

Title	Juvenile Law: Consideration of Parent’s Incarceration or Institutionalization in Extending Services (amend Cal. Rules of Court, rule 5.710).
Summary	The proposed amended rule implements statutory changes relevant to the six-month review hearing in juvenile dependency proceedings, as mandated by Senate Bill 597. In determining whether to extend court-ordered services in certain cases, the court must consider barriers to a parent’s ability to maintain contact with his or her child due to the parent’s incarceration or institutionalization.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Melissa Ardaiz, Associate Attorney, 415-865-7567, melissa.ardaiz@jud.ca.gov

The Family and Juvenile Law Advisory Committee recommends amending rule 5.710, Six-month review hearing, to bring it into compliance with new law. (Sen. Bill 597 (Liu]; Stats. 2009, ch. 339.) New Welfare and Institutions Code section 366.215 requires that the court, in determining whether court-ordered services may be extended to the 12-month point for a child who is under three years of age on the date of the initial removal or is a member of a sibling group described in Welfare and Institutions Code section 361.5(a)(1)(C), must take into account any particular barriers to a parent’s ability to maintain contact with his or her child due to the parent’s incarceration or institutionalization.

Welfare and Institutions Code section 366.215 became effective on January 1, 2010. It is based on Senate Bill 597, which was “clean-up” legislation to clarify statutory changes mandated by Assembly Bill 2070 (Bass; Stats. 2008, ch. 482). AB 2070 required the court to consider the circumstances of parents or legal guardians who are incarcerated, institutionalized, or in residential substance abuse treatment when determining whether to extend the time period for reunification services at the 12- and 18-month review hearings. Section 366.215 imposes a similar requirement for 6-month review hearings. The legislative changes mandated by AB 2070 were incorporated into new and revised rules relevant to review and permanency hearings in juvenile dependency hearings, effective January 1, 2010.

The Family and Juvenile Law Advisory Committee proposes revising rule 5.710 to include the requirements in new section 366.215. These requirements are in new subdivision (e) of the rule. The language in new subdivision (e) is modeled after a similar

requirement applicable at 12-month review hearings found in Welfare and Institutions Code section 361.5(a)(3) and rule 5.715(b)(4)(A)(ii) of the California Rules of Court.

The committee also proposes revising the numbering in rule 5.710(c)(1)(D) for clarification purposes.

The proposed rule is attached on pages 3–4.

Welfare and Institutions Code section 366.215 is attached on page 5.

Rule 5.710 of the California Rules of Court would be amended, effective January 1, 2011, to read:

1 **Rule 5.710. Six-month review hearing**

2 (a) ***

3 (b) ***

4 (c) Setting a section 366.26 hearing (§ 366.21)

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6 (1) The court may set a hearing under section 366.26 within 120 days if:

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(A)–(C) ***

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(D) The child was under the age of three when initially removed, or a member of a sibling group described in section 361.5(a)(1)(C), and the court finds by clear and convincing evidence that the parent has failed to participate regularly and make substantive progress in any court-ordered treatment plan, unless the court finds a substantial probability that the child may be returned within 6 months or within 12 months of the date the child entered foster care, whichever is sooner, or that reasonable services have not been offered or provided.

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(i) In order to find a substantial probability that the child may be returned within the applicable time period, the court should consider the following factors along with any other relevant evidence:

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(i)a. Whether the parent or legal guardian has consistently and regularly contacted and visited the child;

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(i)b. Whether the parent or legal guardian has made significant progress in resolving the problems that led to the removal of the child; and

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(i)c. Whether the parent or legal guardian has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child's safety, protection, physical and emotional health, and special needs.

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(2) ***

Rule 5.710 of the California Rules of Court would be amended, effective January 1, 2011, to read:

1 (d) ***

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3 (e) Extending services (§ 366.215)

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5 If the child was under three years of age on the date of the initial removal or
6 is a member of a sibling group as described in section 361.5(a)(1)(C), the
7 court, in determining whether court-ordered services may be extended to the
8 12-month point, must take into account any particular barriers to a parent's
9 ability to maintain contact with his or her child due to the parent's
10 incarceration or institutionalization. The court may also consider, among
11 other factors, whether the parent has made good faith efforts to maintain
12 contact with the child and any barriers to the parent's access to services.
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Welfare and Institutions Code section 366.215

With respect to a hearing held pursuant to subdivision (e) of Section 366.21, if the child in question was under three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, the court, in determining whether to schedule a hearing pursuant to Section 366.26, shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization.

Item SPR10-36 Response Form

Title: **Juvenile Law: Consideration of Parent's Incarceration or Institutionalization in Extending Services** (amend Cal. Rules of Court, rule 5.710)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.