

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15- 24

Title	Action Requested
Juvenile Law: Detention	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; revise forms JV-642 and JV-667	January 1, 2016
Proposed by	Contact
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Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending California Rules of Court, rules 5.502, 5.760, and 5.790, and revising form JV-642 and form JV-667 to conform to recent statutory changes to the options for children detained in juvenile hall who are dependents of the court under Welfare and Institutions Code section 300 and to the requirements when children remain detained in juvenile hall after a dispositional order committing the child or placing the child in foster care.

Background

Assembly Bill 388 (Chesbro; Stats 2014, ch. 760) amended section 635 of the Welfare and Institutions Code to clarify that the court's decision to detain a child in juvenile hall must not be based on the child's status as a dependent of the court or on the child welfare services department's inability to provide a placement for the child. AB 388 also mandates that if the court releases from custody a child who is a dependent of the court, the court must order the child welfare services department to ensure that the minor's current caregiver takes physical custody of the child or that the department take physical custody of the child and place him or her in an approved placement. Assembly Bill 2607 (Skinner; Stats. 2014, ch. 615) amended section 737 of the Welfare and Institutions Code to add requirements to the reviews that must occur every 15 days in any case in which a child or nonminor dependent is detained pending the execution of an order of commitment or any other disposition.

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 These proposals are circulated for comment purposes only.

The Proposal

Rules 5.502, 5.760, and 5.790 would be revised to ensure that they conform to the recently enacted provisions of Welfare and Institutions Code sections 635 and 737 and to clarify that when a child is placed on home supervision he or she is not detained.¹

The Family and Juvenile Law Advisory Committee proposes the following specific amendments to the California Rules of Court:

- Amend rule 5.502(11) to eliminate the reference to home supervision in the definition of “detained,” and amend rule 5.760(c) to clarify that if the court places the child on home supervision the child is not detained.

Although this amendment is not mandated by either of the bills discussed above, the current definition and phrasing in rule 5.760(c) have led to confusion regarding the status of a child who is on home supervision. Section 628.1 provides that if the child meets one or more of the criteria for detention, but the probation officer believes that 24-hour secure detention is unnecessary, the probation officer must “release such minor to his or her parent, guardian, or responsible relative on home supervision.” Because the child is not in a secured detention facility and is released to parental custody, the child is not detained. The committee recommends making the above amendments to remove confusion regarding the status of a child who is placed on home supervision pending disposition of the petition.

- Further amend rule 5.760(c) to conform to the new statutory requirement that the court’s decision to detain in juvenile hall a child who is a dependent of the court must not be based on the child’s status as a dependent of the court or the inability of the child welfare department to provide a placement for the child.

Newly enacted section 636(e) states that for a child who is a dependent of the court, “the court’s decision to detain the child shall not be based on a finding that continuance in the minor’s current placement is contrary to the minor’s welfare.” The committee is unaware of this finding as a practice in any county, and it is not a finding authorized by statute or rule of court. The committee has clarified throughout the proposal that the “contrary to the minor’s welfare” finding must be made regarding the parent’s or legal guardian’s home. The committee seeks specific comment on whether this clarification is sufficient or whether the rule should be amended to state that a court’s decision to detain a child must not be based on a finding that continuance in the child’s current placement is contrary to the child’s welfare.

- Amend rule 5.760(d) to conform to the new statutory requirement that if the child is a dependent of the court under section 300 and no grounds for detention exist, the court must order the child released and order the child welfare services department either to ensure that

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

the child's current caregiver take physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.

- Amend rule 5.760(e) to remove the requirement that the findings and orders document be signed. California law does not require a signature for a valid court order. Currently, this signature requirement exists only in this rule. No other hearing type in either dependency or delinquency proceedings has a requirement that the findings and orders must be signed.
- Amend rule 5.790 to conform to new statutory requirements regarding the fifteen-day reviews the court must conduct when a child is detained pending the implementation of a dispositional order. The committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737. By referencing the statute, any future modification to section 737 will not result in the need for changes to the rule.

The committee proposes the following specific revisions to Judicial Council forms:

- On *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), insert a new item 26, which would allow the court to state that the child is a dependent of the court under section 300 and is ordered released from custody, and to order the child welfare services department to ensure that the child's current caregiver take physical custody of the child or to take physical custody of the child and place the child in a licensed or approved placement.
- On *Custodial and Out-of-Home Placement Disposition Attachment* (form JV-667), clarify that a child on home supervision or electronic monitoring is not "detained" but rather "released" as specified in section 628.1. Add to two items the finding "Continuance in the home is contrary to the child's welfare," which is required at any court hearing where the court is authorizing the removal of the child from the home and is critical to ensure federal foster care funding.²

Alternatives Considered

The committee considered making only the changes necessary to implement AB 388 and AB 2607 but determined that amending rules 5.502(11) and 5.760(c) and revising forms JV-642 and JV-667 to clarify the differences between detention and home supervision would remove confusion regarding the status of a child who is placed on home supervision pending disposition of the petition.

Implementation Requirements, Costs, and Operational Impacts

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

² See 42 U.S.C. § 672(a)(1)–(2); 45 C.F.R. § 1356.21(c).

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 rule 5.760 be amended to state that a court's decision to detain a child must not be based on a finding that continuance in the child's current placement is contrary to the child's welfare? This finding is not authorized by statute or rule.

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. Proposed Cal. Rules of Court, rules 5.502, 5.760, and 5.790, at pages 5–7
2. Proposed forms JV-642 and JV-667, at pages 8–12
3. Assembly Bill 388,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB388&search_keywords=
4. Assembly Bill 2607,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2607&search_keywords=

Rules 5.502, 5.760, and 5.790 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 5.502. Definitions and use of terms**

2
3 Definitions (§§ 202(e), 303, 319, 361, 361.5(a)(3), 450, 628.1, 636, 726, 727.3(c)(2),
4 727.4(d), 4512(j), 4701.6(b), 11400(v), 11400(y), 16501(f)(16); 20 U.S.C. § 1415; 25
5 U.S.C. § 1903(2))

6
7 As used in these rules, unless the context or subject matter otherwise requires:

8
9 (1)–(10) * * *

10
11 (11) “Detained” means any removal of the child from the person or persons legally
12 entitled to the child’s physical custody, ~~or any release of the child on home~~
13 ~~supervision under section 628.1 or 636.~~

14
15 (12)–(45) * * *

16
17 **Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders;**
18 **factors to consider for detention; restraining orders**

19
20 (a)–(b) * * *

21
22 (c) **Grounds for detention (§§ 625.3, 635, 636)**

23
24 (1) The child must be released unless the court finds that continuance in the home
25 of the parent or legal guardian is contrary to the child’s welfare, and one or
26 more of the following grounds for detention exist:

27
28 ~~(1)~~(A) The child has violated an order of the court;

29
30 ~~(2)~~(B) The child has escaped from a commitment of the court;

31
32 ~~(3)~~(C) The child is likely to flee the jurisdiction of the court;

33
34 ~~(4)~~(D) It is a matter of immediate and urgent necessity for the protection of the
35 child; or

36
37 ~~(5)~~(E) It is reasonably necessary for the protection of the person or property of
38 another.

39
40 The inability of the child welfare services department to provide a placement
41 for the child can not be the basis for any of the above grounds.
42

1 (2) If the child is a dependent of the court under section 300, the court’s decision
2 to detain must not be based on the child’s status as a dependent of the court or
3 the child welfare services department’s inability to provide a placement for the
4 child.

5
6 ~~The court may order the child detained in juvenile hall or in a suitable place~~
7 ~~designated by the court, or on home supervision under the conditions stated in~~
8 ~~sections 628.1 and 636.~~

9
10 (3) The court may order the child placed on home supervision under the
11 conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a
12 suitable place designated by the court.

13
14 (4) If there are no grounds for detention and the child is a dependent of the court
15 under section 300, the court must order the release of the child and order the
16 child welfare services department either to ensure that the child’s current
17 caregiver takes physical custody of the child or to take physical custody of the
18 child and place the child in a licensed or approved placement.

19
20 **(d) Required determinations before detention**

21
22 Before detaining the child, the court must determine whether continuance in the
23 home of the parent or legal guardian is contrary to the child’s welfare and whether
24 there are available services that would prevent the need for further detention. The
25 court must make these determinations on a case-by-case basis and must state the
26 evidence relied on in reaching its decision.

27
28 (1) If the court determines that the child can be returned to the home of the parent
29 or legal guardian through the provision of services, the court must release the
30 child to the parent or guardian and order that the probation department provide
31 the required services.

32
33 (2) If the child cannot be returned to the home of the parent or legal guardian, the
34 court must do one of the following:

35
36 (A) State the facts on which the detention is based; or

37
38 (B) If there are no grounds for detention and the child is a dependent of the
39 court under section 300, order release of the child and order the child
40 welfare services department either to ensure that the child’s current
41 caregiver takes physical custody of the child or to take physical custody
42 of the child and place the child in a licensed or approved placement.
43

1 (e) **Required findings to support detention (§ 636)**
2

3 If the court orders the child detained, the court must make the following findings
4 and order on the record and in the written, ~~signed~~ orders. The court must reference
5 the probation officer's report or other evidence relied on to make its determinations:
6

- 7 (1) Continuance in the home of the parent or guardian is contrary to the child's
8 welfare;
9
10 (2) Temporary placement and care is the responsibility of the probation officer
11 pending disposition or further order of the court; and
12
13 (3) Reasonable efforts have been made to prevent or eliminate the need for
14 removal of the child, or reasonable efforts were not made.
15

16 (f)–(k) * * *

17
18 (l) **Restraining orders**
19

20 As a condition of release ~~or detention~~ on home supervision, the court may issue
21 restraining orders as stated in rule 5.630 or orders restraining the child from any or
22 all of the following:
23

24 (1)–(3) * * *
25

26 **Rule 5.790. Orders of the court**
27

28 (a)–(i) * * *
29

30 (j) **Fifteen-day reviews (§ 737)**
31

32 If the child or nonminor dependent is detained pending the implementation of a
33 dispositional order, the court must review the case at least every 15 days as long as
34 the child is detained. The review must meet all the requirements in section 737. ~~The~~
35 ~~court must inquire about the action taken by the probation officer to carry out the~~
36 ~~court's order, the reasons for the delay, and the effects of the delay on the child.~~
37
38

CHILD'S NAME:	CASE NUMBER:
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16. b. The right to cross-examine and confront witnesses.
 c. The right to subpoena witnesses and present a defense.
 d. The right to remain silent.
17. The child through counsel
- a. admitted the petition as filed as amended (date): _____
- b. pleaded no contest to the petition as filed as amended (date): _____
- c. The child's counsel consents to the admission or plea of no contest.
- d. The admission or plea of no contest is freely and voluntarily made.
- e. There is a factual basis for the admission or plea of no contest.
- f. The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a. The following allegations are admitted and found to be true:

	Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement (if applicable)
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

b. The court has considered whether the above offense(s) should be misdemeanors or felonies.

c. The following allegations are dismissed:

<u>Count number</u>	<u>Statutory violation</u>

19. The child is described by section 601 602 of the Welfare and Institutions Code.
20. The maximum confinement time is:
21. The child's residence is in: _____ County.
22. The matter is transferred to: _____ County for disposition and further proceedings. *Juvenile Court Transfer Orders* (form JV-550) will be completed and transmitted immediately.
23. The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

CHILD IN CUSTODY

24. The court has considered the detention report prepared by probation and the following documents (*specify*):
 and the testimony of (*name*):
 and the examination by the court of (*name*):
 and takes judicial notice of the entire court file.
25. The child is released from custody to the home of (*name, address, and relationship to child*):
 on home supervision on electronic monitoring
 the terms of which are stated in the attached *Terms and Conditions* (form JV-624).
26. The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver takes physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

CHILD'S NAME:	CASE NUMBER:
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- 27. A prima facie showing has been made that the child's disposition is by section 601 or 602.
- 28. Based on the facts stated on the record, the child is detained in secure custody on the following grounds *(check all that apply)*:
 - a. The child has violated an order of the court.
 - b. The child has escaped from a court commitment.
 - c. The child is likely to flee the jurisdiction of the court.
 - d. It is a matter of immediate and urgent necessity for the protection of the child.
 - e. It is reasonably necessary for the protection of the person or property of another.
- 29. Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.
- 30. Based on the facts stated on the record, there are no available services that would prevent the need for further detention.
- 31. Temporary placement and care is the responsibility of the probation department.
- 32. Reasonable efforts to prevent or eliminate the need for detention of the child have have not been made.
- 33. Probation is ordered to provide services that will assist with reunification of the child and the family.
- 34. Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.
- 35. The child and the parent/legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.
- 36. The mother father legal guardian are ordered to supply the names and contact information of adult relatives to probation so probation can notify them of the removal and of their options to be included in the child's life.
- 37. The probation officer must file a case plan within 60 days.
- 38. Probation is authorized to release the minor at its discretion under the following circumstances:
- 39. The court accepts transfer from the County of:
- 40. Other orders:
- 41. Child Counsel waives time for *(check all that apply)*
 jurisdiction hearing disposition hearing other:
- 42. **The next hearings will be**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:
- 43. The child
 - a. is ordered to return to court on the above date and time.
 - b. remains detained.
- 44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.
- 45. All appointed counsel are relieved.

Date: _____

JUDGE
 JUDGE PRO TEMPORE
 COMMISSIONER
 REFEREE

Countersignature for detention orders *(if necessary)*: _____

Date: _____

JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
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CUSTODIAL AND OUT-OF- HOME PLACEMENT DISPOSITION ATTACHMENT

THE COURT FINDS AND ORDERS

1. The maximum time the child may be confined
 - a. in secure custody for the offenses sustained in the petition before the court is (*specify*):
 - b. in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (*specify*):
2. The child is committed to (*specify*): days months in juvenile hall
 - a. and is remanded forthwith. Continuance in the home is contrary to the child's welfare.
 - b. and is to report to (*name*): _____ by a.m. p.m. on (*date*): _____
 - c. with credit for (*specify*): _____ days served.
3. The welfare of the child requires that physical custody be removed from the parent or guardian. (*Check only if applicable*):
 - a. The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
 - b. The child has been on probation in the custody of the parent or guardian and has failed to reform.
 - c. Continuance in the home is contrary to the child's welfare.
4. Probation is granted the authority to authorize medical, surgical, or dental care under Welfare & Institution Code section 739.
5. Reasonable efforts to prevent or eliminate the need for removal
 - a. have been made.
 - b. have not been made.
6. a. The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:

Mother Biological father Legal guardian Presumed father
 Alleged father Indian custodian Other (*specify*): _____
- b. Reunification services do not need to be provided to (*name*): _____ because the court finds by clear and convincing evidence that (*check one*)
 - (1) reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
 - (2) that parent has been convicted of murder of another child of the parent voluntary manslaughter of another child of the parent aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent felony assault resulting in serious bodily injury to the child or another child of the parent.
 - (3) the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.
- c. The child is ordered to continued in _____ the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.
- d. The following are ordered to meet with the probation officer on a monthly basis:

Mother Biological father Legal guardian Presumed father
 Alleged father Indian custodian Other (*specify*): _____
- e. The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

CHILD'S NAME:	CASE NUMBER:
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6. f. The child is to be placed out of state at the following (*name and address*):
- (1) In-state facilities are unavailable or inadequate to meet the needs of the child.
 - (2) The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.
 - (3) The requirements of section 7911.1 of the Family Code are met.
- g. Pending placement, the child is detained in juvenile hall. If being housed in another county, please specify county:
- h. The child is released on home supervision to the home of
- (a) parent (*name*): _____ mother father
 - (b) parent (*name*): _____ mother father
 - (c) legal guardian (*name*): _____
 - (d) other (*name and address*): _____
 - (e) and is subject to electronic monitoring.
- i. The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.
- j. The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.
- k. The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is (*specify*): _____
- l. The right of the parent/guardian to make educational decisions for the child is specifically limited. *Order Designating Educational Rights Holder* (form JV-535) will be completed and transmitted.
7. The child has been ordered into a placement described by title IV-E of the Social Security Act.
- a. The date the child entered foster care is _____, which is 60 days after the day the child was removed from his or her home.
 - b. An exception applies to the standard calculation of the date the child entered foster care because
 - (1) the child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of _____.
 - (2) the child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be _____.
 - (3) at the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the date entered foster care is unchanged from the date the child entered foster care in dependency court. That date is _____.
8. The child is committed to the care, custody, and control of the probation office for placement in the county juvenile ranch, camp, forestry camp, or _____
- a. for _____ months _____ days.
 - b. until the requirements of the program have been satisfactorily completed.
 - c. If being housed in another county, please specify: _____
9. The child is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732) will be completed and transmitted.

Date: _____

JUDICIAL OFFICER