provider;
- 7 (G) Cultural sensitivity;
- 8 (H) Conflicts of interest;
- 9 (I) Confidentiality; ~~and~~
- 10 (J) Issues relating to substance abuse, child abuse, sexual abuse, and domestic
- 11 violence; and
- 12 (K) Basic knowledge of family and juvenile law.

13
14 **(e)(g) Safety and security procedures**

15
16 All providers should make every reasonable effort to assure the safety and welfare of the
17 child and adults during the visitation. ~~Supervised visitation centers~~ Professional providers
18 should establish a written protocol, with the assistance of the local law enforcement
19 agency, that describes the emergency assistance and responses that can be expected from
20 the local law enforcement agency. In addition, the professional ~~and therapeutic~~ provider
21 should:

- 22 (1) Establish and state in writing minimum security procedures and inform the parties
- 23 of these procedures before the commencement of supervised visitation;
- 24 (2) Conduct comprehensive intake and screening to ~~assess~~ understand the nature and
- 25 degree of risk for each case. The procedures for intake should include separate
- 26 interviews with the parties before the first visit. During the interview, the provider
- 27 should obtain identifying information and explain the reasons for temporary
- 28 suspension or termination of a visit under this standard. If the child is of sufficient
- 29 age and capacity, the provider should include the child in part of the intake or
- 30 orientation process. Any discussion should be presented to the child in a manner
- 31 appropriate to the child's developmental stage;
- 32 (3) – (4)* * *

1 (5) Suspend or terminate supervised visitation if the provider determines that the risk
2 factors present are placing in jeopardy the safety and welfare of the child or
3 provider as enumerated in ~~(j)~~(L).

4
5 **~~(f)~~(h) Ratio of children to provider**

6
7 The ratio of children to a professional provider ~~should~~ must be contingent on:

- 8 (1) The degree of risk factors present in each case;
9 (2) The nature of supervision required in each case;
10 (3) The number and ages of the children to be supervised during a visit;
11 (4) The number of people visiting the child during the visit;
12 (5) The duration and location of the visit; and
13 (6) The experience of the provider.

14
15 **~~(g)~~(i) Conflict of interest**

16
17 All providers should maintain neutrality by refusing to discuss the merits of the case or
18 agree with or support one party over another. Any discussion between a provider and the
19 parties should be for the purposes of arranging visitation and providing for the safety of the
20 children. In order to avoid a conflict of interest, the professional provider should not:
21

- 22 (1) Be financially dependent on the person being supervised;
23 (2) Be an employee of the person being supervised;
24 (3) Be an employee of or affiliated with any superior court in the county in which the
25 supervision is ordered unless specified in the employment contract; or
26 (4) Be in an intimate relationship with the person being supervised.

27
28 **~~(h)~~(j) Maintenance and disclosure of records**

29 (1) Professional ~~and therapeutic~~ providers ~~should~~ must keep a record for each case,
30 including the following:

- 31 (A) A written record of each contact and visit, ~~including the date, time, and~~
32 ~~duration of the contact or visit;~~
33 (B) Who attended the visit;
34 (C) ~~A summary of activities during the visit;~~

- 1 (D) ~~Actions taken by the provider, including any interruptions, terminations of~~
2 ~~a visit, and reasons for these actions;~~
- 3 (E) ~~An account of critical incidents, including physical or verbal altercations~~
4 ~~and threats;~~
- 5 (F) ~~Violations of protective or court visitation orders;~~
- 6 ~~(G)~~(C) Any failure to comply with the terms and conditions of the visitation; and
- 7 ~~(H)~~(D) Any incidence of abuse as required by law.

8 (2) * * *

9 (3) If ordered by the court or requested by either party or the attorney for either party
10 or the attorney for the child, a report about the supervised visit should be
11 produced. These reports should include facts, observations, and direct statements
12 and not opinions or recommendations regarding future visitation ~~unless ordered~~
13 ~~by the court. A copy of any report should be sent to all parties, their attorneys, and~~
14 ~~the attorney for the child. The original report should be sent to the court if so~~
15 ordered, or to the requesting party or attorney, and copies should be sent to all
16 parties, their attorneys, and the attorney for the child.

17 (4) * * *

18
19 ~~(i)~~(k) **Confidentiality**

20
21 Communications between parties and providers of supervised visitation are not protected
22 by any privilege of confidentiality. ~~The psychotherapist patient privilege does not apply~~
23 ~~during therapeutic supervision.~~ Professional and therapeutic providers should, whenever
24 possible, maintain confidentiality regarding the case except when:

25 (1)–(5) * * *

26
27 ~~(j)~~(l) **Delineation of terms and conditions**

28
29 The provider bears the sole responsibility for enforcement of all the terms and conditions
30 of any supervised visitation. Unless otherwise ordered by the court, the provider should
31 implement the following terms and conditions:

32
33 (1)–(10) ***

- 34 (11) Allow no emotional, verbal, physical, or sexual abuse; ~~and~~
- 35 (12) Allow no contact between the custodial and noncustodial parents unless ordered
36 by the court; and

1 ~~(12)~~(13) Ensure that the parties follow any additional rules stated by the provider or the
2 court.

3
4 ~~(k)~~**(m)** **Safety considerations for sexual abuse cases**

5
6 In cases where there are allegations of sexual abuse, in addition to the requirements of
7 ~~(j)~~(l), the provider should comply with the following terms and conditions, unless
8 otherwise ordered by the court:

9 (1)–(2) * * *

10 (3) Allow no physical contact with the child such as lap sitting, hair combing,
11 stroking, hand holding, ~~prolonged~~ hugging, wrestling, tickling, horseplaying,
12 changing diapers, or accompanying the child to the bathroom;

13 (4)–(5) * * *

14
15 ~~(l)~~**(n)** **Legal responsibilities and obligations of a provider**

16
17 All nonprofessional providers of supervised visitation should, and all professional
18 providers must:

19 (1) Advise the parties before commencement of supervised visitation that no
20 confidential privilege exists;

21 (2) Report suspected child abuse to the appropriate agency, as provided by law, and
22 inform the parties of the provider’s obligation to make such reports; and

23 ~~(3) — Implement the terms and conditions under (j) and~~

24 ~~(4)(3) Suspend or terminate visitation under ~~(n)~~(p).~~

25
26 ~~(m)~~**(o)** **Additional legal responsibilities of professional ~~and therapeutic~~ providers**

27
28 In addition to the legal responsibilities and obligations required in ~~(l)~~(n), professional ~~and~~
29 ~~therapeutic~~ providers ~~should~~ must:

30 (1) Prepare a written contract to be signed by the parties before commencement of the
31 supervised visitation. The contract should inform each party of the terms and
32 conditions of supervised visitation; and

33 (2) Review custody and visitation orders relevant to the supervised visitation;

34 ~~(3) Implement an intake and screening procedure under (e)(2); and~~

35 ~~(4) Comply with additional requirements under (o).~~

1 ~~(n)~~(p) **Temporary suspension or termination of supervised visitation**

2

3 (1) All providers ~~should~~ must make every reasonable effort to provide a safe visit for
4 the child and the noncustodial party.

5 (2) However, if a provider determines that the rules of the visit have been violated,
6 the child has become acutely distressed, or the safety of the child or the provider
7 is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or
8 terminated.

9 (3) All interruptions or terminations of visits ~~should~~ must be recorded in the case file.

10 (4) All providers ~~should~~ must advise both parties of the reasons for interruption of a
11 visit or termination.

12

13 ~~(o)~~(q) **Additional requirements for professional ~~and therapeutic~~ providers**

14

15 Professional ~~and therapeutic~~ providers ~~should~~ must state the reasons for temporary
16 suspension or termination of supervised visitation in writing and provide the written
17 statement to both parties, their attorneys, the attorney for the child, and the court.

18

19

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
--	--------------

SUPERVISED VISITATION ORDER
Attachment to Child Custody and Visitation Order Attachment (form FL-341)

1. Evidence has been presented in support of a request that the contact of Petitioner Respondent with the child(ren) be supervised based on allegations of
 abduction of child(ren) physical abuse drug abuse neglect
 sexual abuse domestic violence alcohol abuse other (*specify*):

 Petitioner Respondent disputes these allegations, and the court reserves the findings on these issues pending further investigation and hearing or trial.
2. The court finds, under Family Code section 3100, that the best interest of the child(ren) requires that visitation by Petitioner Respondent must, until further order of the court, be limited to contact supervised by the person(s) stated in item 6 below, pending further investigation and hearing or trial.

THE COURT MAKES THE FOLLOWING ORDERS

3. CHILD(REN) TO BE SUPERVISED

<u>Child's Name</u>	<u>Birth Date</u>	<u>Age</u>	<u>Sex</u>
---------------------	-------------------	------------	------------

4. TYPE

- a. Supervised visitation b. Supervised exchange only

5. SUPERVISED VISITATION PROVIDER

- a. Professional (individual provider or supervised visitation center) b. Nonprofessional

6. AUTHORIZED PROVIDER

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
-------------	----------------	------------------

Any other mutually agreed-upon third party as arranged.

7. DURATION AND FREQUENCY OF VISITS (*see form FL-341 for specifics of visitation*):

8. PAYMENT RESPONSIBILITY Petitioner: % Respondent: %

9. Petitioner will contact professional provider or supervised visitation center no later than (*date*):
- Respondent will contact professional provider or supervised visitation center no later than (*date*):

10. THE COURT FURTHER ORDERS

Date:

JUDICIAL OFFICER