



Judicial Council of California

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INVITATION TO COMMENT

W24-____

Title

Criminal Law and Family Law: Changes to Form MIL-100 Under Senate Bill 1182

Action Requested

Review and submit comments by January 2024

Proposed Rules, Forms, Standards, or Statutes

Revise form MIL-100

Proposed Effective Date

September 1, 2024

Proposed by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair
Hon. Lisa Rodriguez, Vice Chair

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Family and Juvenile Law Advisory Committee

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Executive Summary and Origin

Effective September 1, 2024, the Family and Juvenile Law Advisory Committee proposes revising one form to implement the requirements of Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). The proposed changes would allow the court to comply with section 211.5 when the form is submitted in a family law case involving a person who is military, veteran, reserve, or active status. The Criminal Law Advisory Committee proposes revising the same form to clarify procedures when the form is submitted in a criminal law case under Penal Code section 858, and reference treatment options for pretrial diversion under Penal Code section 1001.80.

Background

SB 1182 added section 211.5 to the Family Code to provide the following:

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

(a)(1) Commencing January 1, 2024, in proceedings under this code, a court shall provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs.

(2) The veteran may, at their discretion, provide the information about their veteran status on the Judicial Council military service form, file the form with the court, and serve it on the other parties to the action.

(b)(1) When a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs.

(2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.

(c) On or before January 1, 2024, the Judicial Council may amend or develop the rules and forms necessary to implement this section.

SB 1182 also added subdivision (d) to Family Code section 3040:

(d)(1) Commencing January 1, 2024, if a court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child under subdivision (a), the court shall do both of the following:

(A) Provide the parent, legal guardian, or relative with a list of local resources for mental health treatment.

(B) State its reasons for the finding in writing or on the record.

(2) This subdivision does not relieve a court from ensuring that the health, safety, and welfare of the child is the court's primary concern in determining the best interests of children when making any order regarding the physical or legal custody, or visitation, of the child.

The Proposal

Notification of Military/Veteran/Reserve/Active Status (form MIL-100) is an optional form that the Judicial Council adopted, effective January 1, 2014, as recommended by the Collaborative Justice Courts Advisory Committee. Its purpose is to inform the court that a party is a current or former member of the armed services or reserves, so that courts may address legal issues when military status is relevant, comply with sentencing requirements under the Penal Code, if relevant, and identify when outside resources are available to military and former military court

users.¹ This form has been revised three times since its adoption to comply with changes in the law; most recently, effective January 1, 2021.²

This form would be revised to include the following:

- A revised item 3 for the person completing the form to specify the type of case (a criminal law, family law, or another type of case) and the identity of the person completing the form;
- A reformatted notice box at the bottom of the form to specify the requirements for sending the form to veteran agencies when the form is submitted in a criminal law or family law case;
- A reference to Family Code sections 211.5 in the footer and second page;
- A reference to pretrial diversion offering treatment as an alternative to trial, conviction, and incarceration under Penal Code section 1001.80; and
- Reorganization and reformatting of the information on page two to make the form easier to read.

Notice requirements under Family Code section 211.5

Under section 211(b), “[w]hen a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs. (2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.” The committee proposes that the notice box include a new check box titled “Family Law Case,” and that it be written in plain language like the criminal law notice rather than use the exact language of the statute. Because the legislative history of SB 1182 uses the term “Department of Veterans Affairs (CalVet),” the committee proposes that the notice box include this same reference to “(CalVet).” The family law notice would read as follows:

This form is being submitted by a veteran in a family law case. The court will send a copy of the form to the California Department of Veterans Affairs (CalVet). CalVet will, within a reasonable time, contact the person using the information provided in the form.

Requirements under Penal Code section 858

Penal Code section 858 contemplates that the defendant or defendant’s counsel, with the defendant’s consent, would file form MIL-100.³ Accordingly, the Criminal Law Advisory

¹ The Judicial Council report regarding the form adopted effective January 1, 2015, may be found at: <https://www.courts.ca.gov/documents/jc-20141212-itemA2.pdf>.

² The Judicial Council report regarding revisions to form MIL-100, effective January 1, 2021, may be found at <https://jcc.legistar.com/View.ashx?M=F&ID=8771183&GUID=20C61B6B-54AB-434A-9EE2-41FADF6632AD>.

³ “The court shall advise the defendant that the defendant should consult with counsel prior to submitting the form and that the defendant may, without penalty, decline to provide this information to the court.” (Pen. Code, § 858(d);

Committee recommends specifying in item 3 that in a criminal case, either the defendant or defendant's counsel is filing the form.

In a criminal case, the court is required to send a copy of the form to the county veterans service officer to confirm the defendant's military service. (Pen. Code, § 858(e).) However, the current form does not mention this confirmation requirement. To better communicate this requirement, the committee recommends revising the form to state that the court will send a copy of the form to the county veteran's service office "to confirm the person's military status."

In criminal and family law cases, courts are required to send a copy of the form to the Department of Veterans Affairs. (Pen. Code, § 858(e); Fam. Code, § 211.5.) The form includes a notice box about this requirement. As noted, the Family and Juvenile Law Advisory Committee recommends using the term "Department of Veterans Affairs (CalVet)" in the family law notice due to the legislative history of SB 1182. The legislative history behind Senate Bill 1110 (Stats. 2014, ch. 655), which enacted Penal Code section 858, does not state whether "Department of Veterans Affairs" refers to the state or federal department.

However, in Penal Code section 1170.9, which addresses considerations for the court when sentencing a defendant with military-related health conditions and is cross-referenced in Penal Code section 858, the state department is referred to as the "Department of Veterans Affairs" while the federal department is referred to as the "United States Department of Veterans Affairs." (See Pen. Code, § 1170.9(g) ["The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran."].) Based on these references to the state Department of Veterans Affairs in the Penal Code and Family Code, the committee recommends using "Department of Veterans Affairs (CalVet)" in the criminal law notice to include the shorthand term for the state department.

Other changes

As listed above, the committees propose that page two of the form be reorganized and reformatted so that the content is easier to read. To this end, the "Noncriminal cases" and "Criminal cases" content would be reformatted in two side-by-side columns below an introductory paragraph and above a section that lists and describes the applicable statutes. The proposed content changes would be under the "Noncriminal cases" column and in the section that lists relevant statutes. Specifically, (1) the "Noncriminal cases" content would begin with a sentence that helps the reader understand that noncriminal cases are those that take place in other courts, such as civil, family, and juvenile court, and (2) Family Code section 211.5 would be added among the list of Penal Code sections that appear on the form, along with a brief description of relief available under that statute.

"If the defendant acknowledges active duty or veteran status and submits the Judicial Council military service form to the court, the defendant shall file the form with the court and serve the form on the prosecuting attorney and defense counsel." (Pen. Code, § 858(e).)

Alternatives Considered

Rule and form proposal

The Family and Juvenile Law Advisory Committee considered not proposing changes to any family law rules or forms because SB 1182 does not specifically mandate that the Judicial Council take any action to implement the changes to either Family Code section 211.5 or 3040. Further, section 3040 does not require that the Judicial Council amend forms or rules but does require that a court take certain actions if it makes a finding under subdivision (d).

The committee also considered revising *Child Custody and Visitation (Parenting Time) Order Attachment* (form FL-341) to incorporate the requirements of Family Code section 3040(d) to indicate that the court made a finding that the effects of a parent's, legal guardian's, or relative's history of, or current, mental illness are a factor in determining the best interest of the child. The new item would have included an instruction that if the finding is made, the court must (A) provide the parent, legal guardian, or relative with a list of local resources for mental health treatment, and (B) state its reasons for the finding in writing or on the record.

Because providing a standard entry on an order form could potentially reveal confidential information about a party's clinical diagnosis of a mental health disorder, or other medical information, the committee ultimately decided not to pursue the option of revising the standard child custody and visitation order form.

The committee also considered whether to propose that the Judicial Council adopt a new rule of court to include the requirements of section 3040(d) and a specific item to note that the court, in stating its reasons on the record or in writing, must protect confidential information about a party's mental health diagnosis, treatment, or other medical information in accordance with existing federal and state law.

However, the Legislature did not mandate that the Judicial Council adopt a rule or form to implement Family Code section 3040(d). Further, the Legislature did not address the high potential that family court files would contain declarations, medical and mental health records, and other confidential information about a party in these cases. Because the authority to declare specific court filings or information confidential rests with the Legislature, the committee decided not to include a proposed rule with the proposal but to address the issue through judicial education.

Consultation with the Collaborative Justice Courts Advisory Committee

As to form MIL-100, the committees decided to consult with the Collaborative Justice Courts Advisory Committee, as they originally developed and modified it over the years. They reviewed the proposed new content, as well as the changes proposed to the second page, which were developed with the help of attorneys who staff the committee and who are familiar with the form. This collaboration produced a form that would comply with the relevant law and provide a

better user experience by reorganizing and reformatting the instructions and information on the second page.

Local resource list

The committee also considered whether to propose developing the list of local resources for mental health treatment but decided that the local veterans service office or the superior courts, not the Judicial Council, would be in the best position to create the local resources list that is described in the statutes.

Circulation period

The Family and Juvenile Law Advisory Committee originally considered circulating this proposal in the regular Spring 2023 rules cycle. However, the committee decided that the Criminal Law Advisory Committee needed to provide input on form MIL-100, so that it would comply with the requirements of Penal Code section 858. To allow time for the committee to consider changes to form MIL-100 in a joint proposal, the Family and Juvenile Law Advisory Committee withdrew the invitation to comment from the SPR23 rules cycle.

The Criminal Law Advisory Committee considered waiting for a future proposal cycle to revise form MIL-100, but decided it was efficient to clarify criminal procedures while the form was undergoing family law-related revisions. Thus, the committee submitted its recommendations to the Family and Juvenile Advisory Committee in June 2023.

After reviewing their recommendations, the Family and Juvenile Law Advisory Committee decided to recommend that the Rules Committee approve circulating the proposal in the following Winter 2024 cycle. Because the proposed form would not take effect until September 1, 2024, if circulated in the winter cycle, the committee further recommended that the Center for Families, Children & the Courts issue a Memorandum to Presiding Judges and Court Executive Officers of the Superior Courts to inform them about the obligations their courts have under SB 1182, effective January 1, 2024.

Fiscal and Operational Impacts

The impact to the courts includes the cost to educate judicial officers and court staff about the changes in the law and procedures to implement the law. Courts may also need to adopt local forms or attachments to implement Family Code section 3040(d), update their case management systems, and create new docket codes. In addition, court clerks would be required to take additional steps to send copies of form MIL-100 to the California Department of Veterans Affairs (CalVet) in family law cases, and courts would be required to provide the parties with a list of local resources for mental health treatment.

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?

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 three 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. Form MIL-100, at pages 8–9
2. Link to current form MIL-100, <https://www.courts.ca.gov/documents/mil100.pdf>
3. Link A: Senate Bill 1182, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1182

PERSON COMPLETING THIS FORM: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: STATE BAR NUMBER (IF APPLICABLE):	FOR COURT USE ONLY DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL v. 9/14/2023
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY/VETERAN/RESERVE/ACTIVE STATUS	CASE NUMBER:

1. This form is about (name): _____ who is a party in this case.

2. The person listed in item 1 is:

- a. A current member of the state or federal armed services or reserves.
- b. A veteran of the state or federal armed services or reserves.
 Discharge date (specify if applicable): _____

3. This is a (specify type of case and identify the person completing this form):

- a. Criminal law case.
 I am (check one): the person listed in item 1. an attorney representing the person listed in item 1 in the above entitled case.
- b. Family law case.
 I am (check one): the person listed in item 1. an attorney in the above entitled case.
 other (specify): _____
- c. Other Civil law case (specify): _____
 I am (check one): the person listed in item 1. an attorney in the above entitled case.
 other (specify): _____

I am providing this notification to the court based on information and belief.

Date:

 (TYPE OR PRINT NAME OF PERSON FILING THIS FORM)

 (SIGNATURE)

Notice

Criminal Law Case

If this form is submitted in a criminal law case, the court will send a copy of the form to the county veterans service officer to confirm the person's military status and the Department of Veterans Affairs (CalVet).

Local County Veterans Services Office Information (to be provided by local court):

Family Law Case

If this form is submitted in a family law case, the court will send a copy of the form to the Department of Veterans Affairs (CalVet).

The Department of Veterans Affairs (CalVet) will, in a reasonable time, contact the person using the information provided in this form.

No Filing Fee

No filing fee or court costs are to be charged for this form.

YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law. Filling out form MIL-100 is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. The MIL-100 only needs to be filled out with the court one time per case.

NONCRIMINAL CASES

Noncriminal cases are cases filed in other courts, such as civil, family, or juvenile court.

If you are a party to a noncriminal case be sure to complete all the appropriate forms needed for your case. For example, filing this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Examples of required forms are:

- (1) *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010); and
- (2) *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

CRIMINAL CASES

If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law.

Some examples of benefits of a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restoration relief such as sealing your record, and diversion in misdemeanor cases.

If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.

Below is a brief description of possible rights and protections under the following California laws:

Family Code section 211.5

- Filing this form in a family law case may help you receive information from CalVet and learn about available mental health resources.

Penal Code section 1001.80

- Pretrial diversion program offering treatment instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program.

Penal Code section 1170.9

- Treatment instead of prison or jail time for certain crimes;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered.

Penal Code section 1170.91

- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.