Item number: 01

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 08/19/2021

Title of proposal: Appellate Procedure: Electronic Signatures

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 8.70 and 8.75

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: 11/02/2020
Project description from annual agenda: Amend rule 8.75 to allow electronic signatures on documents requiring signatures of multiple parties. Rule 8.75(c) currently requires the filer to obtain opposing counsel's original signature on a printed form of the document or in the form of a copy of the signed signature page, maintain the original signed document or copies of signed signature pages, and make them available for inspection and copying upon request. Trial court rule 2.257 was recently amended to permit electronic signatures in certain situations; this may provide a starting point for amending the appellate rule. This is a priority 1 rules modernization project because it will increase access to justice, promote efficiency among stipulating parties, further consistency in the rules, and reduce unnecessary transmission of paper documents during the pandemic. Origin: appellate attorney in private practice

Also amend rule 8.70 (application, construction, and definitions) to correct non-substantive issues and noncontroversial substantive issues including redundancy, a typographical error, and non-parallel sentence structure. Although this is a priority 2 item on the committee's current annual agenda, it would promote efficiency and reduce amendment processing costs to amend this electronic filing rule at the same time as rule 8.75.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 30–October 1, 2021

Title
Appellate Procedure: Electronic Signatures

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 8.70 and 8.75

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 16, 2021

Contact
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Executive Summary

The Appellate Advisory Committee recommends amending two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The trial court electronic filing rules have been amended several times recently, including to allow electronic signatures. Several similar amendments for the parallel appellate rules are now being proposed to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The rules would be amended to authorize the use of electronic signatures on electronic documents filed with the court, add new definitions, update several existing definitions, improve clarity, and eliminate redundancies.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2022:

1. Amend rule 8.70 of the California Rules of Court to clarify several definitions, add two new definitions, and add advisory committee comments for further clarification.

2. Amend rule 8.75 to add provisions for using electronic signatures on documents filed with the court and add advisory committee comments for clarification.

The text of the amended rules is attached at pages 9–13.

Relevant Previous Council Action

Rules 8.70 to 8.79,[1] the appellate e-filing rules, were adopted effective July 1, 2010. The rules were renumbered and amended effective January 1, 2017, to eliminate conflicts that had developed between appellate court local rules and the rules of court, and to provide consistency in the e-filing practices of the Courts of Appeal where consistency was desirable. At that time, the Supreme Court had not yet adopted e-filing. Rule 8.70 was amended to remove references to e-filing pilot projects; rule 8.75, previously rule 8.77, was renumbered.

The trial court e-filing rules, which fall within the purview of the Information Technology Advisory Committee (ITAC), have been amended several times recently. Effective January 1, 2018, rule 2.250, the trial court rule containing e-filing definitions, was amended to conform to Judicial Council–sponsored amendments to Code of Civil Procedure section 1010.6. Effective January 1, 2019, new e-filing definitions were added and others were replaced by reference to statute.

Effective January 1, 2018, the Judicial Council amended rule 2.257, the trial court rule governing requirements for signatures on documents, to add a provision for electronic signatures as authorized in amended Code of Civil Procedure section 1010.6. Rule 2.257 was further amended effective January 1, 2019, to add a definition of "electronic signature" and authorize the use of electronic signatures on documents signed under penalty of perjury. One year later, effective January 1, 2020, rule 2.257 was amended again to authorize using an electronic signature for a document signed under penalty of perjury when the declarant is not the filer. The option to use electronic signatures was also added for documents not signed under penalty of perjury, including stipulations and other documents requiring multiple signatures.

Analysis/Rationale

Appellate rule 8.70 defines terms used in the electronic filing rules; rule 8.75 governs signatures on documents filed with the court. The parallel trial court rules are rule 2.250 and 2.257. Unlike trial court rule 2.257, appellate rule 8.75 does not provide for use of electronic signatures on electronically filed documents. The proposal would update rule 8.75 by making changes similar to the recent amendments to rule 2.257. The committee recommends adoption of these proposed amendments to enable litigants to use electronic signatures and bring the rule into conformity with current e-filing practices.

[1] All rule references are to the California Rules of Court unless otherwise noted.

Definitions of "electronic signature" and "secure electronic signature"

The proposal adds definitions for new terms "electronic signature" and "secure electronic signature" to rule 8.70. The definition of "electronic signature" is identical to the definition in trial court rule 2.257: "An 'electronic signature' is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means." This language is modeled on definitions used in the Uniform Electronic Transactions Act, Civil Code sections 1633.1–1633.17, specifically Civil Code section 1633.2(g) and (h). Unlike the trial court rules, which include the definition of an electronic signature in the rule on requirements for signatures on documents (rule 2.257(a)), the proposal places the new definition in rule 8.70(c) with other definitions of terms used in the appellate electronic filing rules.

The term "secure electronic signature" was added to the rule based on public comments noting that the term "electronic signature" in the proposal that circulated was used to describe two different things: (1) the electronic signature described above, and (2) an electronic signature with heightened security features that is required for certain types of documents. Under rule 2.257, declarations signed under penalty of perjury where the declarant is not the electronic filer and documents signed by multiple individuals—such as stipulations—must be signed with an electronic signature that is "unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated." This language is based on several provisions of a "digital signature" as defined in Government Code section 16.5.

The comments suggested using a separate term for this more restricted electronic signature to clarify the difference between the two types and streamline rule 8.75. Although it is a departure from the trial court rule, the committee concluded that these modifications would improve the rule without substantively changing any procedures or creating conflict with the trial court rules. Therefore, the committee recommends adding the definition of "secure electronic signature" to rule 8.70(c) and using that term in rule 8.75. Also based on comments seeking clarification, the proposal includes new advisory committee comments providing information on the source of both definitions.

Amendments to rule 8.70

The proposal makes other amendments that largely mirror the parallel trial court rule containing definitions of electronic filing terms, rule 2.250(c). The proposal:

- Amends and reorganizes the definition of "document" to avoid using the word "document" in the definition, maintain internal consistency by referring to "any writing" rather than "any filing,"[2] and maintain parallel structure with the rest of the subdivision.

[2] The change from "any *filing* submitted to the reviewing court" to "any *writing* . . ." is also intended to reflect that a document includes a submission to the reviewing court that is not filed, such as a document that is lodged.

- Amends the definition of "electronic filing" to clarify that it refers to the action of filing by the filer and does not include the steps taken by the court upon receipt of the document.

- Amends definitions for "electronic service," "electronic filer," and "electronic filing service provider" to include nonparties in provisions related to electronic filing and service. Although less common than in trial court proceedings, there are instances in which electronic filing and service by or upon nonparties takes place in appellate proceedings. The amendments add "or other person" to account for others who may be involved in a case but are not parties.

- Makes minor changes to improve clarity and accuracy.

Rule 8.75

The proposal adds procedures for using electronic signatures in addition to the existing provisions for using original ink signatures on a hard copy or copies of a signed signature page. The amendments provide that an electronically filed document signed under penalty of perjury is deemed to have been signed by the declarant if (1) the declarant has signed using an electronic signature (or a secure electronic signature if the declarant is not the electronic filer) and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct, or (2) the physically signed printed document is available for inspection and copying.

For documents not signed under penalty of perjury, the document is deemed signed by the electronic filer. If the document requires the signatures of multiple persons, the document is deemed to have been signed by those persons if they have signed using a secure electronic signature or the physically signed printed document is available for inspection and copying. Except for use of the term "secure electronic signature," these procedures are the same as those in the trial court rules.

Mirroring amendments to the trial court rule, the proposal deletes a separate subdivision for documents that require multiple signatures. Current rule 8.75 is organized to address documents that are signed under penalty of perjury, documents that are not signed under penalty of perjury, and documents that require multiple signatures. Documents that require multiple signatures are not signed under penalty of perjury and can be addressed as part of that category. Also mirroring the trial court rule, the proposal adds an advisory committee comment providing that "[t]he requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature."

Policy implications

This proposal fosters modern e-business practices, promotes consistency in the rules and efficiency among stipulating parties, and reduces unnecessary transmission of paper documents, all of which are consistent with the Judicial Council's goal of improving access to justice.

Comments

The proposed amended rules were circulated for public comment between April 15 and May 27, 2021, as part of the regular spring comment cycle. The committee received nine comments on this proposal. Six commenters, the California Department of Child Support Services, the Child Support Directors Association, a private law firm, the Orange County Bar Association (OCBA), the Superior Court of San Diego County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS), agreed with the proposal. The California Academy of Appellate Lawyers (CAAL); the California Lawyers Association Committee on Appellate Courts, Litigation Section (CAC); and the Court of Appeal, Third Appellate District (Third District) agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 14–36.

The comments unanimously support authorizing electronic signatures. The child support services organizations both described the positive impact these changes would have on their programs. The JRS noted that the proposal may result in cost savings for litigants who spend substantial time securing appropriate original signatures. A number of commenters also submitted suggestions for clarifying and simplifying the rules. In addressing the comments, the committee sought to balance the goals of maintaining consistency with the trial court rules and updating the appellate rules to be clear, easy to apply, and to reflect current e-filing practice. Accordingly, the committee recommends making several modifications that would not create a conflict with the parallel trial court rules. Other suggestions that would change procedures or create substantial differences between the trial court and appellate court rules would best be considered jointly with ITAC to maintain consistency in the rules. The committee will share these suggestions with ITAC for discussion regarding a potential joint project.

Types of electronic signature

As noted above, the committee received comments pointing out that the proposed amendments used the term "electronic signature" to describe two different types of electronic signature, one with heightened security features. The committee recommends using the term "secure electronic signature" for the more restricted type, defining it in rule 8.70 and using it in rule 8.75. The proposal also adds advisory committee comments that provide information on the source of the terms "electronic signature" and "secure electronic signature."

Commenters questioned the language in existing rule 8.75 that referenced digital signatures without explaining that they are defined in Government Code section 16.5 and instead simply indicated they are not required. The committee agreed that the existing subdivision regarding digital signatures is confusing and recommends deleting it. Although these modifications are a departure from the trial court rule, the clarification they would provide is significant.

Electronic signature requirements satisfied by electronic filing

To address concerns regarding whether an electronically filed document complies with the rule's electronic signature requirements, one commenter suggested including a provision identical to rule 8 of the Supreme Court Rules Regarding Electronic Filing. That rule provides that "[u]se of

a registered TrueFiling user's username and password to electronically file a document is the equivalent of placing the registered user's electronic signature on the document." The committee declined to add such a provision, concluding that such an addition would, in part, be duplicative of rule 8.75(c)(1), which provides that a document not signed under penalty of perjury is deemed signed by the electronic filer. At the same time, it would be inaccurate as to documents signed under penalty of perjury under (b)(1) and documents with multiple signatures under (c)(2), because—as recommended in the proposal—these documents require the placement of a signature on the document: either an electronic or secure electronic signature or a physically signed printed document available for inspection and copying.

Request for specific comments

The invitation to comment included a request for specific comments on a procedure in rule 8.75 related to documents requiring the signatures of multiple parties. Specifically, the rule provides that such a document is deemed to have been signed by those persons if filed electronically and the filer has obtained all the signatures either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page. The filer must maintain the original signed document and any copies of signed signature pages and make them available for inspection and copying upon demand. Based on the concerns of several committee members that this procedure involving manual signatures and hard copies is outdated, the invitation to comment requested feedback on whether the procedure comports with current practice.

The OCBA expressed the same sentiment, writing that "[c]urrent practice regarding such documents is often for the parties' counsel to email each other regarding a stipulation. Once the parties' counsel agree to the substance and language of the stipulation, the filing party's counsel will inquire whether he/she has permission from the opposing party's counsel to 'electronically sign' on the opposing counsel's behalf. Opposing counsel will respond via email confirming the filing party's counsel has permission. The filing party's counsel will then use a simple '/s/ Opposing Counsel' on the signature line, representing to the Court that both parties' counsel have agreed to the stipulation." Other comments endorsed the current procedure. The committee concluded that, to maintain similar procedures in both trial courts and appellate courts, no change to the provision as circulated should be made at this time. The committee will retain the OCBA's suggestion for consideration with ITAC at a future time.

Other comments

The committee received several additional suggestions to modify definitions, provide more information to clarify terms, simplify procedures, and reorganize rule 8.75. The committee recommends that these suggestions be considered jointly with ITAC in the future to maintain consistency between trial court and appellate court rules where appropriate. The suggestions include:

- Reorganizing rule 8.75 based on what type of electronic signature is required, i.e., documents requiring a "secure electronic signature" and all other documents that may be

signed with an "electronic signature." Currently, the rule is organized based on whether a document must be signed under penalty of perjury.

- Clarifying the definition of "electronic signature" to explain technical terms and omit reference to an "electronic sound."

- Modifying the requirement that a secure electronic signature must be under the "sole control" of the declarant and instead require that the declarant have "sole authority" over it. The change would facilitate implementation, as many attorneys give signing authority to other attorneys on a case or to staff, and many litigants give their attorneys signing authority.

- Expanding advisory committee comments to provide guidance on what forms of electronic signature satisfy the requirements.

- Removing the requirement for a secure electronic signature on documents with multiple signatures because it is unnecessary. Instead, require the filer to attest that all signatories have approved the content and authorized the filing. The signatories will receive copies through TrueFiling and can contest a document purporting to have the authorization of an attorney who has not authorized the filing.

Alternatives considered

Because the appellate electronic filing rules had fallen out of date and did not include the option to use electronic signatures, the committee did not consider the alternative of taking no action.

The committee considered maintaining strict consistency with the trial court rules, but concluded that adding a new term for the more restricted type of electronic signature and deleting the provision regarding digital signatures were significant improvements to the rules and do not create conflicts or confusion between appellate and trial court rules.

Fiscal and Operational Impacts

The proposal authorizes the use of electronic signatures on documents filed with the court. Implementation would include training for court staff and incorporating the information into court procedures, but the impacts would be minimal. There is also a potential for impact to automated systems in adapting/modifying existing configurations.

Attachments and Links

1. Cal. Rules of Court, rules 8.70 and 8.75, at pages 8–12
2. Chart of comments, at pages 13–35

Rules 8.70 and 8.75 of the California Rules of Court are amended, effective January 1, 2022, to read:

Rule 8.70. Application, construction, and definitions

(a) Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and the Courts of Appeal.

(b) Construction

The rules in this article must be construed to authorize and permit filing and service by electronic means to the extent feasible.

(c) Definitions

As used in this article, unless the context otherwise requires:

(1) "The court" means the Supreme Court or a Court of Appeal.

(2) A "document" is~~:~~

~~(A)~~ any ~~filing~~ writing submitted to the reviewing court by a party or other person, including a brief, a petition, an appendix, or a motion~~;~~.

~~(B)~~ ~~Any~~ A document is also any writing transmitted by a trial court to the reviewing court, including a notice or a clerk's or reporter's transcript~~;~~, and

~~(C)~~ any writing prepared by the reviewing court, including an opinion, an order, or a notice.

~~(D)~~ A document may be in paper or electronic form.

(3) "Electronic service" is service of a document on a party or other person by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person including the party~~'s~~ or other person's attorney, through an electronic filing service provider, or by a court.

(4) "Electronic transmission" means the ~~transmission~~ sending of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(5) "Electronic notification" means the notification of a party or other person that a document is served by sending an electronic message to the electronic service address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served and providing a hyperlink at which the served document can be viewed and downloaded.

(6) "Electronic service address" ~~of a party~~ means the electronic address at or through which ~~the~~ a party or other person has authorized electronic service.

(7) An "electronic filer" is a ~~party~~ person filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.

(8) "Electronic filing" is the electronic transmission to a court of a document in electronic form for filing. Electronic filing refers to the activity of filing by the electronic filer and does not include the court's actions upon receipt of the document for filing, including processing and review of the document and its entry into the court's records.

(9) An "electronic filing service provider" is a person or entity that receives an electronic ~~filing~~ document from a party or other person for retransmission to the court or for electronic service on other parties, or both. In ~~submission of~~ submitting electronic filings, the electronic filing service provider does so on behalf of the electronic filer and not as an agent of the court.

(10) An "electronic signature" is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.

(11) A "secure electronic signature" is a type of electronic signature that is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data in such a manner that if the data are changed, the electronic signature is invalidated.

Advisory Committee Comment

Subdivision (c)(3). The definition of "electronic service" has been amended to provide that a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded. This amendment is intended to ~~modify the rules on electronic service to~~ expressly

authorize electronic notification as ~~a legally effective~~ an alternative means of service ~~to electronic transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc*. (2009) 170 Cal.App.4th 1129, which interpreted the rules as authorizing only electronic transmission as ~~the only~~ an effective means of electronic service.

Subdivision (c)(10). The definition of electronic signature is based on the definition in the Uniform Electronic Transactions Act, Civil Code section 1633.2.

Subdivision (c)(11). The definition of secure electronic signature is based on the first four requirements of a "digital signature" set forth in Government Code section 16.5(a), specifically the requirements stated in section 16.5(a)(1)–(4). The section 16.5(a)(5) requirement of conformance to regulations adopted by the Secretary of State does not apply to secure electronic signatures.

Rule 8.75. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

~~If~~ When a document ~~to be filed electronically~~ must be signed under penalty of perjury, the ~~following procedure applies~~ document is deemed to have been signed by the declarant if filed electronically, provided that either of the following conditions is satisfied:

(1) ~~The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.~~ The declarant has signed the document using an electronic signature (or a secure electronic signature if the declarant is not the electronic filer) and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct; or

(2) The declarant, before filing, has physically signed a printed form of the document. By electronically filing the document, the electronic filer certifies that ~~(1) has been complied with and that~~ the original signed document is available for inspection and copying at the request of the court or any other party. In the event this second method of submitting documents electronically under penalty of perjury is used, the following conditions apply:

~~(3)~~(A) At any time after the electronic version of the document is filed, any other party may serve a demand for production of the original

signed document. The demand must be served on all other parties but need not be filed with the court.

~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

~~(5)~~(C) At any time after the electronic version of the document is filed, the court may order the ~~filing party~~ electronic filer to produce the original signed document ~~in court~~ for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

(1) If a document does not require a signature under penalty of perjury, the document is deemed signed by the ~~party if the document is filed electronically~~ electronic filer.

~~(c) Documents requiring signatures of multiple parties~~

(2) When a document to be filed electronically, such as a stipulation, requires the signatures of multiple ~~parties~~ persons, ~~the following procedure applies~~ the document is deemed to have been signed by those persons if filed electronically, provided that either of the following procedures is satisfied:

~~(1)~~(A) ~~The party filing the document must obtain the signatures of all parties either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document. By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signatures of all parties in a form permitted by this rule in his or her possession.~~ The parties or other persons have signed the document using a secure electronic signature; or

~~(2)~~(B) ~~The party filing the document must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document and any copies of signed signature pages in the manner provided in (a)(3)–(5).~~ The electronic filer has obtained all the signatures either in the form of an original signature on a printed form

of the document or in the form of a copy of the signed signature page of the document. The electronic filer must maintain the original signed document and any copies of signed signature pages and must make them available for inspection and copying as provided in (a)(2)(B). The court and any party may demand production of the original signed document and any copies of the signed signature pages as provided in (a)(2)(A)–(C). By electronically filing the document, the electronic filer indicates that all persons whose signatures appear on it have signed the document and that the filer has possession of the signatures of all those persons in a form permitted by this rule.

~~**(d) Digital signature**~~

~~A party is not required to use a digital signature on an electronically filed document.~~

~~(e)~~(c) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

Advisory Committee Comment

The requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Draft Committee Response
1.	California Academy of Appellate Lawyers By Rochelle Wilcox Chair, Rules Committee	AM	The California Academy of Appellate Lawyers (CAAL) is an election-only organization of approximately 100 members devoted to excellence in appellate practice. The CAAL has active committees devoted to amicus curiae participation and input on appellate rule changes, and seeks to improve appellate practice and access to justice in the California appellate courts.	The committee thanks the commenter for submitting this feedback.
			The CAAL supports proposal SPR21-01 and agrees that the option to use electronic signatures provides litigants with a potentially faster and more convenient way to obtain needed signatures on documents to be filed in the appellate courts, which is important and relevant during the coronavirus pandemic and in the future event of similar public emergencies.	The committee notes the commenter's support for the proposal.
			The CAAL also supports the goal of updating the rules governing electronic signatures in the appellate courts to provide clarity and consistency with the trial court rules. However, the CAAL is concerned that the incorporation of the definition of an "electronic signature" that is currently used in the trial court rules will be potentially confusing to appellate practitioners. For example, an appellate practitioner lacking a technical background will be unlikely to understand what is meant by rule 8.70(c)(10)'s definition of an " 'electronic signature' " as "an electronic sound, symbol, or process attached to or logically associated with an electronic record"—even if that definition is consistent	The committee notes the commenter's concern with technical language in several proposed amendments to the rules. As indicated in the invitation to comment, the language is based on recent amendments to the trial court rules and the statutory sources are cited in advisory committee comments. One goal of the rules modernization project has been to maintain consistency between the trial court rules and the appellate rules to the extent it is appropriate. The committee is unaware of any problems trial court practitioners have experienced with these terms and concluded that no changes should be made to the appellate rules at this time. However, the committee agrees that simplified language or more explanation could be

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			with some industry standard. Nor will the average practitioner understand what is meant by rule 8.75(a)(1)'s proposed requirement that "the electronic signature must be . . . linked to data such that, if the data are changed, the electronic signature is invalid." (See also proposed rule 8.75(b)(2)(B) [containing similar language].) Adding further confusion is rule 8.75(c)'s statement that a "party or other person is not required to use a digital signature on an electronically filed document." A new proposed Advisory Committee Comment to rule 8.75 suggests there is some difference between an "electronic signature" and a "digital signature," but fails to explain what that difference is. The CAAL recommends that the Advisory Committee Comments be expanded to provide non-technical guidance on what satisfies the newly added electronic signature definition. For example, does the insertion into a document of an image of a person's signature comply with the rule? Does the "/s/ [attorney name]" method used for electronic federal court filings comply? Must an attorney use one of the "secure electronic signature internet services" referenced in the proposal to comply? What is meant by the requirement that the electronic signature be "linked to data such that, if the data are changed, the electronic signature is invalid"? And how is an "electronic" signature different than a "digital" signature? A practitioner reading the rule should not be obliged to search the internet or do other research in order to	helpful and will retain these comments for future consideration as to both trial court and appellate court rules with Information Technology Advisory Committee (ITAC). The committee agrees and has deleted the subdivision regarding digital signatures. As stated above, the committee agrees that more guidance may be helpful, but any such guidance should be developed for both trial court and appellate court rules. The committee will retain these suggestions for consideration in a potential future project with ITAC to examine both sets of rules and develop recommendations jointly.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			understand these requirements and what is intended or permitted. The Advisory Committee Comments should either directly address these questions, or refer practitioners to a source (or sources) containing the answers. The CAAL notes that Rule 8 of the Supreme Court Rules Regarding Electronic Filing currently provides that "[u]se of a registered TrueFiling user's username and password to electronically file a document is the equivalent of placing the registered user's electronic signature on the document." The CAAL recommends that an identical provision be included with the other amendments to rule 8.75. Such inclusion would provide assurance to practitioners that, regardless of their understanding of the rule's other technical requirements, a document filed through the TrueFiling system will be in compliance with the rule's electronic signature requirements. The CAAL offers two other minor suggestions: 1. Rule 8.75(b)(2) pertains to documents that require the signatures of multiple parties. To preserve parallelism, subdivision (b)(2)(B) might be modified as follows: The party parties or other person persons has have signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.	 The committee disagrees with adding a provision identical to Rule 8. The committee concluded that such an addition would, in part, be duplicative of rule 8.75(c)(1), which provides that a document not signed under penalty of perjury is deemed signed by the electronic filer. At the same time, it would be inaccurate as to documents signed under penalty of perjury under (b)(1) and documents with multiple signatures under (c)(2), because—as recommended in the proposal—these documents require the placement of a signature on the document: either an electronic or secure electronic signature or an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document. The committee agrees and has made this change.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			2. Page 2 of proposal SPR21-01 refers to the definitions in "rule 2.250(c)," but likely intended to cite rule 2.250(b), as that rule has no subdivision (c).	The committee regrets this error.
3.	California Department of Child Support Services By John Ziegler Attorney III	A	The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Below please find specific feedback regarding provisions of the rules with potential impacts to the Department and its stakeholders. REQUEST FOR SPECIFIC COMMENTS: 1) Does the proposal appropriately address the stated purpose? Please see the general comment, below. 2) Should the definition of "electronic signature" be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)? Please see the general comment, below. 3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided. If yes, please describe. See general comment, below. GENERAL COMMENTS: The proposal appropriately addresses the stated purpose and would positively impact the	The committee appreciates the commenter's feedback on this proposal. The committee notes the commenter's support for the proposal and appreciates the specific feedback

	Commenter	Position	Comment	Draft Committee Response
			statewide child support program. First, by allowing electronic signatures on documents filed electronically in the appellate courts, the proposal recognizes the increased viability of electronic signatures in an era where business practices have increasingly become remote, and the physical presence of the signatories is less common, and often discouraged. This viability is particularly enhanced in appellate matters where there are more than two parties, as is frequently the case with child support-related appeals. Second, with the exception of certain organizational differences, the proposed changes to rules 8.70 and 8.75 align them with the parallel trial court rules, so the proposal promotes consistency between the forums. Lastly, the proposed changes add requisite clarity for situations when even non-parties must e-file documents in a pending appeal, which occasionally arise within the child support context. Altogether, the Department supports the proposal. Regarding the definition of "electronic signature," while the Department does not have a strong opinion concerning the matter, the "Definitions" section under rule 8.70(c) is seemingly the most appropriate place to include it. Having a single rule articulating the definitions of terms used throughout the applicable article is generally desirable because it creates an obvious first place to search for definitions of terms, particularly for filers who are otherwise unfamiliar with the pertinent	on how the rule amendments would positively impact the statewide child support program. The committee appreciates the response to the question presented in the invitation to comment and has retained the definition in rule 8.70(c).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			rules. Though filers more accustomed to the parallel trial court rules may expect to see the definition included in rule 8.75 just as it is included in rule 2.257(a), the next most conspicuous place to locate it would likely be within the rule that provides the definitions applicable to e-filing in appellate proceedings, so any resulting confusion would presumably be short-lived. Lastly, in appellate proceedings, the Department is represented by the Department of Justice, Office of the Attorney General. Since the Department does not itself practice before appellate courts, the Department has no comment on the third Request for Specific Comments.	No response required.
4.	California Lawyers Association; Committee on Appellate Courts, Litigation Section By Erin Smith Chair Saul Bercovitch Director of Governmental Affairs	AM	The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association ("CAC") submits the following comments on proposed Amended California Rule of Court, rules 8.70 and 8.75. The CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As elaborated below, the CAC agrees with the purpose behind the rule change—that signature rules should evolve to accommodate rapid changes in the practice of law. By allowing parties to affix electronic signatures for certain submissions to the Court of Appeal, the Appellate Advisory Committee's ("AAC") proposed rules change	The committee thanks the commenter for providing feedback on this proposal. The committee notes the commenter's support for updating electronic filing rules to provide for electronic signatures.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			will promote efficiency and ease administrative burdens for attorneys and staff. But the CAC is concerned that the proposed language will cause confusion and uncertainty for practitioners, self-represented litigants, and legal assistants. The proposed language is likely to increase the number of inquiries and non-compliant submissions to the court, exacerbating appellate courts' already burdensome workload. In the comments below, the CAC offers suggestions on achieving greater clarity. **Stated Purpose of Amending Rules 8.70 and 8.75** The CAC shares the AAC's goal to liberalize the use of electronic signatures in appellate court submissions. In federal practice, the typewritten signature with the backslash has proliferated for documents submitted through the ECF system, and correspondingly, the "wet ink signature" has fallen into disuse. The advent of sophisticated electronic-signature programs such as DocuSign, with their added security features, have also changed consumer practices more broadly. Important legal documents, such as loan applications and real estate purchase agreements, are now routinely executed by way of an electronic signature. Even before 2020, these technological innovations have resulted in more remote work, including by attorneys. That trend was catalyzed	No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			by the COVID-19 pandemic, as California attorneys and their staff have largely shifted to working from home. Experts have predicted that remote and hybrid work arrangements will continue to grow going forward. Working from home presents a new set of logistical challenges. As members of the CAC can attest, the requirement to "retain a printed form of the document with the original signature" for electronically filed documents signed under penalty of perjury creates administrative burdens, particularly as the signatory and the legal assistant may both be working from home. The CAC therefore fully supports any rule that eschews requiring the physical presence of the signer or an exchange of mailed paper documents. But the CAC has concerns that the proposed rules do not go far enough in liberalizing the use of electronic signatures. Specifically, rather than stringent requirements on the form of electronic signature, the CAC recommends that the rules allow parties to use more streamlined electronic signatures (e.g., the typewritten "/s/" signature popular in federal court), as there is little risk of fraudulent signatures being used in appellate practice. Alternatively, if more stringent signature requirements are to be included for certain documents, the CAC has some concerns about the specific language proposed and provides suggestions on ways to achieve greater clarity in the proposed rules.	See response below.

	Commenter	Position	Comment	Draft Committee Response
			Recommended Changes to Proposed Rules 8.70 and 8.75 **A. The CAC recommends a simple electronic signature requirement for all documents**	
			Proposed Rules 8.70 and 8.75 contemplate two different types of "electronic signature." Proposed Rule 8.70(c)(10) defines an "electronic signature" broadly as "electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received or stored by electronic means" per Civil Code section 1633.2(h). This definition would seem to include, for example, the simple electronic signatures often used in federal court ("/s/").	The committee agrees that the proposed amendments describe two different types of electronic signature. The committee has added a definition for a "secure electronic signature" to rule 8.70 and uses the term in rule 8.75.
			But Rule 8.75(a)(1) and (b)(2)(B) limit an acceptable "electronic signature" to a "digital signature" per Government Code section 16.5(a), or one that is "unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated." This definition would seem to be limited to signatures obtained by sophisticated electronic-signature programs such as DocuSign. Under the proposed rules change, this more stringent type of electronic signature would be required for (1) documents signed under penalty of perjury (where filed by	The proposal has been modified to refer to this more stringent type of electronic signature as a secure electronic signature. This type of electronic signature is required for documents signed under penalty of perjury where the declarant is not the filer and documents that require multiple signatures.

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	Commenter	Position	Comment	Draft Committee Response
			someone other the signatory) and (2) documents with signatures from multiple parties, such as a stipulation. But the CAC doubts the second, more stringent signature type (a "digital signature") is truly necessary in *any* scenario. In particular, the fact that attorneys receive electronic copies of documents filed through the TrueFiling system eliminates any realistic threat that anyone will file a document purporting to have the authorization of an attorney that has not actually authorized that filing. For example, a party who files a stipulation bearing the purported electronic "signature" of other parties will invariably have some other evidence (e.g., email correspondence) showing that the other parties indeed authorized the filing. By contrast, any attorney who receives an electronic copy of a stipulation they did not authorize but which nonetheless bears their electronic signature could (and would) immediately raise this issue with the court. Nor is it realistic to expect that an attorney's staff will file documents in which the attorney purported to sign under penalty of perjury without securing the attorney's express authorization to do so. And even if this did occur, the attorney—having again received notice of the unauthorized filing through TrueFiling—would be able to take corrective action.	The committee disagrees with eliminating the requirement of a secure electronic signature at this time. The committee concluded that the benefits of a secure electronic signature, with its additional verification requirements, outweigh those of a less secure procedure that places more reliance on an attorney or litigant to contest an unauthorized signature. However, as technology advances and the courts' gain more experience with e-filing, alternate procedures may be warranted. See response above.

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	Commenter	Position	Comment	Draft Committee Response
			Thus, rather than require a signature with increased verification requirements, the CAC proposes that the rules instead require filers to certify that they have the express authorization to file the document on behalf of any attorneys who have signed thereto.	The committee appreciates this suggestion and will retain it for future consideration.
			So, for example, for stipulations among multiple parties, the rules should simply require the party filing the stipulation to include a statement on the filing that he/she/they received the other party's consent to sign on the latter's behalf. This would effectively mirror a local rule of the Federal District Court for the Central District of California that has been widely and successfully adopted by litigants for party stipulations. That rule, C.D. Cal. L.R. 5-4.3.4(a)(2)(i), reads as follows:	See response above.
			[T]he signatures of all signatories may be indicated on the document with an "/s/," and the filer must attest on the signature page of the document that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing…	See response above.
			In other words, the burdens on self-represented litigants, attorneys, and litigation assistant would be eased if the party filing a stipulation may simply: (1) obtain consent from the other party that the latter has agreed to a stipulation; and (2) attest that such consent was obtained.	See response above.

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	Commenter	Position	Comment	Draft Committee Response
			Stipulations in appellate courts typically involve routine requests such as extensions of time to file a brief, and it would promote efficiency and cost-savings to minimize signature requirements. The experience of attorneys practicing before the Central District of California has shown this rule to work. And to guard against misrepresentations or foul play, the attestation requirement provides a strong deterrent for licensed attorneys. **B. If digital signatures will be required in certain scenarios, the CAC recommends a reorganization of Proposed Rules 8.70 and 8.75 .** The CAC perceives two ambiguities in the proposed versions of Rules 8.70 and 8.75 rule that could be cured by changes to the organizational structure of the rules. **First**, as noted above, the rules seem to contemplate two different types of "electronic signature." The first type (defined in Rule 8.70(c)(1)) follows the definition of "electronic signature" in the Uniform Electronic Transactions Act, Civil Code section 1633.2(h). The second type (defined in 8.75(a)(1) and (b)(2)(B)) follows the requirements of a "digital signature" in Government Code section 16.5(a). As noted in the proposed Advisory Committee comment: "Rule 8.70 defines 'electronic signature' but not 'digital signature.' A digital signature is a type of electronic signature as	The committee agrees with the commenter and has added a new defined term for the electronic signature with heightened security requirements: a "secure electronic signature."

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	Commenter	Position	Comment	Draft Committee Response
			defined in Government Code section 16.5(d). (Civ. Code, § 1633.2(h).)" The CAC believes it may be confusing to refer to both types of signatures as "electronic signatures" when their requirements vary so significantly. In addition, as proposed to be amended, the rules would define "electronic signature" and use but not define the term "digital signature" in Rule 8.75(c). Adding to potential confusion, Rule 8.75(c) would say: "A party or other person is not required to use a digital signature on an electronically filed document." Because "digital signature" is not defined, it is not clear what is not required. Moreover, the proposed language in Rule 8.75(a)(1) and (b)(2)(B) follows the statutory requirements of a "digital signature" under Government Code section 16.5(a), and that type of electronic signature would be required under the specified circumstances. To the extent the rules will require different standards of signature verification depending on the document, the CAC would propose that the rules refer to these signatures by different names−such as an "electronic signature" or "digital signature"−and define *both* terms. Thus, for example, signatures that need not meet the requirements set forth in Rule 8.75(a)(1) and (b)(2)(B) would be called "electronic signatures," while the signatures that must satisfy Rule 8.75(a)(1) and (b)(2)(B) would be called "digital signatures." This change would	The committee agrees that reference to a digital signature, with no explanation or definition, is confusing and has removed this subdivision (circulated as rule 8.75(c)). The proposal no longer refers to a digital signature. The committee agrees with referring to the two different types of electronic signature with different names and has modified the proposal accordingly.

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	Commenter	Position	Comment	Draft Committee Response
			also require the removal of Rule 8.75(c), for the reasons discussed above.	
			By offering separate definitions for each respective signature type, Rule 8.75 could then simply use the defined term for each signature type without having to repeat the definition of the acceptable signature type on each occasion where a signature type is discussed. Among other things, this would facilitate better organization of Rule 8.75, as discussed immediately below.	The committee agrees and has used the defined term in rule 8.75.
			Second, and relatedly, the CAC believes that organizing proposed Rule 8.75 into categories based on whether a document must be signed under penalty of perjury creates confusion as to when the more stringent signature type is required.	The committee appreciates this suggestion and will retain it for future consideration together with ITAC to maintain consistency in trial court and appellate court rules.
			Organizing the rule based on whether documents must be signed under penalty of perjury would have made sense if the more stringent signature type was only reserved for penalty-of-perjury situations. But Rule 8.75(b)(2) contemplates that when a document "requires the signatures of multiple parties," it too must be signed with the more stringent signature even though it is not a document signed under penalty of perjury.	See response above.
			Thus, rather than organize the rule based on whether documents must be signed under penalty of perjury, the CAC recommends that	See response above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			the rule be organized based on when a "digital signature" is (or is not) required. So, for example, subsection (a) of Rule 8.75 might simply list the situations in which a "digital signature" is required (i.e., (1) documents signed under penalty of perjury where the filer is someone other than the declarant, (2) documents that require the signatures of multiple parties). Subsection (b) could then specify that for all other documents except those listed in subsection (a), a simple "electronic signature" will suffice. Organizing the rule in this fashion would be easy and intuitive if the rules used different names for the two signature types contemplated by the proposed versions of Rule 8.70(c)(10), and Rule 8.75 (a)(1) and (b)(2)(B) (i.e., "electronic" versus "digital" signatures). Accordingly, creating labels for the two different signature types contemplated by the rules—and then organizing Rule 8.75 based on when the two different signature requirements apply—would significantly enhance the clarity of the rules as a whole.	See response above.
5.	Child Support Directors Association Judicial Council Forms Committee By Lisa Saporito Chair	A	The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSA), our judicial partner, and our case participants. Specific feedback related to the provisions of the proposed legislation with potential impacts	The committee appreciates the commenter's feedback on the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			to the LCSA and its stakeholders is set forth below. REQUEST FOR SPECIFIC COMMENTS: 1) Does the proposal appropriately address the stated purpose? Yes. The proposed revision to California Rules of Court rules 8.70 and 8.75 appropriately address its purpose to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents by changing the rules to allow electronic signatures and to simplify the appellate procedures. 2) Should the definition of "electronic signature" be added to rule 8.70(c) as presented, or to rule 8.75 as a new subdivision (a)? The electronic signature definition logically is placed in rule 8.70(c) along with the other definitions. Although this does not exactly mirror the recent changes to the trial court rules, it does make sense. That said, we do believe that the definition could have been appropriately been placed in either rule 8.70(c) or rule 8.75 as a new subdivision (a). 3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe. The proposal is not inconsistent	The committee notes the commenter's support for the proposal. No further response required. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			with current practices for validating signatures and preserving evidence. Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed legislation.	 No further response required.
6.	Court of Appeal, Third Appellate District By Colette M. Bruggman Assistant Clerk/Executive Officer	AM	 Rule 8.70 Rule 8.70(c)(10) defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means." It appears this language is from the ESIGN Act of 2000. It is unclear what an "electronic sound" is or how it would be presented in court operations. At a minimum, an explanation should be provided. Alternatively, if it has no practical application for court operations, it should probably be removed from the definition. Rules 8.70 and 8.75 The proposals for rules 8.70 and 8.75 include adding the language "other persons" to the scope of the rules to account for others who may be involved in a case but are not parties. "Other persons" is not defined anywhere in the rules of court and does not appear to be consistent with the current language of the rules. The addition of this language makes it appear that filings or submissions by non-parties is routine; however,	The committee notes the commenter's support for the proposal if modified. The committee acknowledges that this aspect of the definition of an electronic signature may not currently be applicable in court operations. The committee declines to modify the definition at this time but will retain the suggestions for future consideration with ITAC. In the meantime, the committee believes it best to maintain consistency with the trial court rules and Civil Code section 1633.2. The proposed addition of "other persons" in these rules is based on the trial court rules, which were amended to include "other persons" based on Code of Civil Procedure section 1010.6. Instances of "other persons" properly filing or submitting electronic documents are more common in trial court proceedings than appellate court proceedings. However, as noted in the comments from CDCSS, nonparties involved in juvenile

	Commenter	Position	Comment	Draft Committee Response
			filings or submissions by non-parties are not routinely allowed. Currently, only two rules allow for filing of documents by non-parties, namely: rule 8.200(c) governing filing of amicus curiae briefs and rule 8.1120(a)(1) governing requests to publish. Any other submissions by non-parties are received or filed by permission of the court only. The addition of this language is too vague to be helpful and places an operational burden on the Clerk's Office in dealing with filings submitted by "other persons." As an example, from time to time we get what I will refer to as a "lobbying effort," wherein non-parties write to us to try to influence the process or outcome of a case. In one case, we received 21 letters from victims in a criminal case, requesting the case be fast-tracked. Adding "other persons" to the rules makes it appear that submissions such as these are properly received or filed in a case. They are not proper submissions, and it is up to the discretion of the court how these submissions will be handled. Sometimes they will be received, but more often, they will be returned. Suggestions: Remove the language "other persons" from these rules. Add a definition of "other persons" to rule 8.10 that limits who "other persons" are for purposes of submitting documents in a case as proscribed in the rules of court.	cases on appeal are another example of "other persons" who may properly submit documents. In the committee's view, the references to "other persons" in the rule are helpful and appropriate. See response above.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Draft Committee Response
7.	Meechan, Rosenthal & Karpilow, P.C. By Rebecca Slay Paralegal	A	Yes! Let's make it easier for individuals to access their rights!!!	The committee notes the commenter's support for the proposal.
8.	Orange County Bar Association By Larisa M. Dinsmoor President	A	The OCBA provides the following responses to the Request for Specific Comments: 1. The proposal addresses the stated purpose. 2. The definition of "electronic signature" should remain in Section 8.70. 3. The procedure described in proposed rule 8.75(b)(2)(A) regarding documents with multiple signatures, such as stipulations, **does not** comport with current practice. Current practice regarding such documents is often for the parties' counsel to email each other regarding a stipulation. Once the parties' counsel agree to the substance and language of the stipulation, the filing party's counsel will inquire whether he/she has permission from the opposing party's counsel to "electronically sign" on the opposing counsel's behalf. Opposing counsel will respond via email confirming the filing party's counsel has permission. The filing party's counsel will then use a simple "/s/ Opposing Counsel" on the signature line, representing to the Court that both parties' counsel have agreed to the stipulation. The procedure in Rule 8.75(b)(2)(A) would still require the Opposing Counsel to either sign the stipulation manually and send it back, or sign it via electronic signature with a	The committee notes the commenter's support for the proposal. No further response required. No further response required. The committee appreciates this feedback and will retain it for future consideration. Any such changes for better alignment with current practice would best be considered together with ITAC as part of a joint project for both trial court and appellate court rules.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			digital certificate. This is a more onerous process than is used in the trial court. Further, any doubts about whether the opposing counsel authorized the electronic signature by the filing party's counsel can be resolved by simple production of the email correspondence authorizing the filing.	
9.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Should the definition of "electronic signature" be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a) **The definition of "electronic signature" should remain as presented within rule 8.70(c). In addition, it is recommended that the following subdivision header in rule 8.75 be revised for clarity as follows: (d)(c) Digital signature not required** • Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe? **Yes. It is the practice of the appeals staff to check for signatures for cases in which electronic filing is currently permitted in San Diego Superior Court (unlimited civil, probate, limited civil up to certification of the appeal record, and family).**	The committee notes the commenter's support for the proposal and appreciates the responses to the request for specific comments. No response required. The committee has removed the subdivision regarding digital signatures from the rule. No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
			• Would the proposal provide cost savings? If so, please quantify. **No.**	No further response required.
			• 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? **Staff in the business office would need to be trained. It is difficult to quantify the amount of training, but it should not be overwhelming. The information would need to be incorporated into written procedures.**	The committee appreciates this feedback on implementation requirements for the court.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes, for areas that already accept e-filing.**	No further response required.
			• How well would this proposal work in courts of different sizes? **There should be no disparate impact between courts of different sizes.**	No further response required.
10.	TCPJAC/CEAC Joint Rules Subcommittee (JRS) On behalf of:	A	The JRS notes the following impact to court operations: • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment,	The committee appreciates these comments regarding the impact of the proposal on court operations and has noted them in the Judicial Council report.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Draft Committee Response
	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC)		Jury Plus/ACS, etc.). There is a potential for impact to automated systems in adapting/modifying existing configurations. • Results in additional training, which requires the commitment of staff time and court resources. Potential for some training around requirements of the new rules as proposed but not significant. **Request for Specific Comments** **Does the proposal appropriately address the stated purpose?** • 8.75(a)(1) defines the use of electronic signatures, and (a)(2) deals with wet signatures. However, 8.75(b)(2)(A) provides further requirements for wet signatures, and (b)(2)(B) with electronic signatures. Although the stated purpose is satisfied with these proposed revisions, the change in ordering of the provisions between the two subsections may lead to confusion. • 8.75(a)(1) requires the signature to be under the "sole control" of the declarant. This may present an implementation challenge, as many attorneys give signing authority to other attorneys on a case, as well as personnel. Similarly, many litigants give their attorneys signing authority. Suggest "sole authority" may be a more feasible and efficient option allowing the signator to authorize the esigning.	See response above. The committee has reordered the provisions in rule 8.75(b)(2)(A) and (B) to be parallel, i.e., electronic signatures are addressed before wet signatures. The committee appreciates the feedback on this aspect of the secure electronic signature. The definition, including the requirement of "sole control," is based on the trial court rule, which in turn is based on Government Code section 16.5(a). The committee declines at this time to modify the definition but will retain it for consideration with ITAC to maintain consistency in the rules.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Draft Committee Response
			Should the definition of "electronic signature" be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)? • 8.70 is helpful to set the standard.	No further response required.
			Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? • Yes.	No further response required.
			Would the proposal provide cost savings? • Yes, for the litigants filing, who spend substantial time securing appropriate originals.	The committee has noted this response in the report to the Judicial Council.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? • Yes.	No further response required.
			How well would this proposal work in courts of different sizes? • Assuming case management impact question is not substantial, this should work well.	No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Item number: 02

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 08/19/2021

Title of proposal: Appellate Procedure: Notice of Appeal After Plea or Admission of Probation Violation

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rule 8.304

Committee or other entity submitting the proposal:
Appellate Advisory Committee

Staff contact (name, phone and e-mail): Christy Simons, 415-865-7694, christy.simons@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: 11/02/2020
Project description from annual agenda: Amend rule 8.304(b)(3) to improve the procedure for filing a notice of appeal after guilty plea that is not accompanied by a certificate of probable cause. Currently, if a defendant does not file a statement for issuance of a certificate of probable cause, rule 8.304(b)(3) requires the clerk to mark the notice of appeal "inoperative." This result is not correct in a significant number of cases, so clerks must analyze and make legal decisions regarding whether to file these notices of appeal. This requires more time and work for court clerks, and incorrect decisions result in further delay. Under the proposed amended rule, if a notice of appeal after a guilty plea is not accompanied by a certificate of probable cause, whether such certificate was denied or not requested, the court would issue an order stating that the appeal is limited to issues that do not require a certificate of probable cause. This is a priority 1 project because the current procedure is inefficient and inappropriately requires clerks to make legal decisions. The improved process will eliminate errors, reduce the workload for trial court clerks, and promote greater fairness and efficiency. Origin: Member of the Criminal Law Advisory Committee, on behalf of the Second District Court of Appeal.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-155
For business meeting on October 1, 2021

Title
Appellate Procedure: Notice of Appeal After Plea or Admission of Probation Violation

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 8.304

Recommended by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 11, 2021

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Executive Summary

The Appellate Advisory Committee recommends amending the rule that governs initiating an appeal in a felony case after a plea of guilty or nolo contendere or after an admission of a probation violation. The amendments would reorganize the rule, simplify procedures, and eliminate the onus on the clerk to make a legal decision regarding whether the notice of appeal should be filed.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2022, amend rule 8.304 of the California Rules of Court to:

1. Distinguish between appeals that require a certificate of probable cause and those that do not;

2. Provide that if a notice of appeal is filed without a request for a certificate of probable cause or the trial court denies the request, the appeal may proceed on noncertificate issues;

3. Add the district appellate projects to the list of persons and entities that receive notification of the filing of a notice of appeal, and include in the notification information regarding

whether the appeal is limited to noncertificate issues and whether the defendant requested a certificate of probable cause; and

4. Update the advisory committee comment to reflect the changes to the rule and to include references to Supreme Court cases analyzing circumstances in which no certificate of probable cause for an appeal is required.

The proposed amended rule is attached at pages 7–12.

Relevant Previous Council Action

As part of a multiyear project to revise the appellate rules, effective January 1, 2004, the Judicial Council repealed and adopted a number of rules governing the hearing and decision of appeals in noncapital criminal cases. Rule 30, subsequently renumbered as rule 8.304, was adopted at this time. The relevant provisions of rule 8.304 have not been amended substantively since adoption in 2004.

Analysis/Rationale

Background

Rule 8.304 of the California Rules of Court governs filing an appeal in a felony case. Subdivision (b) addresses notices of appeal filed after a plea of guilty or nolo contendere or an admission of a probation violation. The defendant filing the appeal must request a certificate of probable cause for any challenge to the validity of the plea. If the superior court does not issue a certificate, either because the defendant did not request one or the court denied the request, the rule states the procedure for clerks to follow: "If the defendant does not file the statement required [to request a certificate of probable cause] or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal 'Inoperative,' notify the defendant, and send a copy of the marked notice of appeal to the district appellate project." (Rule 8.304(b)(3).)

However, in the next paragraph, the rule also provides that a defendant need not request a certificate of probable cause if the notice of appeal states that the appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5 or grounds arising after the plea, such as sentencing issues, that do not challenge the validity of the plea. (Rule 8.304(b)(4).)

As a result, a superior court clerk in receipt of a notice of appeal that is not accompanied by a request for a certificate of probable cause or the certificate itself must decide whether to mark it "Inoperative" or file it and allow the appeal to proceed. Although the notice of appeal forms often contain check boxes that allow the defendant to specify that the appeal is from denial of a motion to suppress evidence or sentencing only and is not designed to attack the plea, it is not uncommon for both self-represented defendants and attorneys to check the wrong box or boxes, check no boxes, or otherwise submit a notice of appeal that does not alert the clerk that no certificate of probable cause is required. Incorrect decisions to mark a notice of appeal

inoperative result in delay and additional work for litigants, district appellate projects, and the courts.

Rule 8.304

This proposal would clarify the rule and eliminate a procedure that inappropriately requires clerks to make legal decisions. It would save time and reduce work for the courts, and avoid delay in felony appeals following a plea or admission of probation violation.

Currently, rule 8.304(b)(1) indicates that, "[e]xcept as provided in (4)," a notice of appeal must be filed with a certificate of probable cause or the statement requesting a certificate. Under subdivision (b)(2), if a certificate is requested, the court must issue it or deny the request within 20 days. Subdivision (b)(3) requires the clerk to mark a notice of appeal that is filed without a certificate or a request for a certificate "Inoperative." Subdivision (b)(4) provides that a defendant "need not comply with (1)" if the notice of appeal states grounds that do not require a certificate. Thus, the rule suggests that a notice of appeal filed without a certificate or a request for one is improper and the clerk is expected to reject the filing and take other steps unless exceptions apply. To more accurately reflect the law and clarify that the distinction to be drawn is whether the grounds for the appeal require a certificate, not whether a certificate is requested or attached to the notice of appeal, the proposed amendments would group paragraphs (1) and (2) of subdivision (b) together as provisions addressing appeals that require a certificate of probable cause.

New subdivision (b)(2) would address appeals for which no certificate of probable cause is required—that is, appeals that challenge the denial of a Penal Code section 1538.5 motion to suppress evidence or are based on grounds such as sentencing or other postplea matters that do not challenge the validity of the plea, or appeals from orders that, by law, require no certificate.

New subdivision (b)(3) would address appeals for which no certificate of probable cause was requested or granted. Rather than requiring clerks to mark the notice of appeal inoperative, notify the defendant, and send a copy of the marked notice of appeal to the district appellate project unless the notice of appeal states that the appeal is based on grounds that do not require a certificate of probable cause, the rule would simply provide that if a notice of appeal is filed without the statement requesting a certificate of probable cause or the trial court denied the request, the appeal is limited to issues that do not require a certificate of probable cause.

The proposal also includes a conforming change to subdivision (c) regarding notification of the appeal. Subdivision (c)(1) requires the superior court clerk to promptly send notification of the filing of a notice of appeal to certain individuals, including the attorneys of record, any unrepresented defendant, the reviewing court clerk, and each court reporter. It further provides that if the defendant files a statement requesting a certificate of probable cause, the clerk must not send the notification unless the superior court files a certificate. This provision would no longer be necessary because the proposed amendments provide that appeals in which a certificate is requested but denied may proceed on noncertificate issues. To address a concern expressed in a comment, further discussed below, the committee recommends amending subdivision (c) to

add the district appellate project to the list of individuals and entities receiving the notification and to require that the notification indicate whether the defendant sought a certificate of probable cause and, if so, whether the trial court filed a certificate.

Finally, the advisory committee comment to subdivision (b) has been rewritten to reflect the changes to the rule and to include references to Supreme Court cases analyzing circumstances in which no certificate of probable cause for the appeal is required.

Policy implications

This proposal furthers the Judicial Council's constitutional mandate to improve the administration of justice and its mission to increase access to justice by simplifying and streamlining the process for initiating an appeal after a plea. The proposal will save time and reduce the workload for superior court clerks, appellate courts, and the district appellate projects.

Comments

The proposed amended rule was circulated for public comment between April 9 and May 21, 2021, as part of the regular spring comment cycle. The committee received seven comments on this proposal. Four commenters—the Superior Court of Los Angeles County, the Superior Court of San Diego County, the Central California Appellate Project on behalf of all the district appellate projects (the district appellate projects), and an attorney in private practice—agreed with the proposal. The California Lawyers Association Committee on Appellate Courts, Litigation Section (CAC), agreed with the proposal if modified. One commenter, the Orange County Bar Association (OCBA), disagreed with the proposal. The seventh commenter, an attorney who practices criminal law, did not take a position but raised an issue with the proposed rule's description of appeals that do not require a certificate of probable cause. A chart with the full text of the comments received and the committee's responses is attached at pages 13–26.

The district appellate projects explained their role in assisting defendants with initiating appeals and stated that they "spend a lot of time trying to remedy defective [inoperative] notices of appeal either by telling the defendant or defense counsel to file an amended notice of appeal checking a noncertificate box if the 60-day deadline has not run yet, or by filing motions to amend/construe notices of appeal as being taken from grounds not requiring a certificate, which often involves an additional step of obtaining a declaration from the defendant or defense counsel of what was intended…. This rule change, therefore, will accomplish the stated goal of relieving trial court clerks of the responsibility of determining whether a notice of appeal following a guilty or nolo contendere plea is operative if no certificate was requested or if a request for a certificate was denied, and it will relieve appellate courts of the burden of entertaining motions to deem notices of appeal operative as to non-certificate issues where the defendant has not obtained a certificate."

CAC agreed with removing legal decisionmaking from the court clerk and facilitating the processing of appeals based on issues that do not require a certificate of probable cause. CAC noted that the proposal will also reduce delay: "when clerks inaccurately deem an appeal to be

'inoperative,' the process of preparing an appellate record is deferred, leading to subsequent delays in resolution of the appeal."

Both CAC and the district appellate projects suggested clarifying the language of subdivision (b)(2)(B) regarding postplea appeals that do not contest the validity of the plea. The proposed language was derived from Supreme Court opinions analyzing whether certain grounds for appeal challenged the validity of the plea, but the committee agreed with rephrasing the rule language to be more straightforward.

In his comment, criminal law attorney Adrian Contreras raised an issue with the proposed language of subdivision (b)(2) regarding appeals that do not require a certificate of probable cause. He read the proposed amendments as seeking to "enumerate the entire universe of orders that require a certificate of probable cause and those that don't" and pointed out that, for example, appeals under Penal Code section 1473.7 from the denial of a motion to vacate a conviction do not fit into the proposed language of the rule. Subdivision (f) of section 1473.7 expressly provides for an appeal authorized by section 1237(b), for which no certificate of probable cause is required. Mr. Contreras suggested a "catch-all" provision stating that a certificate of probable cause is not needed if some other statute expressly states it is not needed. The committee agreed with clarifying this point in new subdivision (b)(2)(C) and an addition to the advisory committee comment.

The OCBA opposes the proposed amendments out of concern for litigants and attorneys who would no longer be notified when a notice of appeal is marked "inoperative" and sent to the defendant and the district appellate project. Under the amendments, such an appeal will be filed and limited to issues that do not require a certificate of probable cause.

OCBA believes this change will penalize litigants and attorneys who do not understand the certificate of probable cause process and who needed to, but did not, request a certificate to have their appellate issues considered by the reviewing court. These individuals might not know they made a mistake in failing to request a certificate and might not have the ability or opportunity to correct the mistake. The subcommittee concluded that modifications to the proposal on this point were warranted.

Although the amendments remove the requirement that defendants and the district appellate projects be notified of an inoperative notice of appeal, there is a broader notification requirement in subdivision (c). Under subdivision (c)(1), "[w]hen a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing to the attorney of record for each party, to any unrepresented defendant, to the reviewing court clerk, to each court reporter, and to any primary reporter or reporting supervisor." Under subdivision (c)(3), the notification must include a copy of the notice of appeal and any certificate of probable cause.

To ensure that the district appellate projects are aware of appeals that have been limited to issues that do not require a certificate and whether the defendant requested a certificate, the committee recommends amending the (c)(1) notification requirement to include the district appellate project

and to require that the notification state whether the court has limited the appeal to issues that do not require a certificate of probable cause and, if so, whether the defendant filed the written statement required for issuance of a certificate.

Alternatives considered

The committee considered the alternative of recommending no amendments to the rule but rejected this option because of the clear benefits of clarifying the rule and relieving the burden on trial court clerks of making legal decisions regarding whether to file notices of appeal.

The committee also considered the alternative of not including a subdivision (b)(2)(C) catch-all category of appeals that do not require a certificate of probable cause. Statutes that expressly provide that no certificate of probable cause is required for an appeal do not seem likely to cause confusion regarding whether a certificate is required, and the committee was aware of no problems caused by the lack of such provision in the current rule. However, for added clarity, the committee supports making this addition.

Fiscal and Operational Impacts

The committee anticipates no significant fiscal or operations impacts beyond training and implementation of new procedures. The committee expects that the rule changes will save time and resources for courts, district appellate projects, and appellants.

The Superior Court of Los Angeles County opined that the amendments would likely result in more timely preparation of the record, whereas the Superior Court of San Diego County expected no impact to preparation of the record because the court already follows the proposed practice. Both the Los Angeles court and CAC noted that because the record is prepared upon the filing of an operative notice of appeal, the amendments may result in some appellate records being prepared for cases that do not present appealable issues. According to the Los Angeles court, "[t]his is not a reason to reject the proposal; the clarity provided by the proposal is necessary. But there may be no net cost savings from this proposal."

Attachments and Links

1. Cal. Rules of Court, rule 8.304, at pages 7–10
2. Chart of comments, at pages 11–24

Rule 8.304 of the California Rules of Court is amended, effective January 1, 2022, to read:

Rule 8.304. Filing the appeal; certificate of probable cause

(a) * * *

(b) Appeal from a judgment of conviction after plea of guilty or nolo contendere or after admission of probation violation

(1) Appeal requiring a certificate of probable cause

~~(1)~~(A) ~~Except as provided in (4),~~ To appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation on grounds that affect the validity of the plea or admission, the defendant must file in that superior court—with the notice of appeal required by (a)—the written statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause.

~~(2)~~(B) Within 20 days after the defendant files a written statement under ~~(1)~~ Penal Code section 1237.5, the superior court must sign and file either a certificate of probable cause or an order denying the certificate.

(2) Appeal not requiring a certificate of probable cause

To appeal from a superior court judgment after a plea of guilty or nolo contendere or after an admission of probation violation on grounds that do not affect the validity of the plea or admission, the defendant need not file the written statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause. No certificate of probable cause is required for an appeal based on or from:

~~(3) If the defendant does not file the statement required by (1) or if the superior court denies a certificate of probable cause, the superior court clerk must mark the notice of appeal "Inoperative," notify the defendant, and send a copy of the marked notice of appeal to the district appellate project.~~

~~(4) The defendant need not comply with (1) if the notice of appeal states that the appeal is based on:~~

(A) The denial of a motion to suppress evidence under Penal Code section 1538.5;

Rule 8.304 of the California Rules of Court is amended, effective January 1, 2022, to read:

(B) ~~Grounds that arose after entry of the plea and do not affect the plea's validity.~~ The sentence or other matters occurring after the plea or admission that do not affect the validity of the plea or admission; or

(C) An appealable order for which, by law, no certificate of probable cause is required.

(3) Appeal without a certificate of probable cause

If the defendant does not file the written statement required by Penal Code section 1237.5 or the superior court denies a certificate of probable cause, the appeal will be limited to issues that do not require a certificate of probable cause.

~~(5) If the defendant's notice of appeal contains a statement under (4), the reviewing court will not consider any issue affecting the validity of the plea unless the defendant also complies with (1).~~

(c) Notification of the appeal

(1) When a notice of appeal is filed, the superior court clerk must promptly send a notification of the filing to the attorney of record for each party, any unrepresented defendant, the district appellate project, the reviewing court clerk, each court reporter, and any primary reporter or reporting supervisor. ~~If the defendant also files a statement under (b)(1), the clerk must not send the notification unless the superior court files a certificate under (b)(2).~~ The notification must specify whether the defendant filed a statement under (b)(1)(A) and, if so, whether the superior court filed a certificate or an order denying a certificate under (b)(1)(B).

(2) The notification must show the date it was sent, the number and title of the case, and the dates that the notice of appeal and any certificate or order denying a certificate under ~~(b)(2)~~ (b)(1)(B) were filed. If the information is available, the notification must also include:

(A)–(C) * * *

(3) The notification to the reviewing court clerk must also include a copy of the notice of appeal, any certificate filed under (b)(1), and the sequential list of reporters made under rule 2.950.

(4)–(6) * * *

Rule 8.304 of the California Rules of Court is amended, effective January 1, 2022, to read:

Advisory Committee Comment

Subdivision (a). Penal Code section 1235(b) provides that an appeal from a judgment or appealable order in a "felony case" is taken to the Court of Appeal, and Penal Code section 691(f) defines "felony case" to mean "a criminal action in which a felony is charged. ~~. . .~~" Rule 8.304(a)(2) makes it clear that a "felony case" is an action in which a felony is charged *regardless of the outcome of the action*. Thus the question whether to file a notice of appeal under this rule or under the rules governing appeals to the appellate division of the superior court (rule 8.800 et seq.) is answered simply by examining the accusatory pleading: if that document charged the defendant with at least one count of felony (as defined in ~~Penal~~ Pen. Code, ~~section~~ § 17(a)), the Court of Appeal has appellate jurisdiction and the appeal must be taken under this rule *even if the prosecution did not result in a punishment of imprisonment in a state prison*.

It is settled case law that an appeal is taken to the Court of Appeal not only when the defendant is charged with and convicted of a felony, but also when the defendant is charged with both a felony and a misdemeanor (Pen. Code, § 691(f)) but is convicted of only the misdemeanor (e.g., *People v. Brown* (1970) 10 Cal.App.3d 169); when the defendant is charged with a felony but is convicted of only a lesser offense (Pen. Code, § 1159; e.g., *People v. Spreckels* (1954) 125 Cal.App.2d 507); and when the defendant is charged with an offense filed as a felony but punishable as either a felony or a misdemeanor, and the offense is thereafter deemed a misdemeanor under Penal Code section 17(b) (e.g., *People v. Douglas* (1999) 20 Cal.4th 85; *People v. Clark* (1971) 17 Cal.App.3d 890).

Trial court unification did not change this rule: after as before unification, "Appeals in felony cases lie to the [C]ourt of [A]ppeal, regardless of whether the appeal is from the superior court, the municipal court, or the action of a magistrate. *Cf.* Cal. Const. art. VI, § 11(a) [except in death penalty cases, Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction 'in causes of a type within the appellate jurisdiction of the [C]ourts of [A]ppeal on June 30, 1995~~. . . .~~']." (~~"~~*Recommendation on Trial Court Unification: Revision of Codes*~~"~~ (July 1998) 28 Cal. Law Revision Com. Rep. (1998) pp. 455–456.)

Subdivision (b). ~~Under (b)(1), the defendant is required to file both a notice of appeal and the statement required by Penal Code section 1237.5(a) for issuance of a certificate of probable cause. Requiring a notice of appeal in all cases simplifies the rule, permits compliance with the signature requirement of rule 8.304(a)(3), ensures that the defendant's intent to appeal will not be misunderstood, and makes the provision consistent with the rule in civil appeals and with current practice as exemplified in the Judicial Council form governing criminal appeals.~~

~~Because of the drastic consequences of failure to file the statement required for issuance of a certificate of probable cause in an appeal after a plea of guilty or nolo contendere or after an admission of probation violation, (b)(5) alerts appellants to a relevant rule of case law, i.e., that,~~

Rule 8.304 of the California Rules of Court is amended, effective January 1, 2022, to read:

~~although such an appeal may be maintained without a certificate of probable cause if the notice of appeal states the appeal is based on the denial of a motion to suppress evidence or on grounds arising after entry of the plea and not affecting its validity, no *issue* challenging the validity of the plea is cognizable on that appeal without a certificate of probable cause. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1104.)~~ Subdivision (b)(1) reiterates the requirement stated in Penal Code section 1237.5(a) that to challenge the validity of a plea or the admission of a probation violation on appeal under Penal Code section 1237(a), the defendant must file both a notice of appeal and the written statement required by section 1237.5(a) for the issuance of a certificate of probable cause. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1098 [probable cause certificate requirement is to be applied strictly].)

Subdivision (b)(2) identifies exceptions to the certificate-of-probable-cause requirement, including an appeal that challenges the denial of a motion to suppress evidence under Penal Code section 1538.5 (see *People v. Stamps* (2020) 9 Cal.5th 685, 694) and an appeal that does not challenge the validity of the plea or the admission of a probation violation (see, e.g., *id.* at pp. 694–698 [appeal based on a postplea change in the law]; *People v. Arriaga* (2014) 58 Cal.4th 950, 958–960 [appeal from the denial of a motion to vacate a conviction based on inadequate advisement of potential immigration consequences under Penal Code section 1016.5]; and *People v. French* (2008) 43 Cal.4th 36, 45–46 [appeal that challenges a postplea sentencing issue that was not resolved by, and as a part of, the negotiated disposition]).

Subdivision (b)(2)(C) clarifies that no certificate of probable cause is required for an appeal from an order that, by law, is appealable without a certificate. (See, e.g., Pen. Code, § 1473.7.)

Subdivision (b)(3) makes clear that if a defendant raises on appeal an issue that requires a certificate of probable cause, but the defendant does not file the written statement required by Penal Code section 1237.5 or the superior court denies the certificate, then the appeal is limited to issues, such as those identified in subdivision (b)(2), that do not require a certificate of probable cause. (See *Mendez, supra* 19 Cal.4th at pp. 1088–1089.)

SPR21-02

Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association; Committee on Appellate Courts, Litigation Section By Erin Smith Chair Saul Bercovitch Director of Governmental Affairs	AM	The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association submits the following response to a proposal to amend Rule of Court, rule 8.304. The Committee broadly supports this proposed amendment, but suggests that one point of ambiguity be addressed before adoption. Criminal defendants who enter a no-contest or guilty plea must generally request a certificate of probable cause prior to filing an appeal that challenges the validity of the plea. However, issues that do not challenge the validity of a plea (or that challenge the denial of a suppression motion) may be raised on appeal even without the certificate of probable cause. The determination of whether an issue challenges the validity of a plea may ultimately be litigated by the parties, and certainly involves legal decision-making. Nevertheless, current rule 8.304 requires the superior court clerk to decide whether a certificate is required at the outset of an appeal—i.e., the clerk must determine whether an appeal will challenge the validity of a plea at the time a notice of appeal is initially filed. If the clerk determines that an appeal will present a certificate issue, and no certificate has been obtained, the rule requires the clerk to mark that notice of appeal as "inoperative."	The committee notes the commenter's support for the proposal if modified and appreciates the thoughtful comments. No response required. No response required.

SPR21-02

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(Amend Cal. Rules of Court, rule 8.304)

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	Commenter	Position	Comment	Committee Response
			The Committee agrees with the Invitation to Comment that this current procedure "inappropriately requires clerks to make legal decisions." The Committee also notes that the current rule frequently leads to unnecessary delays: when clerks inaccurately deem an appeal to be "inoperative," the process of preparing an appellate record is deferred, leading to subsequent delays in resolution of the appeal.	No response required.
			The Committee therefore generally supports the proposed amendment to eliminate the clerk's role in determining whether appeals should be operative. The current proposal appropriately removes legal decision-making from the court clerk, while still limiting post-plea appeals in general to "issues that do not require a certificate of probable cause." The change properly vests this determination entirely with the court, rather than the clerk.	No response required.
			However, the Committee offers the following minor suggestion for the proposed amendment. The current proposal would amend rule 8.304 (b)(2)(B) as follows: "Grounds that arose after entry of the plea or admission and ~~do not affect the plea's validity~~, as a substantive matter, challenge the validity of the plea or admission." But the qualifier "as a substantive matter" appears to be unnecessary, and may open the door to confusion about the appealability of issues that only secondarily or incidentally	The committee agrees and has modified rule 8.304(b)(2)(B). See response below to comment from Central California Appellate Program.

SPR21-02

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	Commenter	Position	Comment	Committee Response
			"affect the plea's validity." The Committee therefore recommends either omitting the qualifier or retaining the prior language. Retaining the prior language would also ensure consistency with the existing body of case law—where the term "affect the plea's validity" has already been well-defined by California courts. The Committee also notes that clerk's and reporter's transcripts must be prepared by the superior court once an operative notice of appeal has been filed. The amendment may therefore result in appellate records being prepared for some cases even when they do not present appealable issues. Since notices of appeals in felony matters are generally filed by attorneys rather than the litigants themselves, these will hopefully be uncommon. However, a review of internal court statistics involving inoperative appeals—comparing the number that are subsequently deemed operative with the number that receive no further action—would help reveal the scope of this potential hurdle. Superior court clerks and staff may have additional insight, assuming adoption of the proposed amendment, on whether the amended rule has required the use of additional resources.	The committee appreciates these thoughts on whether the proposed new procedure may result in preparation of appellate records in cases that do not raise appealable issues and, if so, how to measure the impact.
2.	Central California Appellate Program By Lena Thorpe Executive Director	A	**Appellate projects' interest** The Court of Appeal projects [FN 1 Another project, the California Appellate Project, San Francisco (CAP-SF), administers appointed	The committee notes the commenter's support for the proposal and appreciates the information on the role and perspective of the appellate projects.

	Commenter	Position	Comment	Committee Response
	On Behalf of: Elaine A. Alexander, Executive Director Appellate Defenders, Inc. Patrick McKenna, Executive Director Sixth District Appellate Program Jonathan Soglin, Executive Director First District Appellate Project Rick Lennon, Executive Director California Appellate Project, Los Angeles		death penalty cases in the California Supreme Court.] are non-profit corporations created pursuant to California Rules of Court, rule 8.300(e), which contract with the Courts of Appeal through the Judicial Council of California, Appellate Court Services, to oversee the system of court-appointed counsel on appeal in their respective districts. [FN 2 The Court of Appeal projects include the First District Appellate Project (FDAP), located in Oakland; California Appellate Project, Los Angeles (CAP-LA), serving the Second District; Central California Appellate Program (CCAP), located in Sacramento and serving the Third and Fifth Districts; Appellate Defenders, Inc. (ADI), located in San Diego and serving the Fourth District; and Sixth District Appellate Program (SDAP), in San Jose.] The central goal of the offices is to improve the quality of indigent representation on appeal, assist the Court of Appeal in administering criminal, juvenile, and limited civil appeals by indigents who are entitled to the appointment of counsel at public expense. Their caseload covers criminal, juvenile delinquency and dependency, and civil commitment appeals, certain writs, and other proceedings requiring appointed counsel in the appellate courts. The projects also handle non-capital appointed cases from their respective districts in the California Supreme Court. The guiding concept of the projects is to strengthen the resources of appellate	Nor further response required.

	Commenter	Position	Comment	Committee Response
			practitioners, to oversee this work, and attempt to assure consistently satisfactory representation of all clients. In fulfillment of its goals, the projects perform the preliminary case processing of notices of appeal. This includes the screening of notices of appeal once they have been filed and processed by the Court of Appeal. Also, California Rule of Court, rule 8.406(c) requires that the superior court clerk must mark a late or inoperative notice of appeal as received but not filed and send a copy of the marked notice of appeal to the district appellate project. This places a responsibility on the appellate project to screen the notice of appeal and the clerk's notice. In certain instances, the appellate project communicates with the superior court to request reconsideration of the determination that a notice was untimely or failed to meet other requirements. Also, the appellate project may communicate with the party and trial attorney based on the clerk's notice. In some instances, the late or inoperative filing is only noticed after a notice of appeal has been processed, a record prepared, and before or after the appointment of counsel. In those instances, it is the appointed counsel project that is responsible for interacting with the party whose appeal has been dismissed or assisting the appointed counsel upon the dismissal of the appeal. [FN 3 The appellate projects have a number of other contractual responsibilities, not	The committee notes that subdivision (c) of rule 8.406, which governs the time to appeal in juvenile appeals, addresses notices of appeal that are late; it does not address notices of appeal that are rejected for filing for other reasons. However, to ensure that the district appellate projects are aware of appeals that have been limited to non-certificate issues, the proposal includes amendments to rule 8.304(c) regarding notification of the filing of a notice of appeal. See response to comment from OCBA, below. No further response required.

	Commenter	Position	Comment	Committee Response
			specified here because they are not directly related to the subject of this comment.] **Projects' position** The appellate projects favor a rule change that facilitates the processing of the notices of appeal in criminal cases that follow a plea of guilty or no contest or an admission of a probation violation. **Request for Specific Comments** **1. Does the proposal appropriately address the stated purpose?** The proposed rule amendments are a useful improvement to reach the committee's stated goals. The addition of the revised rule 8.304(b)(3) clarifies that an appeal is operative after a certificate of probable cause has been denied. The trial court's denial of a certificate allows the appeal to proceed on limited issues. Currently, the clerk's determination is relatively easy if the form notice of appeal, CR-120, is used because either box 2.a.(1) (sentencing only) or box 2.a.(2) (motion to suppress under Penal Code section 1538.5) is marked. The onus on the clerk comes when trial counsel or a defendant in propria persona fashions their own notice that requires review of paragraphs or pages of description to distill whether the appeal fits within one of the form boxes.	The committee notes the commenters' support for the proposal. The committee appreciates this response to its request for specific comments.

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	Commenter	Position	Comment	Committee Response
			The boxes, however, can also be a source of the problem. In our experience, and as noted in the proposal itself ("it is not uncommon for both self-represented defendants and attorneys to check the wrong box or boxes, [or] check no boxes"). If a defendant or defense counsel uses the form and only checks the certificate of probable cause box, and the certificate of probable cause is denied, some clerks may deem the notice of appeal inoperative instead of construing it as operative as to non-certificate issues. This proposed rule change solves that problem by directing court clerks to treat such an appeal as operative as to non-certificate issues.	No further response required.
			The appellate projects spend a lot of time trying to remedy these defective notices of appeal either by telling the defendant or defense counsel to file an amended notice of appeal checking a non-certificate box if the 60-day deadline has not run yet, or by filing motions to amend/construe notices of appeal as being taken from grounds not requiring a certificate, which often involves an additional step of obtaining a declaration from the defendant or defense counsel of what was intended. (See, e.g., *People v. McEwan* (2007) 147 Cal.App.4th 173, 177-179. [denying such a motion because "Defendant's application to this court could have included proof of his intent to appeal on non-certificate grounds based on matters outside the	The committee notes this feedback that, under the current rule, the projects spend a lot of time trying to remedy defective notices of appeal that are deemed defective due to lack of a certificate of probable cause.

	Commenter	Position	Comment	Committee Response
			record" – e.g., a declaration – "but it failed to do so"].) This rule change, therefore, will accomplish the stated goal of relieving trial court clerks of the responsibility of determining whether a notice of appeal following a guilty or nolo contendere plea is operative if no certificate was requested or if a request for a certificate was denied, and it will relieve appellate courts of the burden of entertaining motions to deem notices of appeal operative as to non-certificate issues where the defendant has not obtained a certificate.	The committee appreciates this analysis regarding benefits to trial and appellate courts.
			2. Would the proposed rule changes have an impact on preparation of the record on appeal? If so, please describe.	
			The record on appeal is no different for any operative appeal from a judgment of conviction. The composition of the normal record on appeal is defined in rule 8.320. The proposal that would clarify the process for determining whether an appeal is operable would not affect the preparation of the record.	The committee appreciates this response to its request for specific comments.
			The essential portions of the record on appeal following a guilty plea or admitted probation violation would be the same as one in which a certificate of probable cause was issued. Even though a "sentencing only" appeal does not challenge the plea, the record still requires the reporter's transcript of the plea and other portions of record to determine whether the trial	No further response required.

	Commenter	Position	Comment	Committee Response
			court carried out the terms of the plea. When a plea bargain is not implemented according to its terms, due process principles are implicated. (*People v. Villalobos* (2012) 54 Cal.4th 177, 182; accord, *People v. Mancheno* (1982) 32 Cal.3d 855, 860.) A due process claim based on a failure to implement the plea bargain may be forfeited where the trial court provides the advice pursuant to Penal Code section 1192.5 so that the defendant is aware that he may withdraw his plea if the sentencing court does not accept the plea terms. However, where the lay defendant may not be aware that the terms of the agreement have been breached, his failure to object or withdraw his plea does not constitute forfeiture of the due process claim. (See *People v. Newton* (1974) 42 Cal.App.3d 292, 298.) **Additional considerations** **1. How could the grounds be more clearly stated in layman's terms to exercise their right to appeal?** The grounds for appeal stated in proposed rule 8.304(b)(2)(B) could be simplified for the layperson by using the language of the CR-120 notice of appeal form: "(B) The sentence or other matters occurring after the plea that do not affect the validity of the plea." **Conclusion**	The committee agrees and has modified this provision.

SPR21-02

Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Thank you for reviewing our comments. The projects look forward to an amended rule that addresses current problems in initiating an appeal.	No response required.
3.	Adrian Contreras Attorney	NI	I practice criminal law and have a concern with this proposed rule change. The proposed amendment seeks to enumerate the entire universe of orders that require a certificate of probable cause and those that don't. However, I can already see that it does not account for motions to vacate a conviction under Penal Code section 1473.7, subdivision (a)(1). Subdivision (f) of that statute expressly states it is an appeal order under Penal Code section 1237, subdivision (b). I could see a situation where either a defendant or defense attorney wants to file an appeal on a PC 1473.7 order and the superior court clerk disagree about whether a notice of appeal is needed. Perhaps the proposed rule change could have a "catch-all" provision saying a certificate of probable cause is not needed if some other statute expressly states it is not needed, like in PC 1473.7, subdivision (f). Plus, that would avoid having to amend the rule every time the Legislature in the future expands the class of orders that do not need a certificate of probable cause.	The committee appreciates the commenter's feedback. Under the rule, the two categories of appeals that do not require a certificate of probable cause are unchanged substantively by the proposed amendments. However, the committee agrees with adding a catch-all provision to make clear that no certificate of probable cause is required for an appeal from an order for which, by law, no certificate of probable cause is required. Penal Code section 1473.7 is noted as an example in the advisory committee comment.
4.	Robert Gant Owner North Hollywood	A	No specific comment.	The committee notes the commenter's support for the proposal.

SPR21-02

Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
5.	Orange County Bar Association By Larisa M. Dinsmoor President	N	The proposed amendment to California Rules of Court, Rule 8.304 would negatively impact litigants and deny them due process. Under Penal Code section 1237.5, litigants who decide to appeal a plea of guilty or an admission of a probation violation must file both a notice of appeal and a certificate of probable cause. Under the current law, if a litigant fails to file a certificate of probable cause, the clerk is required to notify the litigant and send a copy of the marked appeal to the district appellate project. With the proposed amendments, the clerk would no longer notify the litigant or the appellate project. If the certificate of probable cause is missing, any appellate issues from the plea or admission could not be addressed by the appellate court. This proposed amendment would harm a number of individuals who are seeking appellate review on pleas or admissions. First, many people who file for appeal after a plea or admission are doing so pro per and likely do not have the legal acumen to know that they must file the certificate of probable cause. In addition, some lawyers do not understand the certificate of probable cause process and could unintentionally harm defendants seeking an appeal under these circumstances. This proposed amendment will cause litigants to lose	The committee notes the commenter's opposition to the proposal. No response required. The committee has modified the proposal to ensure that the district appellate project receives notification of a notice of appeal filed without a certificate of probable cause and whether the defendant requested a certificate (which request the trial court denied). See response above.

SPR21-02
Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			the ability to have certain appellate issues considered by reviewing courts. Moreover, litigants will not even know that they made a mistake and will not have the ability to correct the mistake.	
6.	Superior Court of California, County of Los Angeles By Bryan Borys	A	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? Yes. Clarification of the current rule is welcome. Would the proposed changes have an impact on preparation of the record on appeal? If so, please describe. The impact is likely to be more timely preparation of the record for appeals that fall within this category, as the court will not have to wait for the ruling on the certification of probable cause, or for appeals court review, to prepare the notice. 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. The proposal will provide cost savings associated with elimination of the notice requirement. Note, however, that in instances in which the appeal goes forward, the trial court prepares the record, and then the Court of	The committee notes the commenter's support for the proposal. No response required. The committee appreciates these comments on the impact of the proposed rule change. The committee appreciates this information on cost and implementation matters.

SPR21-02
Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Appeal subsequently determines that the appeal is invalid, the trial court will have wasted time and money in preparing the record. This is not a reason to reject the proposal; the clarity provided by the proposal is necessary. But there may be no net cost savings from this proposal. 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. Minor programming and training costs.	No further response required.
7.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? **Yes.** • Would the proposed changes have an impact on preparation of the record on appeal? If so, please describe. **No. The appeals clerks already follow this proposed practice.** • Would the proposal provide cost savings? If so, please quantify. **No.** • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of	The committee notes the commenter's support for the proposal and appreciates the feedback on its request for specific comments. No further response required. No further response required.

SPR21-02

Appellate Procedure: Appeal After Plea of Guilty or Nolo Contendre or Admission of Probation Violation
(Amend Cal. Rules of Court, rule 8.304)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **The information would need to be incorporated into written procedures.**	No further response required.
			• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.**	No further response required.
			• How well would this proposal work in courts of different sizes? **There should be no disparate impact between courts of different sizes.**	No further response required.

Item number: 03

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Jury Instructions: Revisions and Additions to Criminal Jury Instructions

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise CALCRIM Nos. 336, 417, 582, 625, 775, 840, 852A, 1001, 1015, 1016, 1030, 1031, 1045, 1046, 1201, 1215, 1243, 1244, 1807, 1930, 2100, 2200, 2656, 3411, 3451; and Adopt New CALCRIM Nos. 2045 and 3185

Committee or other entity submitting the proposal:
Advisory Committee on Criminal Jury Instructions

Staff contact (name, phone and e-mail): Kara Portnow, kara.portnow@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A
Project description from annual agenda: Review case law and new legislation affecting jury instructions to determine whether changes to the criminal jury instructions are required. Judicial Council Direction: Draft and maintain jury instructions that accurately and understandably state the law.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* N/A
- *List any new forms that require translation by statute or that you will request to be translated:* N/A

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-109
For business meeting on October 1, 2021

Title
Jury Instructions: Revisions and Additions to Criminal Jury Instructions

Rules, Forms, Standards, or Statutes Affected
Judicial Council of California Criminal Jury Instructions (CALCRIM)

Recommended by
Advisory Committee on Criminal Jury Instructions
Hon. Peter J. Siggins, Chair

Agenda Item Type
Action Required

Effective Date
October 1, 2021

Date of Report
July 19, 2021

Contact
Kara Portnow, 415-865-4961
kara.portnow@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2021 supplement of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective October 1, 2021, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to CALCRIM Nos. 336, 417, 582, 625, 775, 840, 852A, 1001, 1015, 1016, 1030, 1031, 1045, 1046, 1201, 1215, 1243, 1244, 1807, 1930, 2100, 2200, 2656, 3411, 3451; and

2. Adoption of new CALCRIM Nos. 2045 and 3185.

The proposed jury instructions are attached at pages 9–118.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.[1] In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court.

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM.* The council approved the last *CALCRIM* release at its March 2021 meeting.

Analysis/Rationale

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

In-Custody Informant (CALCRIM No. 336)

A member alerted the committee about an unpublished opinion (*People v. Aguilera* (Mar. 20, 2020, F073866)) that discovered a potential ambiguity in this instruction. The court in *Aguilera* observed that the instruction failed to state corroboration is only required for incriminating testimony by an informant and not for exculpatory testimony. To clarify the instruction, the committee added "against the defendant" after the phrase "You may use the (statement/ [or] testimony of an in-custody informant" at the beginning of the list of requirements for such testimony. The committee also inserted the following sentence following those requirements: "This supporting evidence requirement does not apply where the testimony of an in-custody informant is offered for any purpose other than proving (guilt/ [or] a special circumstance/evidence in aggravation)."

Liability for Coconspirators' Acts (CALCRIM No. 417)

This instruction explains to jurors that "[a] member of a conspiracy is also criminally responsible for any act of any member of the conspiracy if that act is done to further the conspiracy and that act is a natural and probable consequence of the common plan or design of the conspiracy." A superior court judge pointed out that Senate Bill 1437 (Stats. 2018, ch. 1015), by eliminating natural and probable consequence liability for murder, could affect the application of this instruction in a murder case where the target offense was not murder. In response, the committee added a related issue to alert users of this potential complication. This same related issue was added to CALCRIM Nos. 402 and 403 in 2019.

[1] Rule 10.59(a) states: "The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's criminal jury instructions."

Death Penalty: Mental Retardation **(CALCRIM No. 775)**
Assembly Bill 2512 (Stats. 2020, ch. 331) amended Penal Code section 1376, which addresses intellectual disability in death penalty proceedings. The legislation changed the third prong of the intellectual disability definition to include conditions that were observable "before the end of the developmental period" instead of the previous age 18 cutoff. The committee updated the instruction with this new statutory language and replaced the term "mental retardation" with "intellectual disability." The committee also modified the authority section by removing an old link and by adding *Hall v. Florida* (2014) 572 U.S. 701, 722–723 [134 S.Ct. 1986, 188 L.Ed.2d 1007].

Evidence of Uncharged Domestic Violence **(CALCRIM No. 852A)**
Senate Bill 1141 (Stats. 2020, ch. 248) amended Family Code section 6320 to add coercive control as a basis for an ex parte order. While reviewing the instruction in relation to this statutory change, an attorney pointed out that the instruction failed to provide a complete definition of abuse as defined in Family Code section 6203. In response, the committee expanded the definition of abuse to include sexual assault and engaging in behavior that was or could be enjoined by Family Code section 6320. The committee also added domestic relationships specified in Family Code section 6211. During the comment period, a commenter noted that the Family Code contains separate definitions of cohabitants and that the relationships covered under Family Code section 6211 are broader than what the committee had initially included. As a result, the committee expanded the relationship descriptions and clarified the different statutory definitions.

Causing Minor to Engage in Commercial Sex Act **(CALCRIM No. 1244)**
In *People v. Moses* (2020) 10 Cal.5th 893, 912–913 [272 Cal.Rptr.3d 862, 477 P.3d 579], the California Supreme Court held that an actual minor victim is not required to violate Penal Code section 236.1(c). The Court also disapproved of *People v. Shields* (2018) 23 Cal.App.5th 1242 [233 Cal.Rptr.3d 701] "to the extent that it is inconsistent with this opinion." 10 Cal.5th at 913, fn. 13. Accordingly, the committee expanded the third element of the instruction to include situations when the defendant believed that a person was under 18 years of age. The committee also removed the bench note related to the holding of *People v. Shields* and added a reference to *Moses*.

False Personation **(proposed new CALCRIM No. 2045)**
Previously, CALCRIM No. 2044 applied to offenses under both Penal Code section 529 and section 530. Last March, the Judicial Council approved revisions to CALCRIM No. 2044 that included simplifying the instruction so that it only covered Penal Code section 529 offenses. As a result, this new instruction is intended to separately cover Penal Code section 530 offenses. The new instruction largely tracks the deleted sections from the prior version of CALCRIM No. 2044.

Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury (CALCRIM No. 2100)

In *People v. Stockman* (2020) 56 Cal.App.5th 1093, 1095–1096 [270 Cal.Rptr.3d 812], the court noted that this instruction, unlike the lesser included instruction CALCRIM No. 2110 (*Driving Under the Influence Without Injury*), fails to state that the "manner in which a person drives is not enough by itself to establish" that the person was "under the influence," though it may be considered along with other factors. The court encouraged the Judicial Council to consider reconciling these two instructions so that jurors would have consistent direction. In response, the committee incorporated the manner of driving language from CALCRIM No. 2110 into this instruction.

Resisting Peace Officer, Public Officer, or EMT (CALCRIM No. 2656)

In *People v. Mackreth* (2020) 58 Cal.App.5th 317 [272 Cal.Rptr.3d 498], the court held that the mental state element of Penal Code section 148(a) does not require actual knowledge that the victim is a police officer. In reaching this conclusion, the court disagreed with *In re A.L.* (2019) 38 Cal.App.5th 15, 22 [250 Cal.Rptr.3d 572], which held that the defendant must have actual knowledge he or she is resisting an officer in the performance of duty. The committee added a bench note to highlight this split in authority and to alert trial courts to modify the instruction if the court agrees with the holding of *A.L.* instead of *Mackreth*.

Sex Offenses: Sentencing Factors—Using Force or Fear Against Minor Under 14 Years/14 Years or Older (proposed new CALCRIM No. 3185) with related revisions to CALCRIM Nos. 1001, 1015, 1016, 1030, 1031, 1045, and 1046

A committee member noted that CALCRIM No. 1045 did not include sentence enhancements that apply when force or fear is used against a minor victim who is either younger than 14 years of age or at least 14 years of age. Because multiple sex offenses contain similarly worded sentence enhancements, the committee decided to create a new instruction that could be used in conjunction with several instructions. This new instruction contains alternatives that correspond to the different statutory language describing the various Penal Code offenses. The committee also added a reference to this new instruction in the bench notes of the related instructions. Finally, in CALCRIM No. 1045, the committee added *People v. Duarte Lara* (2020) 49 Cal.App.5th 332 [262 Cal.Rptr.3d 774] [holding that the statutory presumption that a minor over 14 is incapable of legal consent does not apply to a violation of Penal Code section 289(a)(1)(C)] to the bench notes.

Mistake of Law As a Defense (CALCRIM No. 3411)

People v. Koenig (2021) 58 Cal.App.5th 771, 809 [272 Cal.Rptr.3d 732] involved a prosecution for securities fraud. During the trial, the defendant presented evidence that he had relied on legal advice that he was not required to disclose his prior mail fraud convictions when he offered to sell a security. The court agreed that "a mistake of law instruction was warranted insofar as evidence gave rise to a good faith belief that the prior convictions need not be disclosed." The committee added this case to the bench note that discusses the limited application of this defense.

Present Mental Competence of Defendant (CALCRIM No. 3451)

A criminal defense attorney requested that the committee change element 2 of the competence definition to include that the accused can "consult with counsel and assist in preparing his or her defense" as outlined in *Dusky v. United States* (1960) 362 U.S. 402, 402 [80 S.Ct. 788, 4 L.Ed.2d 824]. In addition to *Dusky*, the committee reviewed *People v. Jablonski* (2006) 37 Cal.4th 774, 808 [38 Cal.Rptr.3d 98, 126 P.3d 938], which held that the competency standard outlined in Penal Code section 1367 comported with federal due process standards. Because the competency standard in this instruction is based on Penal Code section 1367, the committee concluded that the language did not need to be changed but instead added citations to *Dusky* and *Jablonski* to the authority section. The committee also replaced the term "mental retardation" with "intellectual disability."

Policy implications

Rule 2.1050 of the California Rules of Court requires the Advisory Committee on Criminal Jury Instructions to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from May 17 through June 18, 2021. The committee received responses from two commenters. The text of all comments received and the committee's responses are included in a comments chart attached at pages 6–8.

Alternatives considered

The proposed changes are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 6–8
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 9–118

CALCRIM-2021-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
417, 582, 625, 775, 840, 852A, 1001, 1015, 1016, 1030, 1031, 1045, 1046, 1201, 1215, 1243, 1244, 2045, 2100, 2200, 2656, 3411, 3451	Orange County Bar Association by Larissa M. Dinsmoor, President	The OCBA agrees with above-referenced instructions.	No response necessary.
336	Orange County Bar Association, by Larissa M. Dinsmoor, President	The amendment to the instruction makes two changes. The first is to clarify that the statement of the in-custody informant can be used against the defendant, presumably as opposed to a third party. This is a correct statement. The second change adds a paragraph explaining that the supporting evidence requirement does not apply where the testimony is offered for any purpose other than proving guilt/aggravation evidence/special circumstance. Under instructional duty, there is a note that the committee is awaiting guidance as to whether this instruction applies to witnesses other than those called by the prosecution. To resolve that issue and make this instruction applicable to the defense, it appears that this amended language is added to clarify that the supporting evidence rule is not required for evidence provided by the defense or evidence that is exculpatory. While this change is appropriate and necessary, there is a possibility that well-meaning parties and trial courts could misconstrue or misunderstand this amendment. As such, it would be helpful to further amend this instruction to add a use note or some other guidance to clarify that this amendment relates to exculpatory evidence or evidence presented on behalf of the defense.	The committee disagrees with this suggestion. The additional instructional language is self-explanatory and thus does not require a bench note.

CALCRIM-2021-01 Invitation to Comment
Revised CALCRIM Instructions
All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
852A	Pallavi Dhawan, Director of Domestic Violence Policy, on behalf of Los Angeles City Attorney's Office	Under this instruction, Alternative B triggers the Family Code, which has different definitions of abuse, victim, and cohabitant. For instance, Family Code section 6209 reads: "Cohabitant" means a person who regularly resides in the household. "Former cohabitant" means a person who formerly regularly resided in the household. Section 6211 defines victim and includes "any other person related by consanguinity or affinity within the second degree", which is broader than grandchildren, siblings, and parents. Family Code Section 6210 reads: ""Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." Since the Family Code definitions are subject to change, it may be more efficient to simply refer the user to the Family Code definitions under 6200 et al, the division of the Family Code cited as the Domestic Violence Prevention Act, if Alternative B is in play rather than defining each phrase separately and in opposition to the Penal Code definitions which control Alternative A. Otherwise, the special definitions for the Family Code for cohabitant, victim, and dating relationship should be clarified to avoid confusion with the Penal Code/Alternative A. The Penal Code definition of abuse in 13700 varies from the Family Code definition in 6203. It's not clear to me from the current proposed instruction that the differences are spelled out under each alternative; rather, it seems as though the definitions under Alternatives A and B have been conflated for cohabitant and abuse, and that the Alternative B/Family Code definition of victim excludes certain relationships that would fall within 6211(f).	The committee agrees with this comment and has made the suggested changes.
1807	Orange County Bar Association, by Larissa M. Dinsmoor, President	Amend to add: $950 value threshold applies to a felony violation of Penal Code section 368(d) based on identity theft theory under section 530.5. *People v. Baratang* (2020) 56 Cal.App.5th 252, 260–263 [270 Cal.Rptr.3d 280].	The committee disagrees with this suggestion.
1930	Orange County Bar Association, by Larissa M. Dinsmoor, President	Adds the following language to Element #3: (**document/([or] completed** <insert type[s] of document[s] from Pen. Code, Sec 470(d)> **Suggested modification: document/([or] completed item**, which is the language from the statute and *People v. Abrahamian* (2020) 45 Cal.App.5th 314, 330–333 [258 Cal.Rptr.3d 670].	The committee disagrees with this suggestion. As written, the instruction allows the trial judge to use a more specific description,

All comments are verbatim unless indicated by an asterisk (*).

Instruction	Commentator	Comment	Response
			which is preferable to the general term "item."
3185	Orange County Bar Association, by Larissa M. Dinsmoor, President	This is a new instruction specific to certain sentencing factors related to sex offenses that involve force, fear, duress, etc. specifically against minors. It is an accurate statement of the law and helpful to provide to jurors so that they can understand the elements of the allegations. While the instruction is accurate, it may be helpful to provide definitions of the different allegations (i.e. force, fear, duress, etc.) in the new instruction. In the alternative, CALCRIM 3815 can refer back to other instructions which contain the definition.	The committee disagrees with this suggestion. The relevant definitions already appear in the instructions for the underlying offenses and it would be duplicative to repeat them. It would also be unnecessary to refer back to those instructions for the definitions.

CALCRIM Proposed Changes
Table of Contents

Instruction Number	Instruction Title
336	In-Custody Informant
417	Liability for Coconspirators' Acts
582	Involuntary Manslaughter: Failure to Perform Legal Duty–Murder Not Charged
625	Voluntary Intoxication: Effects on Homicide Crimes
775	Death Penalty: Mental Retardation
840	Inflicting Injury on Spouse, Cohabitant, or Fellow Parent Resulting in Traumatic Condition
852A	Evidence of Uncharged Domestic Violence
1001	Rape or Spousal Rape in Concert
1015 & 1016	Oral Copulation by Force, Fear, or Threats Oral Copulation in Concert
1030 & 1031	Sodomy by Force, Fear, or Threats Sodomy in Concert
1045 & 1046	Sexual Penetration by Force, Fear, or Threats Sexual Penetration in Concert
1201 & 1215	Kidnapping
1243	Human Trafficking
1244	Causing Minor to Engage in Commercial Sex Act
1807	Elder Abuse
1930	Possession of Forged Documents
NEW 2045	False Personation
2100	Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury

Instruction Number	Instruction Title
2200	Reckless Driving
2656	Resisting Peace Officer, Public Officer, or EMT
NEW 3185	Sex Offenses: Sentencing Factors—Using Force or Fear Against Minor Under 14 Years/14 Years or Older
3411	Mistake of Law
3451	Present Mental Competence of Defendant

336. In-Custody Informant

View the (statement/ [or] testimony) of an in-custody informant against the defendant with caution and close scrutiny. In evaluating such (a statement/ [or] testimony), you should consider the extent to which it may have been influenced by the receipt of, or expectation of, any benefits. This does not mean that you may arbitrarily disregard such (statement/ [or] testimony), but you should give it the weight to which you find it to be entitled in the light of all the evidence in the case.

<Give the following paragraph if the issue of whether a witness was an in-custody informant is in dispute>
[An *in-custody informant* is someone [, other than (a/an) (codefendant[,]/ [or] percipient witness[,]/ [or] accomplice[,]/ [or] coconspirator,)] whose (statement/ [or] testimony)is based on [a] statement[s] the defendant allegedly made while both the defendant and the informant were held within a correctional institution. If you decide that a (declarant/ [or] witness) was not an in-custody informant, then you should evaluate his or her (statement/ [or] testimony) as you would that of any other witness.]

<Give the first bracketed phrase if the issue of whether a witness was an in-custody informant is in dispute>
[If you decide that a (declarant/ [or] witness) was an in-custody informant, then] (Y/)you may not convict the defendant of _____*<insert charged crime[s]>* **based on the (statement/ [or] testimony) of that in-custody informant alone. [Nor may you find a special circumstance true/ [or] use evidence in aggravation based on the (statement/ [or] testimony) of that in-custody informant alone.]**

You may use the (statement/ [or] testimony) of an in-custody informant against the defendant only if:

1. **The (statement/ [or] testimony) is supported by other evidence that you believe;**
2. **That supporting evidence is independent of the (statement/ [or] testimony) ;**
   AND
3. **That supporting evidence connects the defendant to the commission of the crime[s] [or to the special circumstance/ [or] to evidence in aggravation]. The supporting evidence is not sufficient if it merely**

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shows that the charged crime was committed [or proves the existence of a special circumstance/ [or] evidence in aggravation].

This supporting evidence requirement does not apply where the testimony of an in-custody informant is offered for any purpose other than proving (guilt/ [or] a special circumstance/evidence in aggravation).

[*Supporting evidence,* however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime, and it does not need to support every fact (mentioned by the accomplice in the statement/ [or] about which the witness testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.]

[Do not use the (statement/ [or] testimony) of an in-custody informant to support the (statement/ [or/ testimony) of another in-custody informant unless you are convinced that _____ *<insert name of party calling in-custody informant as witness>* **has proven it is more likely than not that the in-custody informant has not communicated with another in-custody informant on the subject of the testimony.]**

[A *percipient witness* is someone who personally perceived the matter that he or she testified about.]

<Insert the name of the in-custody informant if his or her statement~~ue~~ is not in dispute>
[_____ *<insert name of witness>* **is an in-custody informant.]**

[_____ *<insert name of institution>* **is a correctional institution.]**

New January 2006; Revised August 2012, February 2016, October 2021

BENCH NOTES

Instructional Duty
The court must give this instruction on request. (Pen. Code, § 1127a.)

The court should also be aware of the following statutory provisions relating to in-custody informants: Penal Code sections 1127a(c) [prosecution must disclose consideration given to witness]; 1191.25 [prosecution must notify victim of in-

custody informant]; and 4001.1 [limitation on payments to in-custody informants and action that may be taken by in-custody informant].

If there is no issue over whether the witness is an in-custody informant and the parties agree, the court may instruct the jury that the witness "is an in-custody informant." If there is an issue over whether the witness is an in-custody informant, give the bracketed definition of the term.

The committee awaits guidance from courts of review on the issue of whether this instruction applies to witnesses other than those called by the People. Until the issue is resolved, the committee provides this version consistent with the language of the new statute.

If the court concludes that the corroboration requirement applies to an out-of-court statement, use the word "statement" throughout the instruction. (See discussion in Related Issues section to CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*.)

Related Instruction
CALCRIM No. 337, *Witness in Custody or Physically Restrained*.

AUTHORITY

- Instructional Duty ▸ Pen. Code, §§ 1111.5, 1127a.
- In-Custody Informant Testimony and Accomplice Testimony May Corroborate Each Other ▸ *People v. Huggins* (2015) 235 Cal.App.4th 715, 719-720 [185 Cal.Rptr.3d 672].

SECONDARY SOURCES

2 Witkin, California Evidence (5th ed. 2012) Witnesses, § 20.

3 Witkin, California Evidence (5th ed. 2012) Presentation at Trial, §§ 120, 123.
2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 30, *Confessions and Admissions*, § 30.32[2] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 82, *Witnesses*, § 82.03A, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[2][b], 85.03[2][b] (Matthew Bender).

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417. Liability for Coconspirators' Acts

A member of a conspiracy is criminally responsible for the crimes that he or she conspires to commit, no matter which member of the conspiracy commits the crime.

A member of a conspiracy is also criminally responsible for any act of any member of the conspiracy if that act is done to further the conspiracy and that act is a natural and probable consequence of the common plan or design of the conspiracy. This rule applies even if the act was not intended as part of the original plan. [Under this rule, a defendant who is a member of the conspiracy does not need to be present at the time of the act.]

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

A member of a conspiracy is not criminally responsible for the act of another member if that act does not further the common plan or is not a natural and probable consequence of the common plan.

To prove that the defendant is guilty of the crime[s] charged in Count[s] __, the People must prove that:

1. **The defendant conspired to commit one of the following crimes:** _____ <*insert target crime[s]*>**;**

2. **A member of the conspiracy committed** _____ <*insert nontarget offense[s]*> **to further the conspiracy;**

   AND

3. _____ <*insert nontarget offense[s]*> **(was/were) [a] natural and probable consequence[s] of the common plan or design of the crime that the defendant conspired to commit.**

[The defendant is not responsible for the acts of another person who was not a member of the conspiracy even if the acts of the other person helped accomplish the goal of the conspiracy.]

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[A conspiracy member is not responsible for the acts of other conspiracy members that are done after the goal of the conspiracy had been accomplished.]

New January 2006; Revised October 2021

BENCH NOTES

Instructional Duty

Give this instruction when there is an issue whether the defendant is liable for the acts of coconspirators. (See *People v. Flores* (1992) 7 Cal.App.4th 1350, 1363 [9 Cal.Rptr.2d 754] [no sua sponte duty when no issue of independent criminal act by coconspirator].)

The court **must** also give either CALCRIM No. 415, *Conspiracy*, or CALCRIM No. 416, *Evidence of Uncharged Conspiracy*, with this instruction. The court **must** also give all appropriate instructions on the offense or offenses alleged to be the target of the conspiracy. (*People v. Prettyman* (1996) 14 Cal.4th 248, 254 [58 Cal.Rptr.2d 827, 926 P.2d 1013].)

Give the bracketed sentence that begins with "Under this rule," if there is evidence that the defendant was not present at the time of the act. (See *People v. Benenato* (1946) 77 Cal.App.2d 350, 356 [175 P.2d 296]; *People v. King* (1938) 30 Cal.App.2d 185, 203 [85 P.2d 928].)

Although no published case to date gives a clear definition of the terms "natural" and "probable," nor holds that there is a sua sponte duty to define them, a suggested definition is included. (See *People v. Prettyman* (1996) 14 Cal.4th 248, 291 [58 Cal.Rptr.2d 827, 926 P.2d 1013] (conc. & dis. opn. of Brown, J.).)

Give either of the last two bracketed paragraphs on request, when supported by the evidence.

Related Instructions

CALCRIM No. 418, *Coconspirator's Statements*.

AUTHORITY

- Natural and Probable Consequences; Reasonable Person Standard ▸ *People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388]; see *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323] [in context of aiding and abetting].

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- Vicarious Liability of Conspirators ▸ *People v. Hardy* (1992) 2 Cal.4th 86, 188 [5 Cal.Rptr.2d 796, 825 P.2d 781].
- Must Identify and Describe Target Offense ▸ *People v. Prettyman* (1996) 14 Cal.4th 248, 254 [58 Cal.Rptr.2d 827, 926 P.2d 1013].

RELATED ISSUES

Murder

A verdict of murder may not be based on the natural and probable consequences doctrine. Pen. Code, § 188(a)(3). (Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019.) The amendment added "malice shall not be imputed to a person based solely on his or her participation in a crime." The question whether this amendment abolished the natural and probable consequences doctrine as to attempted murder is unresolved.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 98-99.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt*, §§ 141.01[6], 141.02 (Matthew Bender).

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582. Involuntary Manslaughter: Failure to Perform Legal Duty—Murder Not Charged (Pen. Code, § 192(b))

The defendant is charged [in Count ____] with involuntary manslaughter [in violation of Penal Code section 192(b)] based on failure to perform a legal duty.

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant had a legal duty to _____** *<insert name of decedent>***;**

2. **The defendant failed to perform that legal duty;**

3. **The defendant's failure was criminally negligent;**

AND

4. **The defendant's failure caused the death of _____** *<insert name of decedent>***.**

(A/An) _____ *<insert description of person owing duty>* **has a legal duty to (help/care for/rescue/warn/maintain the property of/_____** *<insert other required action[s]>***) _____** *<insert description of decedent, not name>***.**

Criminal negligence **involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:**

1. **He or she acts in a reckless way that creates a high risk of death or great bodily injury;**

AND

2. **A reasonable person would have known that acting in that way would create such a risk.**

In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the

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same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death, only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

New January 2006; Revised September 2020, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The second sentence of the great bodily injury definition could result in error if the prosecution improperly argues great bodily injury may be shown by greater than minor injury alone. (Compare *People v. Medellin* (2020) 45 Cal.App.5th 519, 533-535 [258 Cal.Rptr.3d 867] [the definition was reasonably susceptible to prosecutor's erroneous argument that the injury need only be greater than minor] with *People v. Quinonez* (2020) 46 Cal.App.5th 457, 466 [260 Cal.Rptr.3d 86] [upholding instructions containing great bodily injury definition as written].)

Legal Duty

The existence of a legal duty is a matter of law to be decided by the judge. (*Kentucky Fried Chicken v. Superior Court* (1997) 14 Cal.4th 814, 819 [59 Cal.Rtpr.2d 756, 927 P.2d 1260]; *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 124 [211 Cal.Rptr. 356, 695 P.2d 653].) The court should instruct the jury if a legal duty exists. (See *People v. Burden* (1977) 72 Cal.App.3d 603, 614 [140 Cal.Rptr. 282] [proper instruction that parent has legal duty to furnish necessary clothing, food, and medical attention for his or her minor child].) In the

instruction on legal duty, the court should use generic terms to describe the relationship and duty owed. For example:

> A parent has a legal duty to care for a child.
>
> A paid caretaker has a legal duty to care for the person he or she was hired to care for.
>
> A person who has assumed responsibility for another person has a legal duty to care for that other person.

The court should not state "the defendant had a legal duty to the decedent." (See *People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135] [correct to state "a Garden Grove Regular Police Officer [is a] peace officer"; would be error to state "Officer Reed was a peace officer"].)

However, in a small number of cases where the legal duty to act is based on the defendant having created or increased risk to the victim, the existence of the legal duty may depend on facts in dispute. (See *People v. Oliver* (1989) 210 Cal.App.3d 138, 149 [258 Cal.Rptr. 138].) If there is a conflict in testimony over the facts necessary to establish that the defendant owed a legal duty to the victim, then the issue must be submitted to the jury. In such cases, the court should insert a section similar to the following:

> **The People must prove that the defendant had a legal duty to (help/rescue/warn/**_____ *<insert other required action[s]>***)** _____ *<insert name of decedent>***.**
>
> **In order to prove that the defendant had this legal duty, the People must prove that the defendant** _____ *<insert facts that establish legal duty>***.**
>
> **If you decide that the People have proved that the defendant** _____ *<insert facts that establish legal duty>***, then the defendant had a legal duty to (help/rescue/warn/**_____ *<insert other required action[s]>***)** _____ *<insert name of decedent>***.**
>
> **If you have a reasonable doubt whether the defendant** _____ *<insert facts that establish legal duty>***, then you must find (him/her) not guilty.**

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AUTHORITY

- Elements. ▸ Pen. Code, § 192(b); *People v. Oliver* (1989) 210 Cal.App.3d 138, 146 [258 Cal.Rptr. 138].
- Criminal Negligence. ▸ *People v. Penny* (1955) 44 Cal.2d 861, 879–880 [285 P.2d 926]; *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Legal Duty. ▸ *People v. Heitzman* (1994) 9 Cal.4th 189, 198–199 [37 Cal.Rptr.2d 236, 886 P.2d 1229]; *People v. Oliver* (1989) 210 Cal.App.3d 138, 149 [258 Cal.Rptr. 138].
- Causation. ▸ *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274].
- This Instruction Upheld. ▸ *People v. Skiff* (2021) 59 Cal.App.5th 571, 579–580 [273 Cal.Rptr.3d 572].

LESSER INCLUDED OFFENSES

Aggravated assault is not a lesser included offense of involuntary manslaughter. (*People v. Murray* (2008) 167 Cal.App.4th 1133, 1140 [84 Cal.Rptr.3d 676].)

RELATED ISSUES

Legal Duty to Aid

In *People v. Oliver* (1989) 210 Cal.App.3d 138, 147 [258 Cal.Rptr. 138], the court explained the requirement of a legal duty to act as follows:

> A necessary element of negligence, whether criminal or civil, is a duty owed to the person injured and a breach of that duty. . . . Generally, one has no legal duty to rescue or render aid to another in peril, even if the other is in danger of losing his or her life, absent a special relationship which gives rise to such duty. . . . In California civil cases, courts have found a special relationship giving rise to an affirmative duty to act where some act or omission on the part of the defendant either created or increased the risk of injury to the plaintiff, or created a dependency relationship inducing reliance or preventing assistance from others. . . . Where, however, the defendant took no affirmative action which contributed to, increased, or changed the risk which would otherwise have existed, and did not voluntarily assume any responsibility to protect the person or induce a false sense of security, courts have refused to find a special relationship giving rise to a duty to act.

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Duty Based on Dependency/Voluntary Assumption of Responsibility
A legal duty to act exists when the defendant is a caretaker or has voluntarily assumed responsibility for the victim. (*Walker v. Superior Court* (1988) 47 Cal.3d 112,134–138 [253 Cal.Rptr. 1, 763 P.2d 852] [parent to child]; *People v. Montecino* (1944) 66 Cal.App.2d 85, 100 [152 P.2d 5] [contracted caretaker to dependent].)

Duty Based on Conduct Creating or Increasing Risk
A legal duty to act may also exist where the defendant's behavior created or substantially increased the risk of harm to the victim, either by creating the dangerous situation or by preventing others from rendering aid. (*People v. Oliver* (1989) 210 Cal.App.3d 138, 147–148 [258 Cal.Rptr. 138] [defendant had duty to act where she drove victim to her home knowing he was drunk, knowingly allowed him to use her bathroom to ingest additional drugs, and watched him collapse on the floor]; *Sea Horse Ranch, Inc. v. Superior Court* (1994) 24 Cal.App.4th 446, 456 [30 Cal.Rptr. 2d 681] [defendant had duty to prevent horses from running onto adjacent freeway creating risk].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 258–260.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes,* §§ 140.03, 140.04, Ch. 142, *Crimes Against the Person,* § 142.02[2][b] (Matthew Bender).

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625. Voluntary Intoxication: Effects on Homicide Crimes (Pen. Code, § 29.4)

You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant acted with an intent to kill[,] [or] [the defendant acted with deliberation and premeditation[,]] [[or] the defendant was unconscious when (he/she) acted[,]] [or the defendant _____ *<insert other specific intent required in a homicide charge or other charged offense>***.]**

A person is *voluntarily intoxicated* if he or she becomes intoxicated by willingly using any intoxicating drug, drink, or other substance knowing that it could produce an intoxicating effect, or willingly assuming the risk of that effect.

You may not consider evidence of the defendant's voluntary intoxication for any other purpose.

New January 2006; Revised August 2014, February 2016, March 2019, October 2021

BENCH NOTES

Instructional Duty

With the statutory elimination of diminished capacity as a defense, there is no sua sponte duty to instruct on the effect of voluntary intoxication on the mental states required for homicide. (Pen. Code, § 28(b); *People v. Saille* (1991) 54 Cal.3d 1103, 1119–1120 [2 Cal.Rptr.2d 364, 820 P.2d 588].) However, subsequent cases affirm that voluntary intoxication can be used to negate an element of the crime that must be proven by the prosecution. (*People v. Reyes* (1997) 52 Cal.App.4th 975, 982 [61 Cal.Rptr.2d 39]; *People v. Visciotti* (1992) 2 Cal.4th 1, 56–57 [5 Cal.Rptr.2d 495, 825 P.2d 388].) Such an instruction is a "pinpoint" instruction, which must be given on request when there is sufficient evidence supporting the theory. (*People v. Saille, supra,* 54 Cal.3d at p. 1120.)

Include the bracketed language regarding unconsciousness if the court also gives CALCRIM No. 626, *Voluntary Intoxication Causing Unconsciousness: Effects on Homicide Crimes*.

If the defendant is charged with a homicide crime that has as an element an

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additional specific intent requirement other than intent to kill, include the required intent in the last bracketed portion of the second sentence. For example, if the defendant is charged with torture murder, include "whether the defendant intended to inflict extreme and prolonged pain." Or, if the defendant is charged with felony-murder, insert intent to commit the felony where indicated. Similarly, if the defendant is also charged with a nonhomicide crime with a specific intent requirement, include that intent requirement. For example, if the defendant is charged with murder and robbery, include "whether the defendant intended to permanently deprive the owner of the property."

Evidence of voluntary intoxication is inadmissible on the question of whether a defendant believed it necessary to act in self-defense. (*People v. Soto* (2018) 4 Cal.5th 968, 970 [231 Cal.Rptr.3~~r~~d 732, 415 P.3d 789].)

AUTHORITY

- Voluntary Intoxication Defined. ▸ Pen. Code, § 29.4(c).
- Unconsciousness Not Required. ▸ *People v. Ray* (1975) 14 Cal.3d 20, 28–29 [120 Cal.Rptr. 377, 533 P.2d 1017], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451, 999 P.2d 675].
- No Sua Sponte Duty to Instruct. ▸ *People v. Saille* (1991) 54 Cal.3d 1103, 1120 [2 Cal.Rptr.2d 364, 820 P.2d 588].
- Evidence of Intoxication Inapplicable to Implied Malice. ▸ Pen. Code, § 29.4(b); *People v. Martin* (2000) 78 Cal.App.4th 1107, 1114–1115 [93 Cal.Rptr.2d 433].
- Applies to Attempted Murder. ▸ *People v. Castillo* (1997) 16 Cal.4th 1009, 1016 [68 Cal.Rptr.2d 648, 945 P.2d 1197].
- Voluntary Intoxication Relevant to Knowledge. ▸ *People v. Reyes* (1997) 52 Cal.App.4th 975, 982–986 [61 Cal.Rptr.2d 39].
- This Instruction Upheld. ▸ *People v. Turk* (2008) 164 Cal.App.4th 1361, 1381 [80 Cal.Rptr.3d 473]; *People v. Timms* (2007) 151 Cal.App.4th 1292, 1298 [60 Cal.Rptr.3d 677].

RELATED ISSUES

General Instruction on Voluntary Intoxication
This instruction is a specific application of CALCRIM No. 3426, *Voluntary Intoxication*, to homicide.

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Unconsciousness
Unconsciousness (as defined in CALCRIM No. 3425, *Unconsciousness*) is not required. (*People v. Ray* (1975) 14 Cal.3d 20, 28–29 [120 Cal.Rptr. 377, 533 P.2d 1017], disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89 [96 Cal.Rptr.2d 451, 999 P.2d 675].)

Not Applicable in Murder Cases Based Exclusively on Implied Malice
This instruction is inapplicable to cases where the murder charge is exclusively based on a theory of *implied* malice because voluntary intoxication can only negate *express* malice. (Pen. Code, § 29.4(b); *People v. Martin* (2000) 78 Cal.App.4th 1107, 1114–1115 [93 Cal.Rptr.2d 433].) Drunk-driving second degree murder is one type of case that is typically based exclusively on an implied malice theory.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 30–34.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications,* §§ 73.01[4], 73.04 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person,* §§ 142.01[3][d.1], [e], 142.02[1][e], [f], [2][b], [3][c] (Matthew Bender).

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775. Death Penalty: Intellectual Disability~~Mental Retardation~~ (Pen. Code, § 1376)

I will now instruct you on the law that applies to this [phase of the] case.

[You must disregard all the instructions I gave you earlier and decide this phase of the trial applying only the instructions that I am giving you now. Some of these instructions will be the same or similar to instructions you have heard before. However, you must follow only this new set of instructions in this phase of the trial.]

You must decide whether the defendant is intellectually disabled~~mentally retarded~~.

In order to establish that (he/she) is intellectually disabled~~mentally retarded~~, the defendant must prove by a preponderance of the evidence that:

1. **(His/Her) general intellectual functioning is significantly below average;**

2. **(He/She) also has deficits in two or more areas of adaptive behavior;**

AND

3. **These conditions were observable before the defendant reached the end of the developmental period~~age of 18 years~~.**

***Adaptive behavior* is the set of learned skills that people generally need to function in their everyday lives. Those skill areas include communication, self-care, home-living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.**

***Proof by a preponderance of the evidence* is a different standard than proof beyond a reasonable doubt. To meet the burden of proof by a preponderance of the evidence, the defendant must prove that it is more likely than not that (he/she) is intellectually disabled~~mentally retarded~~. If the defendant has not met this burden, you must find that (he/she) has not proved that (he/she) is intellectually disabled~~mentally retarded~~. In order to return a finding that the defendant is or is not intellectually disabled~~mentally retarded~~, you must all agree on that finding.**

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New January 2006; Revised October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on general concepts of law. (*People v. Babbitt* (1988) 45 Cal.3d 660, 718 [248 Cal.Rptr. 69, 755 P.2d 253].) In the context of penalty phase instructions, the Supreme Court has stated that the trial court must clarify for the jury which instructions apply to the penalty phase. (*People v. Babbitt, supra,* 45 Cal.3d at p. 718, fn. 26; *People v. Weaver* (2001) 26 Cal.4th 876, 982 [111 Cal.Rptr.2d 2, 29 P.3d 103], cert. den. sub nom. *Weaver v. California* (2002) 535 U.S. 1058 [122 S.Ct. 1920, 152 L.Ed.2d 828].) In order to avoid confusion, the Supreme Court has indicated that the preferable practice is for the court to provide the jury with a completely new set of instructions. (*People v. Weaver, supra,* 26 Cal.4th at p. 982.) The committee recommends this approach in the ~~mental retardation~~ intellectual disability phase as well.

When the defendant in a capital trial raises the issue of intellectual disability~~mental retardation~~, the jury must decide the question unless the defendant has waived a jury on the issue. (Pen. Code, § 1376(b)(1).) The hearing on intellectual disability~~mental retardation~~ shall be conducted after the guilt phase and prior to the penalty phase. *(Ibid.)* If the defendant has entered a plea of not guilty by insanity, the hearing on intellectual disability~~mental retardation~~ shall be conducted after the sanity phase. (Pen. Code, § 1376(e).) The defense bears the burden of proving intellectual disability~~mental retardation~~ by a preponderance of the evidence. (Pen. Code, § 1376(b)(2).)

The court **must** also give any necessary instructions on witnesses and evidence, such as CALCRIM No. 222, *Evidence*, CALCRIM No. 226, *Witnesses*, and CALCRIM No. 332, *Expert Witness*. The court must conclude with CALCRIM No. 3550, *Pre-Deliberation Instructions*.

AUTHORITY

- Hearing on Intellectual Disability~~Mental Retardation~~ in Death Penalty Case. ▸ Pen. Code, § 1376.
- Execution of Intellectually Disabled~~Mentally Retarded~~ Unconstitutional. ▸ *Atkins v. Virginia* (2002) 536 U.S. 304, 319–321 [122 S.Ct. 2242, 153 L.Ed.2d 335].
- Intellectual Disability~~Mental Retardation~~ Defined. ▸ Pen. Code, § 1376(a).~~; *In re Hawthorne* (2005) 35 Cal.4th 40, 47-49 [24 Cal.Rptr.3d 189, 105 P.3d 552];~~

~~American Association on Mental Retardation, http://www.aamr.org/Policies/faq_mental_retardation.shtml (accessed August 16, 2006 [case sensitive]).~~

- Weight of IQ Tests in Assessing Intellectual Disability. ▸ *Hall v. Florida* (2014) 572 U.S. 701, 722–723 [134 S.Ct. 1986, 188 L.Ed.2d 1007]; *In re Hawthorne* (2005) 35 Cal.4th 40, 48–49 [24 Cal.Rptr.3d 189, 105 P.3d 552].
- Should Give Jury New Set of Instructions (Penalty Phase). ▸ *People v. Weaver* (2001) 26 Cal.4th 876, 982 [111 Cal.Rptr.2d 2, 29 P.3d 103], cert. den. sub nom. *Weaver v. California* (2002) 535 U.S. 1058 [122 S.Ct. 1920, 152 L.Ed.2d 828].

RELATED ISSUES

Scope of Expert Testing

When the defendant places at issue the question of whether he or she is intellectually disabled~~mentally retarded~~, the defendant must submit to examination by a prosecution expert. (*Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, 40 [11 Cal.Rptr.3d 533].) "However, those examinations are permissible only to the extent they are reasonably related to the determination of the existence of the mental condition raised. . . . [On] a defense objection to specific proposed prosecution tests, the trial court must make a threshold determination that the tests bear some reasonable relation to measuring mental retardation, including factors that might confound or explain the testing, such as malingering. . . . The trial court must prohibit any tests it concludes are not reasonably related to determining mental retardation." (*Id.* at p. 45.)

SECONDARY SOURCES

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, *Death Penalty,* §§ 87.16, 87.17, 87.18 (Matthew Bender).

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840. Inflicting Injury on Spouse, Cohabitant, or Fellow Parent Resulting in Traumatic Condition (Pen. Code, § 273.5(a))

The defendant is charged [in Count __] with inflicting an injury on [his/her] ([former] spouse/[former] cohabitant/the (mother/father) of (his/her) child/someone with whom (he/she) had, or previously had, an engagement or dating relationship that resulted in a traumatic condition [in violation of Penal Code section 273.5(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant willfully [and unlawfully] inflicted a physical injury on (his/her) ([former] spouse/[former] cohabitant/the (mother/father) of (his/her) child)/someone with whom (he/she) had, or previously had, an engagement or dating relationship);**

[AND]

2. **The injury inflicted by the defendant resulted in a traumatic condition.**

<Give element 3 when instructing on self-defense or defense of another>

[AND

3. **The defendant did not act (in self-defense/ [or] in defense of someone else).]**

Someone commits an act *willfully* when he or she does it willingly or on purpose.

A *traumatic condition* is a wound or other bodily injury, whether minor or serious, caused by the direct application of physical force.

[The term *cohabitants* means two unrelated persons living together for a substantial period of time, resulting in some permanency of the relationship. Factors that may determine whether people are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same residence, (2) sharing of income or expenses, (3) joint use or ownership of

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property, (4) the parties' holding themselves out as (spouses/domestic partners), (5) the continuity of the relationship, and (6) the length of the relationship.]

[The term *dating relationship* means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement [independent of financial considerations].]

[A person may cohabit simultaneously with two or more people at different locations, during the same time frame, if he or she maintains substantial ongoing relationships with each person and lives with each person for significant periods.]

[A person is considered to be the (mother/father) of another person's child if the alleged male parent is presumed under law to be the natural father. _____ <*insert name of presumed father*> is presumed under law to be the natural father of _____ <*insert name of child*>.]

[A traumatic condition is the *result of* an injury if:

1. **The traumatic condition was the natural and probable consequence of the injury;**

2. **The injury was a direct and substantial factor in causing the condition;**

AND

3. **The condition would not have happened without the injury.**

A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that resulted in the traumatic condition.]

New January 2006; Revised June 2007, August 2012, August 2014, February 2015, February 2016, March 2018, October 2021

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BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 3 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590-591 [35 Cal.Rptr. 401]; *People v. Cervantes* (2001) 26 Cal.4th 860, 865–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Give the bracketed paragraph that begins, "A traumatic condition is the *result of* an injury if . . . ."

Give CALCRIM No. 3404, *Accident,* on request ~~I~~if there is sufficient evidence that an alleged victim's injuries were caused by an accident~~, the court has a **sua sponte** duty to instruct on accident~~. (*People v. Anderson* (2011) 51 Cal.4th 989, 998, fn. 3 [125 Cal.Rptr.3d 408, 252 P.3d 968]~~*People v. Gonzales* (1999) 74 Cal.App.4th 382, 390 [88 Cal.Rptr.2d 111]~~.)~~ Give CALCRIM No. 3404, *Accident*~~.

Give the bracketed language "[and unlawfully]" in element 1 if there is evidence that the defendant acted in self-defense.

Give the third bracketed sentence that begins "A person may cohabit simultaneously with two or more people," on request if there is evidence that the defendant cohabited with two or more people. (See *People v. Moore* (1996) 44 Cal.App.4th 1323, 1335 [52 Cal.Rptr.2d 256].)

Give on request the bracketed paragraph that begins "A person is considered to be the (mother/father)" if an alleged parental relationship is based on the statutory presumption that the male parent is the natural father. (See Pen. Code, § 273.5(d); see also *People v. Vega* (1995) 33 Cal.App.4th 706, 711 [39 Cal.Rptr.2d 479] [parentage can be established without resort to any presumption].)

If the defendant is charged with an enhancement for a prior conviction for a similar offense within seven years and has not stipulated to the prior conviction, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*. If the court has granted a bifurcated trial, see CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

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If there is evidence that the traumatic condition resulted from strangulation or suffocation, consider instructing according to the special definition provided in Pen. Code, § 273.5(c).

The amendment to Penal Code section 273.5(b) adding "someone with whom the offender has, or previously had, an engagement or dating relationship as defined in Penal Code section 243(f)(10)" to the list of potential victims became effective on January 1, 2014.

AUTHORITY

- Elements ▸ Pen. Code, § 273.5(a).
- Traumatic Condition Defined ▸ Pen. Code, § 273.5(c); *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952 [217 Cal.Rptr. 616].
- Willful Defined ▸ Pen. Code, § 7, subd. 1; see *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Cohabitant Defined ▸ *People v. Holifield* (1988) 205 Cal.App.3d 993, 1000 [252 Cal.Rptr. 729]; *People v. Ballard* (1988) 203 Cal.App.3d 311, 318–319 [249 Cal.Rptr. 806].
- Direct Application of Force ▸ *People v. Jackson* (2000) 77 Cal.App.4th 574, 580 [91 Cal.Rptr.2d 805].
- Duty to Define Traumatic Condition ▸ *People v. Burns* (1948) 88 Cal.App.2d 867, 873–874 [200 P.2d 134].
- Strangulation and Suffocation ▸ Pen. Code, § 273.5(d).
- General Intent Crime ▸ See *People v. Thurston* (1999) 71 Cal.App.4th 1050, 1055 [84 Cal.Rptr.2d 221]; *People v. Campbell* (1999) 76 Cal.App.4th 305, 307–309 [90 Cal.Rptr.2d 315]; contra *People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402 [7 Cal.Rptr.2d 495] [dictum].
- Simultaneous Cohabitation ▸ *People v. Moore* (1996) 44 Cal.App.4th 1323, 1335 [52 Cal.Rptr.2d 256].
- Dating Relationship Defined ▸ Pen. Code, § 243(f)(10).

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LESSER INCLUDED OFFENSES

- Attempted Infliction of Corporal Punishment on Spouse ▸ Pen. Code, §§ 664, 273.5(a); *People v. Kinsey* (1995) 40 Cal.App.4th 1621, 1627, 1628 [47 Cal.Rptr.2d 769] [attempt requires intent to cause traumatic condition, but does not require a resulting "traumatic condition"].
- Misdemeanor Battery ▸ Pen. Code, §§ 242, 243(a); see *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952 [217 Cal.Rptr. 616].
- Battery Against Spouse, Cohabitant, or Fellow Parent ▸ Pen. Code, § 243(e)(1); see *People v. Jackson* (2000) 77 Cal.App.4th 574, 580 [91 Cal.Rptr.2d 805].
- Simple Assault ▸ Pen. Code, §§ 240, 241(a); *People v. Van Os* (1950) 96 Cal.App.2d 204, 206 [214 P.2d 554].

RELATED ISSUES

Continuous Course of Conduct

Penal Code section 273.5 is aimed at a continuous course of conduct. The prosecutor is not required to choose a particular act and the jury is not required to unanimously agree on the same act or acts before a guilty verdict can be returned. (*People v. Thompson* (1984) 160 Cal.App.3d 220, 224–225 [206 Cal.Rptr. 516].)

Multiple Acts of Abuse

A defendant can be charged with multiple violations of Penal Code section 273.5 when each battery satisfies the elements of section 273.5. (*People v. Healy* (1993) 14 Cal.App.4th 1137, 1140 [18 Cal.Rptr.2d 274].)

Prospective Parents of Unborn Children

Penal Code section 273.5(a) does not apply to a man who inflicts an injury upon a woman who is pregnant with his unborn child. "A pregnant woman is not a 'mother' and a fetus is not a 'child' as those terms are used in that section." (*People v. Ward* (1998) 62 Cal.App.4th 122, 126, 129 [72 Cal.Rptr.2d 531].)

Termination of Parental Rights

Penal Code section 273.5 "applies to a man who batters the mother of his child even after parental rights to that child have been terminated." (*People v. Mora* (1996) 51 Cal.App.4th 1349, 1356 [59 Cal.Rptr.2d 801].)

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SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 64–67.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.13[3] (Matthew Bender).

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852A. Evidence of Uncharged Domestic Violence

The People presented evidence that the defendant committed domestic violence that was not charged in this case[, specifically: _____ *<insert other domestic violence alleged>***.]**

<Alternative A—As defined in Pen. Code, § 13700>
[*Domestic violence* means abuse committed against (an adult/a fully emancipated minor) who is a (spouse[,]/ [or] former spouse[,]/ [or] cohabitant[,]/ [or] former cohabitant[,]/ [or] person with whom the defendant has had a child[,]/ [or] person who dated or is dating the defendant[,]/ [or] person who was or is engaged to the defendant).]

<Alternative B—As defined in Fam. Code, § 6211>
[*Domestic violence* means abuse committed against a (spouse[,]/ [or] former spouse[,]/ [or] cohabitant[,]/ [or] former cohabitant[,]/ [or] person with whom the defendant has had a child[,]/ [or] person who dated or is dating the defendant[,]/ [or] person who was or is engaged to the defendant/ [or] child[,]/ [or] grandchild[,]/ [or] parent[,]/ [or] grandparent[,]/ [or] brother[,]/ [or] sister[,]/ [or] father-in-law[,]/ [or] mother-in-law[,]/ [or] brother-in-law[,]/ [or] sister-in-law[,]/ [or] son-in-law[,]/ [or] daughter-in-law[,]/ [or] _____ <*insert relationship of consanguinity or affinity within the second degree*>) of the defendant.]

***Abuse* means intentionally or recklessly causing or attempting to cause bodily injury, [or] [committing sexual assault][,] [or] placing another person in reasonable fear of imminent serious bodily injury to himself or herself or to someone else[, or engaging in _____** *<insert behavior that was or could be enjoined pursuant to Fam. Code, § 6320>*]**.**

[A *fully emancipated minor* is a person under the age of 18 who has gained certain adult rights by marrying, being on active duty for the United States armed services, or otherwise being declared emancipated under the law.]

<Definition of cohabitant under Pen. Code § 13700(b)>
[The term *cohabitant*~~s~~ means a person who lives with an unrelated person ~~two unrelated persons living together~~ for a substantial period of time, resulting in some permanency of the relationship. Factors that may determine whether people are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same residence, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) the parties' holding

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themselves out as spouses ~~husband and wife~~, (5) the parties' registering as domestic partners, (6) the continuity of the relationship, and (7) the length of the relationship.]

<Definition of cohabitant under Fam. Code § 6209>
[The term *cohabitant* means a person who regularly resides in the household. *Former cohabitant* means a person who formerly regularly resided in the household.]

You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged domestic violence. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

If the People have not met this burden of proof, you must disregard this evidence entirely.

If you decide that the defendant committed the uncharged domestic violence, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit domestic violence and, based on that decision, also conclude that the defendant was likely to commit [and did commit] _____ *<insert charged offense[s] involving domestic violence>***, as charged here. If you conclude that the defendant committed the uncharged domestic violence, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of** _____ *<insert charged offense[s] involving domestic violence>***. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.**

[Do not consider this evidence for any other purpose [except for the limited purpose of _____ *<insert other permitted purpose, e.g., determining the defendant's credibility>***].]**

New January 2006; Revised August 2006, June 2007, April 2008, February 2014, March 2017, October 2021

BENCH NOTES

Instructional Duty

The court must give this instruction on request when evidence of other domestic violence has been introduced. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 924

[89 Cal.Rptr.2d 847, 986 P.2d 182] [error to refuse limiting instruction on request]; *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1317–1318 [97 Cal.Rptr.2d 727]; *People v. Willoughby* (1985) 164 Cal.App.3d 1054, 1067 [210 Cal.Rptr. 880] [general limiting instructions should be given when evidence of past offenses would be highly prejudicial without them].)

If the court has admitted evidence that the defendant was convicted of a felony or committed a misdemeanor for the purpose of impeachment in addition to evidence admitted under Evidence Code section 1109, then the court must specify for the jury what evidence it may consider under section 1109. (*People v. Rollo* (1977) 20 Cal.3d 109, 123, fn. 6 [141 Cal.Rptr. 177, 569 P.2d 771] [discussing section 1101(b); superseded in part on other grounds as recognized in *People v. Olmedo* (1985) 167 Cal.App.3d 1085, 1096 [213 Cal.Rptr. 742]].) In the first sentence, insert a description of the uncharged offense allegedly shown by the section 1109 evidence. If the court has not admitted any felony convictions or misdemeanor conduct for impeachment, then, in the first sentence, the court is not required to insert a description of the conduct alleged.

The definition of "domestic violence" contained in Evidence Code section 1109(d) was amended, effective January 1, 2006. The definition is now in subdivision (d)(3), which states that, as used in section 1109:

> 'Domestic violence' has the meaning set forth in Section 13700 of the Penal Code. Subject to a hearing conducted pursuant to section 352, which shall include consideration of any corroboration and remoteness in time, 'domestic violence' has the further meaning as set forth in section 6211 of the Family Code, if the act occurred no more than five years before the charged offense.

If the court determines that the evidence is admissible pursuant to the definition of domestic violence contained in Penal Code section 13700, give the definition of domestic violence labeled alternative A. If the court determines that the evidence is admissible pursuant to the definition contained in Family Code section 6211, give the definition labeled alternative B. Give the bracketed portions in the definition of "abuse" if the evidence is admissible pursuant to Family Code section 6211.

Depending on the evidence, give on request the bracketed paragraphs defining "emancipated minor" (see Fam. Code, § 7000 et seq.) and "cohabitant" (see Pen. Code, § 13700(b)).

In the paragraph that begins with "If you decide that the defendant committed," the committee has placed the phrase "and did commit" in brackets. One appellate

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court has criticized instructing the jury that it may draw an inference about disposition. (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823].) The court should review the Commentary section below and give the bracketed phrase at its discretion.

Give the final sentence that begins with "Do not consider" on request.

Related Instructions
CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 1191B, *Evidence of Charged Sex Offense*.

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*

CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person*.

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

AUTHORITY

- Instructional Requirement ▸ Evid. Code, § 1109(a)(1); see *People v. Reliford* (2003) 29 Cal.4th 1007, 1012–1016 [130 Cal.Rptr.2d 254, 62 P.3d 601]; *People v. Frazier* (2001) 89 Cal.App.4th 30, 37 [107 Cal.Rptr.2d 100]; *People v. Falsetta* (1999) 21 Cal.4th 903, 923–924 [89 Cal.Rptr.2d 847, 986 P.2d 182] [dictum].
- Abuse Defined ▸ Pen. Code, § 13700(a); Fam. Code, § 6203; *People v. Kovacich* (2011) 201 Cal.App.4th 863, 894–895 [133 Cal.Rptr.3d 924].
- Cohabitant Defined ▸ Pen. Code, § 13700(b); Fam. Code, § 6209.
- Dating Relationship Defined ▸ Fam. Code, § 6210.
- Determining Degree of Consanguinity ▸ Prob. Code, § 13.
- Affinity Defined. ▸ Fam. Code, § 6205.
- Domestic Violence Defined ▸ Evid. Code, § 1109(d)(3); Pen. Code, § 13700(b); Fam. Code, § 6211; see *People v. Poplar* (1999) 70 Cal.App.4th 1129, 1139 [83 Cal.Rptr.2d 320] [spousal rape is higher level of domestic violence].
- Emancipation of Minors Law ▸ Fam. Code, § 7000 et seq.

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- Other Crimes Proved by Preponderance of Evidence ▸ *People v. Carpenter* (1997) 15 Cal.4th 312, 382 [63 Cal.Rptr.2d 1, 935 P.2d 708]; *People v. James* (2000) 81 Cal.App.4th 1343, 1359 [96 Cal.Rptr.2d 823].
- Propensity Evidence Alone Is Not Sufficient to Support Conviction Beyond a Reasonable Doubt ▸ *People v. Younger* (2000) 84 Cal.App.4th 1360, 1382 [101 Cal.Rptr.2d 624]; *People v. James* (2000) 81 Cal.App.4th 1343, 1357–1358, fn. 8 [96 Cal.Rptr.2d 823]; see *People v. Hill* (2001) 86 Cal.App.4th 273, 277–278 [103 Cal.Rptr.2d 127] [in context of prior sexual offenses].
- Charged Sex Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▸ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].
- Previous Version of This Instruction Upheld ▸ *People v. Johnson* (2008) 164 Cal.App.4th 731, 738 [79 Cal.Rptr.3d 568].
- No Sua Sponte Duty to Give Similar Instruction ▸ *People v. Cottone* (2013) 57 Cal.4th 269, 293, fn. 15 [159 Cal.Rptr.3d 385, 303 P.3d 1163].

COMMENTARY

The paragraph that begins with "If you decide that the defendant committed" tells the jury that they may draw an inference of disposition. (See *People v. Hill* (2001) 86 Cal.App.4th 273, 275–279 [103 Cal.Rptr.2d 127]; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334–1335 [92 Cal.Rptr.2d 433].) One appellate court, however, suggests using more general terms to instruct the jury how they may use evidence of other domestic violence offenses, "leaving particular inferences for the argument of counsel and the jury's common sense." (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823] [includes suggested instruction].) If the trial court adopts this approach, the paragraph that begins with "If you decide that the defendant committed the uncharged domestic violence" may be replaced with the following:

> If you decide that the defendant committed the uncharged domestic violence, you may consider that evidence and weigh it together with all the other evidence received during the trial to help you determine whether the defendant committed _____ <*insert charged offense involving domestic violence*>. Remember, however, that evidence of uncharged domestic violence is not sufficient alone to find the defendant guilty of _____ <*insert charged offense involving domestic violence*>. The People must still prove (the/each) (charge/ [and] allegation) of _____

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<*insert charged offense involving domestic violence*> beyond a reasonable doubt.

RELATED ISSUES

Constitutional Challenges

Evidence Code section 1109 does not violate a defendant's rights to due process (*People v. Escobar* (2000) 82 Cal.App.4th 1085, 1095–1096 [98 Cal.Rptr.2d 696]; *People v. Hoover* (2000) 77 Cal.App.4th 1020, 1028–1029 [92 Cal.Rptr.2d 208]; *People v. Johnson* (2000) 77 Cal.App.4th 410, 420 [91 Cal.Rptr.2d 596]; see *People v. Falsetta* (1999) 21 Cal.4th 903, 915–922 [89 Cal.Rptr.2d 847, 986 P.2d 182] (construing Evid. Code, § 1108, a parallel statute to Evid. Code, § 1109); *People v. Branch* (2001) 91 Cal.App.4th 274, 281 [109 Cal.Rptr.2d 870] (construing Evid. Code, § 1108) or equal protection (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1310–1313 [97 Cal.Rptr.2d 727]; see *People v. Fitch* (1997) 55 Cal.App.4th 172, 184–185 [63 Cal.Rptr.2d 753] (construing Evid. Code, § 1108).

Exceptions

Evidence of domestic violence occurring more than 10 years before the charged offense is inadmissible under section 1109 of the Evidence Code, unless the court determines that the admission of this evidence is in the interest of justice. (Evid. Code, § 1109(e).) Evidence of the findings and determinations of administrative agencies regulating health facilities is also inadmissible under section 1109. (Evid. Code, § 1109(f).)

See the Related Issues sections of CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*, and CALCRIM No. 1191, *Evidence of Uncharged Sex Offense*.

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, §§ 720-722.

1 Witkin, California Evidence (5th ed. 2012) Circumstantial Evidence, §§ 101, 102.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.12[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.13 (Matthew Bender).

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1001. Rape or Spousal Rape in Concert (Pen. Code, § 264.1)

The defendant[s] [_____ *<insert name[s] if not all defendants in trial charged with this count>***] (is/are) charged [in Count __] with committing rape by acting in concert [with _____** *<insert name[s] or description[s] of uncharged participant[s]>*] **[in violation of Penal Code section 264.1].**

To prove that a defendant is guilty of this crime, the People must prove that:

<Alternative A—defendant committed rape>
[1.] [The defendant personally committed forcible rape and voluntarily acted with someone else who aided and abetted its commission(;/.)]

[OR]

<Alternative B—defendant aided and abetted>
[(1/2).] [The defendant voluntarily aided and abetted someone else who personally committed forcible rape.]

To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>***] committed rape, please refer to the separate instructions that I (will give/have given) you on that crime. To decide whether the defendant[s] [or _____** *<insert name[s] or description[s] of uncharged participant[s]>***] aided and abetted rape, please refer to the separate instructions that I (will give/have given) you on aiding and abetting. You must apply those instructions when you decide whether the People have proved rape in concert.**
<Make certain that all appropriate instructions on rape and aiding and abetting are given.>

[To prove the crime of rape in concert, the People do not have to prove a prearranged plan or scheme to commit rape.]

New January 2006; Revised October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the crime. (See Pen. Code, § 264.1; *People v. Ramirez* (1987) 189 Cal.App.3d 603,

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621 [236 Cal.Rptr. 404] [rape in concert is a separate crime, not an enhancement].) The court also has a **sua sponte** duty to instruct on rape. Give one or more of the following instructions defining rape: CALCRIM No. 1000, or CALCRIM Nos. 1005–1114.

Select alternative A or B, or both, depending on whether the defendant personally committed the crime or aided and abetted someone else.

Depending on the evidence, give the final bracketed paragraph on request regarding the lack of a prearranged plan. (See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658].)

Related Instructions

See generally CALCRIM No. 400, *Aiding and Abetting: General Principles* and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 264.1; see *People v. Mom* (2000) 80 Cal.App.4th 1217, 1224 [96 Cal.Rptr.2d 172] [requires no greater force than that necessary for forcible rape], disapproved on other grounds in *People v. Griffin* (2004) 33 Cal.4th 1015, 1028 [16 Cal.Rptr.3d 891, 94 P.3d 1089].
- Forcible Rape Defined. ▸ Pen. Code, § 261(a)(2).
- Spousal Rape Defined. ▸ Pen. Code, § 262(a)(1).
- Aiding and Abetting. ▸ *People v. Adams* (1993) 19 Cal.App.4th 412, 445–446 [23 Cal.Rptr.2d 512]; see *People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].

COMMENTARY

There is conflicting authority whether all types of forcible rape may be the basis for charging a rape in concert. (Compare *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [rape by duress, menace, and fear unavailable under Pen. Code, § 264.1] and *People v. Mom* (2000) 80 Cal.App.4th 1217, 1222–1223 [96 Cal.Rptr.2d 172] [§ 264.1 only includes rape involving "force" and "violence"], disapproved on other grounds in *People v. Griffin* (2004) 33 Cal.4th 1015, 1028 [16 Cal.Rptr.3d 891, 94 P.3d 1089], with *People v. Wheeler* (1977) 71

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Cal.App.3d 902, 907 [139 Cal.Rptr. 737] [§ 264.1 includes any unlawful use of force, including threat of harm].) The instruction addresses rape accomplished by force or violence. (See Pen. Code, §§ 261(a)(2), 264.1.) If another basis for charging rape in concert is argued, for example, rape by duress, menace, fear, or threats (see Pen. Code, § 261(a)(2), (6), & (7)), see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats* for appropriate language that may be included on request.

Penal Code section 264.1 deals with a crime of substance, and is not an enhancement statute, as discussed in *People v. Best* (1983) 143 Cal.App.3d 232, 237 [191 Cal.Rptr. 614].

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Rape. ▸ Pen. Code, § 220; *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [where forcible rape is charged].
- Attempted Rape. ▸ Pen. Code, §§ 664, 261.
- Battery. ▸ Pen. Code, § 242.
- Rape. ▸ Pen. Code, §§ 261, 262.

RELATED ISSUES

Need Not Personally Participate

A defendant may be convicted of rape in concert if he or she was at the general scene of the rape and aided and abetted another person in accomplishing the act, even if the defendant did not personally participate in the act or was not personally present at the exact scene of the act. (See *People v. Lopez* (1981) 116 Cal.App.3d 882, 887–888 [172 Cal.Rptr. 374]; *People v. Barnett* (1976) 54 Cal.App.3d 1046, 1049 [127 Cal.Rptr. 88] [oral copulation in concert although not in room when act took place]; *People v. Champion* (1995) 9 Cal.4th 879, 933 [39 Cal.Rptr.2d 547] [rape in concert by holding victim's family at gun point in another room].) However, the Supreme Court has not resolved whether a person acts in concert when his accomplice assists in the commission of the crime, but is not present at the general scene (for example, when the accomplice provides the rapist with information about the victim, or pays the rapist to commit the act). (*People v. Champion* (1995) 9 Cal.4th 879, 933, fn. 22 [891 P.2d 93].)

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SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 21.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][a], [2][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1015. Oral Copulation by Force, Fear, or Threats (Pen. Code, § 287(c)(2) & (3), (k))

The defendant is charged [in Count __] with oral copulation by force [in violation of Penal Code section 287].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant committed an act of oral copulation with someone else;**

2. **The other person did not consent to the act;**

AND

3. **The defendant accomplished the act by**

<Alternative 3A—force or fear>
[force, violence, duress, menace, or fear of immediate and unlawful bodily injury to someone.]

<Alternative 3B—future threats of bodily harm>
[threatening to retaliate against someone when there was a reasonable possibility that the threat would be carried out. A *threat to retaliate* is a threat to kidnap, unlawfully restrain or confine, or inflict extreme pain, serious bodily injury, or death.]

<Alternative 3C—threat of official action>
[threatening to use the authority of a public office to incarcerate, arrest, or deport someone. A *public official* is a person employed by a government agency who has the authority to incarcerate, arrest, or deport. The other person must have reasonably believed that the defendant was a public official even if (he/she) was not.]

***Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.**

[In order to *consent,* a person must act freely and voluntarily and know the nature of the act.]

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[Evidence that the defendant and the person (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the person (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[An act is *accomplished by force* if a person uses enough physical force to overcome the other person's will.]

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do [or submit to] something that he or she would not otherwise do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[An act is *accomplished by fear* if the other person is actually and reasonably afraid [or (he/she) is actually but unreasonably afraid and the defendant knows of (his/her) fear and takes advantage of it].]

[The defendant is not guilty of forcible oral copulation if he or she actually and reasonably believed that the other person consented to the act. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the person consented. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2006, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

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Select the appropriate alternative in element 3 to instruct how the act was allegedly accomplished.

Related Instructions
CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 287(c)(2) & (3), (k).
- Consent Defined. ▸ Pen. Code, §§ 261.6, 261.7.
- Duress Defined. ▸ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].
- Menace Defined. ▸ Pen. Code, § 261(c) [in context of rape].
- Oral Copulation Defined. ▸ Pen. Code, § 287(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- Threatening to Retaliate Defined. ▸ Pen. Code, § 287(l).
- Fear Defined. ▸ *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651]; *People v. Iniguez* (1994) 7 Cal.4th 847 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [in context of rape].
- Force Defined. ▸ *People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089]; *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826].
- Threatening to Retaliate. ▸ *People v. White* (2005) 133 Cal.App.4th 473, 484–485 [34 Cal.Rptr.3d 848]; *People v. Ward* (1986) 188 Cal.App.3d 459, 468 [233 Cal.Rptr. 477].

COMMENTARY

Penal Code section 287 requires that the oral copulation be "against the will" of the other person. (Pen. Code, § 287(c)(2) & (3), (k).) "Against the will" has been defined as "without consent." (*People v. Key* (1984) 153 Cal.App.3d 888, 895 [203 Cal.Rptr. 144]; see also *People v. Young* (1987) 190 Cal.App.3d 248, 257 [235 Cal.Rptr. 361].)

The instruction includes a definition of the sufficiency of "fear" because that term has meaning in the context of forcible oral copulation that is technical and may not

be readily apparent to jurors. (See *People v. Iniguez* (1994) 7 Cal.4th 847, 856–857 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [fear in context of rape].)

The court is not required to instruct sua sponte on the definition of "duress" or "menace" and Penal Code section 288a does not define either term. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion. The definition of "duress" is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071], and *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]. The definition of "menace" is based on the statutory definitions contained in Penal Code sections 261 and 262 [rape]. (See *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416] [using rape definition in case involving forcible lewd acts].) In *People v. Leal, supra,* 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of "duress" contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute. The court did not discuss the statutory definition of "menace." The court should consider the *Leal* opinion before giving the definition of "menace."

The term "force" as used in the forcible sex offense statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024; *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826]). In *People v. Griffin, supra,* the Supreme Court further stated,

> Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. [*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].] To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." (*People v. Young* (1987) 190 Cal.App.3d 248, 257–258 [235 Cal.Rptr. 361].)

(*People v. Griffin, supra*, 33 Cal.4th at pp. 1023–1024 [emphasis in original]; see also *People v. Guido* (2005) 125 Cal.App.4th 566, 574–576 [22 Cal.Rptr.3d 826] [*Griffin* reasoning applies to violation of Pen. Code, § 287(c)(2)].)

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The committee has provided a bracketed definition of "force," consistent with *People v. Griffin, supra,* that the court may give on request.

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Oral Copulation. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [where forcible crime is charged].
- Attempted Oral Copulation. ▸ Pen. Code, §§ 663, 287.
- Battery. ▸ Pen. Code, § 242.

RELATED ISSUES

Consent Obtained by Fraudulent Representation

A person may also induce someone else to consent to engage in oral copulation by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c.) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567] [rejecting defendant's argument that certain acts were consensual and without physical force, and were only violations of section 266c].)

Consent Withdrawn

A forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection. (*In re John Z.* (2003) 29 Cal.4th 756, 760 [128 Cal.Rptr.2d 783, 60 P.3d 183].) If there is an issue whether consent to oral copulation was withdrawn, see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats*, for language that may be adapted for use in this instruction.

Multiple Acts of Oral Copulation

An accused may be convicted for multiple, nonconsensual sex acts of an identical nature that follow one another in quick, uninterrupted succession. (*People v. Catelli* (1991) 227 Cal.App.3d 1434, 1446–1447 [278 Cal.Rptr. 452] [defendant properly convicted of multiple violations of former Pen. Code, § 288a where he interrupted the acts of copulation and forced victims to change positions].)

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Sexual Organ
A man's "sexual organ" for purposes of Penal Code section 287 includes the penis and the scrotum. (Pen. Code, § 287; *People v. Catelli* (1991) 227 Cal.App.3d 1434, 1448–1449 [278 Cal.Rptr. 452].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 35–38, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1016. Oral Copulation in Concert (Pen. Code, § 287(d))

The defendant[s] [_____ <*insert name[s] if not all defendants in trial charged with this count*>] (is/are) charged [in Count __] with committing oral copulation by acting in concert [with _____ <*insert name[s] or description[s] of uncharged participant[s]*>] [in violation of Penal Code section 287(d)].

To prove that a defendant is guilty of this crime, the People must prove that:

<*Alternative A—defendant committed oral copulation*>
[1.] [The defendant personally committed oral copulation and voluntarily acted with someone else who aided and abetted its commission(;/.)]

[OR]

<*Alternative B—defendant aided and abetted*>
[(1/2).] [The defendant voluntarily aided and abetted someone else who personally committed oral copulation.]

To decide whether the defendant[s] [or _____ <*insert name[s] or description[s] of uncharged participant[s]*>] committed oral copulation, please refer to the separate instructions that I (will give/have given) you on that crime. To decide whether the defendant[s] [or _____ <*insert name[s] or description[s] of uncharged participant[s]*>] aided and abetted oral copulation, please refer to the separate instructions that I (will give/have given) you on aiding and abetting. You must apply those instructions when you decide whether the People have proved oral copulation in concert.
<*MAKE CERTAIN THAT ALL APPROPRIATE INSTRUCTIONS ON ORAL COPULATION AND AIDING AND ABETTING ARE GIVEN.*>

[To prove the crime of oral copulation in concert, the People do not have to prove a prearranged plan or scheme to commit oral copulation.]

New January 2006; Revised October 2021

BENCH NOTES

Instructional Duty

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The court has a **sua sponte** duty to give an instruction defining the elements of the crime. (See Pen. Code, § 287(d).) The court also has a **sua sponte** duty to instruct on oral copulation. Give one or more of the following instructions defining oral copulation: CALCRIM No. 1015 or CALCRIM Nos. 1017–1022.

Select alternative A or B, or both, depending on whether the defendant personally committed the crime or aided and abetted someone else.

Depending on the evidence, give the final bracketed paragraph on request regarding the lack of a prearranged plan. (See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658].)

Related Instructions
See generally CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 287(d).
- Aiding and Abetting. ▸ *People v. Adams* (1993) 19 Cal.App.4th 412, 429, 444–446 [23 Cal.Rptr.2d 512]; *People v. Caldwell* (1984) 153 Cal.App.3d 947, 951–952 [200 Cal.Rptr. 508]; *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658] [in context of sodomy in concert].
- Consent Defined. ▸ *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Oral Copulation. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [when forcible crime is charged].
- Attempted Oral Copulation. ▸ Pen. Code, §§ 664, 287.
- Attempted Oral Copulation in Concert. ▸ Pen. Code, §§ 663, 287(d).
- Battery. ▸ Pen. Code, § 242.

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- Oral Copulation. ▸ Pen. Code, § 287.

RELATED ISSUES

See the Related Issues sections under CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*, and CALCRIM No. 1001, *Rape or Spousal Rape in Concert*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 35, 40, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [2][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1030. Sodomy by Force, Fear, or Threats (Pen. Code, § 286(c)(2), (3), (k))

The defendant is charged [in Count __] with sodomy by force [in violation of Penal Code section 286].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant committed an act of sodomy with another person;**

2. **The other person did not consent to the act;**

AND

3. **The defendant accomplished the act:**

<Alternative 3A—force or fear>
[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury to another person.]

<Alternative 3B—future threats of bodily harm>
[by threatening to retaliate against someone when there was a reasonable possibility that the defendant would carry out the threat. A *threat to retaliate* is a threat to kidnap, unlawfully restrain or confine, or inflict extreme pain, serious bodily injury, or death.]

<Alternative 3C—threat of official action>
[by threatening to use the authority of a public office to incarcerate, arrest, or deport someone. A *public official* is a person employed by a government agency who has authority to incarcerate, arrest, or deport. The other person must have reasonably believed that the defendant was a public official even if (he/she) was not.]

***Sodomy* is any penetration, no matter how slight, of the anus of one person by the penis of another person. [Ejaculation is not required.]**

[In order to *consent,* a person must act freely and voluntarily and know the nature of the act.]

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[Evidence that the defendant and the other person (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the other person (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[An act is *accomplished by force* if a person uses enough physical force to overcome the other person's will.]

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do [or submit to] something that he or she would not otherwise do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[An act is *accomplished by fear* if the other person is actually and reasonably afraid [or he or she is actually but unreasonably afraid and the defendant knows of his or her fear and takes advantage of it].]

[The other person must be alive at the time of the act for the crime of sodomy to occur.]

<Defense: Reasonable Belief in Consent>
[The defendant is not guilty of forcible sodomy if (he/she) actually and reasonably believed that the other person consented to the act. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the other person consented. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2006, February 2012, October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of sodomy. (Pen. Code, § 286(c)(2), (3), (k); *People v. Martinez* (1986) 188

Cal.App.3d 19, 24–26 [232 Cal.Rptr. 736]; *People v. Moore* (1989) 211 Cal.App.3d 1400, 1407 [260 Cal.Rptr. 134].)

The court should select the appropriate alternative in element 3 to instruct how the sodomy was accomplished.

Sodomy requires that the victim be alive at the moment of the act. (*People v. Ramirez* (1990) 50 Cal.3d 1158, 1175–1177 [270 Cal.Rptr. 286, 791 P.2d 965]; If this is an issue in the case, give the bracketed sentence that begins with "The other person must be alive . . ."

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of reasonable belief in consent if there is "substantial evidence of equivocal conduct that would have led a defendant to reasonably and in good faith believe consent existed where it did not." (See *People v. Williams* (1992) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961]; *People v. Mayberry* (1975) 15 Cal.3d 143, 153–158 [125 Cal.Rptr. 745, 542 P.2d 1337].)

Related Instructions

CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 286(c)(2), (3), (k).
- Consent Defined. ▸ Pen. Code, §§ 261.6, 261.7.
- Duress Defined. ▸ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].
- Menace Defined. ▸ Pen. Code, § 261(c) [in context of rape].
- Sodomy Defined. ▸ Pen. Code, § 286(a); see *People v. Singh* (1923) 62 Cal.App. 450, 452 [217 P. 121] [ejaculation is not required].
- Threatening to Retaliate Defined. ▸ Pen. Code, § 286(*l*).
- Fear Defined. ▸ *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651]; *People v. Iniguez* (1994) 7 Cal.4th 847, 856 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [in context of rape].
- Force Defined. ▸ *People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089]; see also *People v. Guido* (2005) 125 Cal.App.4th 566, 574 [22 Cal.Rptr.3d 826].

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COMMENTARY

Penal Code section 286 requires that the sodomy be "against the will" of the other person. (Pen. Code, § 286(c)(2), (3), (k).) "Against the will" has been defined as "without consent." (*People v. Key* (1984) 153 Cal.App.3d 888, 895 [203 Cal.Rptr. 144] [in context of rape]; see also *People v. Young* (1987) 190 Cal.App.3d 248, 257 [235 Cal.Rptr. 361].)

The instruction includes a definition of the sufficiency of "fear" because that term has meaning in the context of forcible sodomy that is technical and may not be readily apparent to jurors. (See *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651] [fear]; *People v. Iniguez* (1994) 7 Cal.4th 847, 856–857 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [fear in context of rape].)

The court is not required to instruct sua sponte on the definition of "duress" or "menace" and Penal Code section 286 does not define either term. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion. The definition of "duress" is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071], and *People v. Pitmon*, *supra*, 170 Cal.App.3d at 50. The definition of "menace" is based on the statutory definitions contained in Penal Code sections 261 and 262 [rape]. (See *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416] [using rape definition in case involving forcible lewd acts].) In *People v. Leal, supra,* 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of "duress" contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute. The court did not discuss the statutory definition of "menace." The court should consider the *Leal* opinion before giving the definition of "menace."

The term "force" as used in the forcible sex offense statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089].) In *People v. Griffin, supra,* the Supreme Court further stated,

> Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. (*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].) To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, [former]

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> subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." (*People v. Young* (1987) 190 Cal.App.3d 248, 257–258 [235 Cal.Rptr. 361].)

(*Ibid.* [emphasis in original]; see also *People v. Guido* (2005) 125 Cal.App.4th 566, 574 [22 Cal.Rptr.3d 826].)

The committee has provided a bracketed definition of "force," consistent with *People v. Griffin, supra,* that the court may give on request.

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Sodomy. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [where forcible crime is charged].
- Attempted Forcible Sodomy. ▸ Pen. Code, §§ 664, 286.
- Battery. ▸ Pen. Code, § 242; *People v. Hughes* (2002) 27 Cal.4th 287, 366 [116 Cal.Rptr.2d 401, 39 P.3d 432].

Non-forcible sex crimes requiring the perpetrator and victim to be within certain age limits are not lesser included offenses of forcible sex crimes. (*People v. Scott* (2000) 83 Cal.App.4th 784, 794 [100 Cal.Rptr.2d 70].)

RELATED ISSUES

Consent Obtained by Fraudulent Representation

A person may also induce someone else to consent to engage in sodomy by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c.) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567] [rejecting defendant's argument that certain acts were consensual and without physical force, and were only violations of section 266c].)

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Consent Withdrawn
A forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection. (*In re John Z.* (2003) 29 Cal.4th 756, 760 [128 Cal.Rptr.2d 783, 60 P.3d 183].) If there is an issue whether consent to sodomy was withdrawn, see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats*, for language that may be adapted for use in this instruction.

Victim Must Be Alive
Sodomy requires that the victim be alive at the moment of penetration. (*People v. Davis* (1995) 10 Cal.4th 463, 521, fn. 20 [41 Cal.Rptr.2d 826, 896 P.2d 119]; *People v. Ramirez* (1990) 50 Cal.3d 1158, 1176 [270 Cal.Rptr. 286, 791 P.2d 965].) Sodomy with a deceased victim can constitute attempted sodomy if the defendant attempted an act of forcible sodomy while the victim was alive or with the mistaken belief that the victim was alive. (*People v. Davis, supra,* 10 Cal.4th at p. 521, fn. 20; *People v. Hart* (1999) 20 Cal.4th 546, 611 [85 Cal.Rptr.2d 132, 976 P.2d 683].)

Penetration May Be Through Victim's Clothing
If there is penetration into a victim's anus by a perpetrator's sexual organ, it is sodomy, even if the victim is wearing clothing at the time. (*People v. Ribera* (2005) 133 Cal.App.4th 81, 85–86 [34 Cal.Rptr.3d 538]).

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 27, 28, 30, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][b], [2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1031. Sodomy in Concert (Pen. Code, § 286(d))

The defendant[s] [_____ *<insert name[s] if not all defendants in trial charged with this count>***] (is/are) charged [in Count __] with committing sodomy by acting in concert [with _____** *<insert name[s] or description[s] of uncharged participant[s]>*] **[in violation of Penal Code section 286(d)].**

To prove that a defendant is guilty of this crime, the People must prove that:

<Alternative A—defendant committed sodomy >
[1.] [The defendant personally committed sodomy and voluntarily acted with someone else who aided and abetted its commission(;/.)]

[OR]

<Alternative B—defendant aided and abetted>
[(1/2).] [The defendant voluntarily aided and abetted someone else who personally committed sodomy.]

To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>***] committed sodomy, please refer to the separate instructions that I (will give/have given) you on that crime. To decide whether the defendant[s] [or _____** *<insert name[s] or description[s] of uncharged participant[s]>***] aided and abetted sodomy, please refer to the separate instructions that I (will give/have given) you on aiding and abetting. You must apply those instructions when you decide whether the People have proved sodomy in concert.**
<MAKE CERTAIN THAT ALL APPROPRIATE INSTRUCTIONS ON SODOMY AND AIDING AND ABETTING ARE GIVEN.>

[To prove the crime of sodomy in concert, the People do not have to prove a prearranged plan or scheme to commit sodomy.]

New January 2006; Revised October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the crime. (*People v. Ramirez* (1987) 189 Cal.App.3d 603, 621 [236 Cal.Rptr. 404]

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[rape in concert is a separate crime, not an enhancement].) The court also has a **sua sponte** duty to instruct on sodomy. Give one or more of the following instructions defining sodomy: CALCRIM No. 1030 or CALCRIM Nos. 1032–1037.

Select alternative A or B, or both, depending on whether the defendant personally committed the crime or aided and abetted someone else.

Depending on the evidence, give the final bracketed paragraph on request regarding the lack of a prearranged plan. (See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658].)

Related Instructions
See CALCRIM No. 400, *Aiding and Abetting: General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 286(d).
- Aiding and Abetting. ▸ *People v. Adams* (1993) 19 Cal.App.4th 412, 429, 444–446 [23 Cal.Rptr.2d 512]; *People v. Caldwell* (1984) 153 Cal.App.3d 947, 951–952 [200 Cal.Rptr. 508]; *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rptr. 658].

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Sodomy. ▸ Pen. Code, § 220; see *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape]; *People v. Moran* (1973) 33 Cal.App.3d 724, 730 [109 Cal.Rptr. 287] [where forcible crime is charged].
- Attempted Sodomy. ▸ Pen. Code, §§ 664, 286.
- Attempted Sodomy in Concert. ▸ Pen. Code, §§ 663, 286(d).
- Battery. ▸ Pen. Code, § 242.

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- Sodomy. ▸ Pen. Code, §§ 663, 286.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1030, *Sodomy by Force, Fear, or Threats*, and CALCRIM No. 1001, *Rape or Spousal Rape in Concert*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 34.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][b], [2][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1045. Sexual Penetration by Force, Fear, or Threats (Pen. Code, § 289(a)(1), (2), (g))

The defendant is charged [in Count __] with sexual penetration by force [in violation of Penal Code section 289].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant committed an act of sexual penetration with another person;**

2. **The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);**

3. **The other person did not consent to the act;**

AND

4. **The defendant accomplished the act:**

<Alternative 4A—force or fear>
[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury to another person.]

<Alternative 4B—future threats of bodily harm>
[by threatening to retaliate against someone when there was a reasonable possibility that the defendant would carry out the threat. A *threat to retaliate* is a threat to kidnap, unlawfully restrain or confine, or inflict extreme pain, serious bodily injury, or death.]

<Alternative 4C—threat of official action>
[by threatening to use the authority of a public office to incarcerate, arrest, or deport someone. A *public official* is a person employed by a government agency who has authority to incarcerate, arrest, or deport. The other person must have reasonably believed that the defendant was a public official even if (he/she) was not.]

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Sexual penetration **means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.**

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[In order to *consent,* a person must act freely and voluntarily and know the nature of the act.]

[Evidence that the defendant and the other person (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the other person (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[An act is *accomplished by force* if a person uses enough physical force to overcome the other person's will.]

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do [or submit to] something that he or she would not otherwise do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[An act is *accomplished by fear* if the other person is actually and reasonably afraid [or (he/she) is actually but unreasonably afraid and the defendant knows of (his/her) fear and takes advantage of it].]

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<Defense: Reasonable Belief in Consent>
[The defendant is not guilty of forcible sexual penetration if (he/she) actually and reasonably believed that the other person consented to the act. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the other person consented. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2016, April 2020, October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of sexual penetration.

The court should select the appropriate alternative in element 4 to instruct how the sexual penetration was accomplished.

Defenses—Instructional Duty
The court has a **sua sponte** duty to instruct on the defense of reasonable belief in consent if there is "substantial evidence of equivocal conduct that would have led a defendant to reasonably and in good faith believe consent existed where it did not." (See *People v. Williams* (1992) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961]; *People v. Mayberry* (1975) 15 Cal.3d 143, 153–158 [125 Cal.Rptr. 745, 542 P.2d 1337].) The statutory presumption that a minor over 14 is incapable of legal consent does not apply to a violation of Penal Code section 289(a)(1)(C). (*People v. Duarte-Lara* (2020) 49 Cal.App.5th 332, 339 [262 Cal.Rptr.3d 774].)

Related Instructions
CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, § 289(a)(1), (2), (g).
- Specific Intent Crime. ▸ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Consent Defined. ▸ Pen. Code, §§ 261.6, 261.7.

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- Duress Defined. ▸ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].
- Foreign Object, Substance, Instrument, or Device Defined. ▸ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rtpr. 170] [a finger is a "foreign object"].
- Menace Defined. ▸ Pen. Code, § 261(c) [in context of rape].
- Sexual Penetration Defined. ▸ Pen. Code, § 289(k); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Threatening to Retaliate Defined. ▸ Pen. Code, § 289(*l*).
- Unknown Object Defined. ▸ Pen. Code, § 289(k)(3).
- Fear Defined. ▸ *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651]; *People v. Iniguez* (1994) 7 Cal.4th 847 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [in context of rape].
- Force Defined. ▸ *People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089].
- Intent. ▸ *People v. Senior* (1992) 3 Cal.App.4th 765, 776 [5 Cal.Rptr.2d 14] [specific intent is "purpose of sexual arousal, gratification, or abuse"].
- Mistake of Fact Regarding Consent. ▸ See *People v. Mayberry* (1975) 15 Cal.3d 143, 153–158 [125 Cal.Rptr. 745, 542 P.2d 1337] [in context of kidnapping and rape]; *People v. Duarte-Lara* (2020) 49 Cal.App.5th 332, 339 [262 Cal.Rptr.3d 774] [noting minor over 14].
- Sexual Abuse Defined. ▸ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

COMMENTARY

Penal Code section 289 requires that the sexual penetration be "against the victim's will." (Pen. Code, § 289(a)(1), (2), (g).) "Against the will" has been defined as "without consent." (See *People v. Key* (1984) 153 Cal.App.3d 888, 895 [203 Cal.Rptr. 144] [in context of rape]; see also *People v. Young* (1987) 190 Cal.App.3d 248, 257 [235 Cal.Rptr. 361].)

The instruction includes an optional definition of the sufficiency of "fear" because that term has meaning in the context of forcible sex offenses that is technical and may not be readily apparent to jurors. (See *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651] [fear in context of sodomy and oral copulation];

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People v. Iniguez (1994) 7 Cal.4th 847, 856–857 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [fear in context of rape].)

The court is not required to instruct sua sponte on the definition of "duress" or "menace" and Penal Code section 289 does not define either term. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion. The definition of "duress" is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071], and *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]. The definition of "menace" is based on the statutory definitions contained in Penal Code sections 261 and 262 [rape]. (See *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416] [using rape definition in case involving forcible lewd acts].) In *People v. Leal, supra,* 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of "duress" contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute. The court did not discuss the statutory definition of "menace." The court should consider the *Leal* opinion before giving the definition of "menace."

The term "force" as used in the forcible sex offense statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089].) In *People v. Griffin, supra,* the Supreme Court further stated,

> Nor is there anything in the common usage definitions of the term "force," or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force "*substantially* different from or *substantially* greater than" the physical force normally inherent in an act of consensual sexual intercourse. [*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].] To the contrary, it has long been recognized that "in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim]." (*People v. Young* (1987) 190 Cal.App.3d 248, 257–258 [235 Cal.Rptr. 361] . . . .)

(*Ibid.* at 1023–1024 [emphasis in original].)

The committee has provided a bracketed definition of "force," consistent with *People v. Griffin, supra,* that the court may give on request.

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LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Assault With Intent to Commit Forcible Sexual Penetration. ▸ See Pen. Code, § 220; *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape].
- Attempted Forcible Sexual Penetration. ▸ Pen. Code, §§ 664, 289(a)(1), (2), (g).
- Battery. ▸ Pen. Code, § 242.
- Sexual Battery. ▸ Pen. Code, §§ 243.4(a), (e)(1) under the expanded accusatory pleading test; *People v. Ortega* (2015) 240 Cal.App.4th 956, 967–970 [193 Cal.Rptr.3d 142].

Nonforcible sex crimes requiring the perpetrator and victim to be within certain age limits are not lesser included offenses of forcible sex crimes. (*People v. Scott* (2000) 83 Cal.App.4th 784, 794 [100 Cal.Rptr.2d 70].)

RELATED ISSUES

Consent Obtained by Fraudulent Representation

A person may also induce someone else to consent to engage in sexual penetration by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c [wobbler offense].) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567] [rejecting defendant's argument that certain acts were consensual and without physical force, and were only violations of section 266c].)

Consent Withdrawn

A forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection. (*In re John Z.* (2003) 29 Cal.4th 756, 760 [128 Cal.Rptr.2d 783, 60 P.3d 183].) If there is an issue whether consent to sexual penetration was withdrawn, see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats,* for language that may be adapted for use in this instruction.

Minor Victim

When sexual penetration is committed against the will of a person who is incapable of consent, such as a baby, and is accomplished by physical force that results in physical

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injury to the victim, the statutory requirements "against the will" and "use of force" are fully satisfied. (*People v. White* (1986) 179 Cal.App.3d 193, 202 [224 Cal.Rptr. 467].)

Multiple Penetrations

A violation of section 289 is complete when "slight" penetration occurs. A new and separate violation is completed each time a new and separate penetration, however slight, occurs. (*People v. Harrison* (1989) 48 Cal.3d 321, 329, 334 [256 Cal.Rtpr. 401, 768 P.2d 1078] [disapproving *People v. Hammon* (1987) 191 Cal.App.3d 1084, 1097 [236 Cal.Rptr. 822]].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 58, 178.

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, § 292.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [2] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1046. Sexual Penetration in Concert (Pen. Code, §§ 264.1, 289(a)(1))

The defendant[s] [_____ *<insert name[s] if not all defendants in trial charged with this count>*] (is/are) charged [in Count __] with committing sexual penetration by acting in concert [with _____ *<insert name[s] or description[s] of uncharged participant[s]>*] [in violation of Penal Code sections 264.1 and 289(a)(1)].

To prove that a defendant is guilty of this crime, the People must prove that:

<Alternative A—defendant committed sexual penetration>

[1.] [The defendant personally committed sexual penetration and voluntarily acted with someone else who aided and abetted its commission(;/.)]

[OR]

<Alternative B—defendant aided and abetted>

[(1/2).] [The defendant voluntarily aided and abetted someone else who personally committed sexual penetration.]

To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>*] committed sexual penetration, please refer to the separate instructions that I (will give/have given) you on that crime. To decide whether the defendant[s] [or _____ *<insert name[s] or description[s] of uncharged participant[s]>*] aided and abetted sexual penetration, please refer to the separate instructions that I (will give/have given) you on aiding and abetting. You must apply those instructions when you decide whether the People have proved sexual penetration in concert.
<MAKE CERTAIN THAT ALL APPROPRIATE INSTRUCTIONS ON SEXUAL PENETRATION AND AIDING AND ABETTING ARE GIVEN.>

[To prove the crime of sexual penetration in concert, the People do not have to prove a prearranged plan or scheme to commit sexual penetration.]

New January 2006; Revised October 2021

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BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. (*People v. Ramirez* (1987) 189 Cal.App.3d 603, 621 [236 Cal.Rptr. 404] [rape in concert is a separate crime, not an enhancement].) The court also has a **sua sponte** duty to instruct on sexual penetration. Give one or more of the following instructions defining sexual penetration: CALCRIM Nos. 1045 or 1047–1051.

Select alternative A or B, or both, depending on whether the defendant personally committed the crime or aided and abetted someone else.

Depending on the evidence, give the final bracketed paragraph on request regarding the lack of a prearranged plan. (See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341–342 [122 Cal.Rtpr. 658].)

Related Instructions

See generally CALCRIM No. 400, *Aiding and Abetting*: *General Principles*, and CALCRIM No. 401, *Aiding and Abetting: Intended Crimes*.

CALCRIM No. 3185, *Sex Offenses: Sentencing Factor—Using Force or Fear Against Minor Under 14 Years/14 Years or Older.*

AUTHORITY

- Elements. ▸ Pen. Code, §§ 264.1, 289(a)(1); see People v. Mom (2000) 80 Cal.App.4th 1217, 1224 [96 Cal.Rptr.2d 172] [rape in concert requires no greater force than that necessary for forcible rape], disapproved on other grounds in *People v. Griffin* (2004) 33 Cal.4th 1015, 1028 [16 Cal.Rptr.3d 891, 94 P.3d 1089].
- Aiding and Abetting. ▸ *People v. Adams* (1993) 19 Cal.App.4th 412, 445–446 [23 Cal.Rptr.2d 512]; see *People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].

LESSER INCLUDED OFFENSES

- Assault. ▸ Pen. Code, § 240.
- Attempted Sexual Penetration. ▸ Pen. Code, §§ 664, 289(a)(1).
- Attempted Sexual Penetration in Concert. ▸ Pen. Code, §§ 663, 264.1, 289(a)(1).

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- Battery. ▸ Pen. Code, § 242.
- Sexual Penetration. ▸ Pen. Code, § 289(a)(1).

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*, and CALCRIM No. 1001, *Rape or Spousal Rape in Concert*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 21.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [2][c] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

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1201. Kidnapping: Child or Person Incapable of Consent (Pen. Code, § 207(a), (e))

The defendant is charged [in Count __] with kidnapping (a child/ [or] a person with a mental impairment who was not capable of giving legal consent to the movement) [in violation of Penal Code section 207].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant used (physical force/deception) to take and carry away an unresisting (child/ [or] person with a mental impairment);**

2. **The defendant moved the (child/ [or] person with a mental impairment) a substantial distance(;/.)**

[AND]

<Section 207(e)>
[3. The defendant moved the child with an illegal intent or for an illegal purpose(;/.)]

[AND]

<Alternative 4A—alleged victim under 14 years.>
[4. The child was under 14 years old at the time of the movement(;/.)]

<Alternative 4B—alleged victim has mental impairment.>
[(3/4). _____ *<Insert name of complaining witness>* **suffered from a mental impairment that made (him/her) incapable of giving legal consent to the movement.]**

Substantial distance **means more than a slight or trivial distance. In deciding whether the distance was substantial, consider all the circumstances relating to the movement. [Thus, in addition to considering the actual distance moved, you may also consider other factors such as whether the movement increased the risk of [physical or psychological] harm, increased the danger of a foreseeable escape attempt, gave the attacker a greater opportunity to commit additional crimes, or decreased the likelihood of detection.]**

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A person is incapable of giving legal consent if he or she is unable to understand the act, its nature, and possible consequences.

[*Deception* includes tricking the (child/mentally impaired person) into accompanying him or her a substantial distance for an illegal purpose.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised April 2008, April 2020, September 2020, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give alternative 4A if the defendant is charged with kidnapping a person under 14 years of age. (Pen. Code, § 208(b).) Do not use this bracketed language if a biological parent, a natural father, an adoptive parent, or someone with access to the child by a court order takes the child. (*Ibid.*) Give alternative 4B if the alleged victim has a mental impairment.

In the paragraph defining "substantial distance," give the bracketed sentence listing factors that the jury may consider, when evidence permits, in evaluating the totality of the circumstances. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 [83 Cal.Rptr.2d 533, 973 P.2d 512].) However, in the case of simple kidnapping, if the movement was for a substantial distance, the jury does not need to consider any other factors. (*People v. Martinez, supra*, 20 Cal.4th at p. 237; see *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058].)

Give this instruction when the defendant is charged under Penal Code section 207(a) with using force to kidnap an unresisting infant or child, or person with a mental impairment, who was incapable of consenting to the movement. (See, e.g., *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; see also 2003 Amendments to Pen. Code, § 207(e) [codifying holding of *In re Michele D.*].) Give CALCRIM No. 1200, *Kidnapping: For Child Molestation*, when the defendant is charged under Penal Code section 207(b) with kidnapping a child without the use of force for the purpose of committing a lewd or lascivious act.

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Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Related Instructions

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*In re Michele D.* (2002) 29 Cal.4th 600, 614 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions relating to defenses to kidnapping, see CALCRIM No. 1225, *Defense to Kidnapping: Protecting Child From Imminent Harm.*

AUTHORITY

- Elements. ‣ Pen. Code, § 207(a), (e).
- Punishment If Victim Under 14 Years of Age. ‣ Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206] [ignorance of victim's age not defense].
- Asportation Requirement. ‣ See *People v. Martinez* (1999) 20 Cal.4th 225, 235–237 [83 Cal.Rptr.2d 533, 973 P.2d 512] [adopting modified two-pronged asportation test from *People v. Rayford* (1994) 9 Cal.4th 1, 12–14 [36 Cal.Rptr.2d 317, 884 P.2d 1369] and *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225]].
- Force Required to Kidnap Unresisting Infant or Child. ‣ *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; Pen. Code, § 207(e).
- Force Required to Kidnap Unconscious and Intoxicated Adult. ‣ *People v. Daniels* (2009) 176 Cal.App.4th 304, 333 [97 Cal.Rptr.3d 659].
- Movement Must Be for Illegal Purpose or Intent if Victim Incapable of Consent. ‣ ~~-~~*In re Michele D.* (2002) 29 Cal.4th 600, 610–611 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Oliver* (1961) 55 Cal.2d 761, 768 [12 Cal.Rptr. 865, 361 P.2d 593]~~.~~; but see *People v. Hartland* (2020) 54 Cal.App.5th 71, 80 [268 Cal.Rptr.3d 1] [an illegal purpose or intent is not required for an intoxicated and resisting adult victim].
- Substantial Distance Requirement. ‣ *People v. Daniels* (1993) 18 Cal.App.4th 1046, 1053 [22 Cal.Rptr.2d 877]; *People v. Stanworth* (1974) 11 Cal.3d 588,

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600–601 [114 Cal.Rptr. 250, 522 P.2d 1058] [since movement must be more than slight or trivial, it must be substantial in character].

- Deceit May Substitute for Force. ▸ *People v. Dalerio* (2006) 144 Cal.App.4th 775, 783 [50 Cal.Rptr.3d 724] [taking requirement satisfied when defendant relies on deception to obtain child's consent and through verbal directions and his constant physical presence takes the child substantial distance].
- This Instruction Upheld. ▸ *People v. Singh* (2019) 42 Cal.App.5th 175, 181-183 [254 Cal.Rptr.3d 871] [no sua sponte duty to define "illegal intent" or "illegal purpose"].

COMMENTARY

Penal Code section 207(a) uses the term "steals" in defining kidnapping not in the sense of a theft, but in the sense of taking away or forcible carrying away. (*People v. McCullough* (1979) 100 Cal.App.3d 169, 176 [160 Cal.Rptr. 831].) The instruction uses "take and carry away" as the more inclusive terms, but the statutory terms "steal," "hold," "detain" and "arrest" may be used if any of these more closely matches the evidence.

LESSER INCLUDED OFFENSES

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Victim Must Be Alive

A victim must be alive when kidnapped. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 498 [117 Cal.Rptr.2d 45, 40 P.3d 754].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 286-289.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person* § 142.14[1], [2][a] (Matthew Bender).

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1215. Kidnapping (Pen. Code, § 207(a))

The defendant is charged [in Count __] with kidnapping [in violation of Penal Code section 207(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant took, held, or detained another person by using force or by instilling reasonable fear;**

2. **Using that force or fear, the defendant moved the other person [or made the other person move] a substantial distance;**

[AND]

3. **The other person did not consent to the movement(;/.)**

<Give element 4 when instructing on reasonable belief in consent.>
[AND]

[4. The defendant did not actually and reasonably believe that the other person consented to the movement.]

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

***Substantial distance* means more than a slight or trivial distance. In deciding whether the distance was substantial, you must consider all the circumstances relating to the movement. [Thus, in addition to considering the actual distance moved, you may also consider other factors such as [whether the distance the other person was moved was beyond that merely incidental to the commission of _____*<insert associated crime>*], whether the movement increased the risk of [physical or psychological] harm, increased the danger of a foreseeable escape attempt, or gave the attacker a greater opportunity to commit additional crimes, or decreased the likelihood of detection.]**

<Defense: Good Faith Belief in Consent>
[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the other person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not

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reasonably and actually believe that the other person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Consent Given>
[The defendant is not guilty of kidnapping if the other person consented to go with the defendant. The other person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient maturity and understanding to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the other person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the other person withdrew consent, the defendant committed the crime as I have defined it.]]

New January 2006; Revised October 2010, April 2020, October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

In the paragraph defining "substantial distance," give the bracketed sentence listing factors that the jury may consider, when evidence permits, in evaluating the totality of the circumstances. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 [83 Cal.Rptr.2d 533, 973 P.2d 512].) However, in the case of simple kidnapping, if the movement was for a substantial distance, the jury does not need to consider any other factors. (*People v. Martinez*, supra, 20 Cal.4th at p. 237; see *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058].)

The court must give the bracketed language on movement incidental to an associated crime when it is supported by the evidence. (*People v. Martinez, supra,* 20 Cal.4th at p. 237; *People v. Bell* (2009) 179 Cal.App.4th 428, 439 [102 Cal.Rptr.3d 300].)
Give the bracketed definition of "consent" on request.

Defenses—Instructional Duty

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The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913] overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) An optional paragraph is provided for this purpose, "Defense: Consent Given."

On request, if supported by the evidence, also give the bracketed paragraph that begins with "Consent may be withdrawn." (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The court has a **sua sponte** duty to instruct on the defendant's reasonable and actual belief in the victim's consent to go with the defendant, if supported by the evidence. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].) Give bracketed element 4 and the bracketed paragraph on the defense.

Related Instructions

If the victim is incapable of consent because of immaturity or mental condition, see CALCRIM No. 1201, *Kidnapping: Child or Person Incapable of Consent*. An illegal purpose or intent is not required for an intoxicated and resisting adult victim. *People v. Hartland* (2020) 54 Cal.App.5th 71, 80 [268 Cal.Rptr.3d 1].

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*In re Michele D.* (2002) 29 Cal.4th 600, 614 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions relating to other defenses to kidnapping, see CALCRIM No. 1225, *Defense to Kidnapping: Protecting Child From Imminent Harm*, and CALCRIM No. 1226, *Defense to Kidnapping: Citizen's Arrest*.

AUTHORITY

- Elements. ▸ Pen. Code, § 207(a).

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- Punishment If Victim Under 14 Years of Age. ▸ Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206] [ignorance of victim's age not a defense].
- Asportation Requirement. ▸ *People v. Martinez* (1999) 20 Cal.4th 225, 235–237 [83 Cal.Rptr.2d 533, 973 P.2d 512] [adopting modified two-pronged asportation test from *People v. Rayford* (1994) 9 Cal.4th 1, 12–14 [36 Cal.Rptr.2d 317, 884 P.2d 1369], and *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225]].
- Consent to Physical Movement. ▸ See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119].
- Force or Fear Requirement. ▸ *People v. Moya* (1992) 4 Cal.App.4th 912, 916–917 [6 Cal.Rptr.2d 323]; *People v. Stephenson* (1974) 10 Cal.3d 652, 660 [111 Cal.Rptr. 556, 517 P.2d 820]; see *People v. Davis* (1995) 10 Cal.4th 463, 517, fn. 13, 518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [kidnapping requires use of force or fear; consent not vitiated by fraud, deceit, or dissimulation].
- Good Faith Belief in Consent. ▸ Pen. Code, § 26(3) [mistake of fact]; *People v. Mayberry* (1975) 15 Cal.3d 143, 153–155 [125 Cal.Rptr. 745, 542 P.2d 1337]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279]; *People v. Patrick* (1981) 126 Cal.App.3d 952, 968 [179 Cal.Rptr. 276].
- Incidental Movement Test. ▸ *People v. Martinez* (1999) 20 Cal.4th 225, 237–238 [83 Cal.Rptr.2d 533, 973 P.2d 512].
- Intent Requirement. ▸ *People v. Thornton* (1974) 11 Cal.3d 738, 765 [114 Cal.Rptr. 467, 523 P.2d 267], disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Davis* (1995) 10 Cal.4th 463, 519 [41 Cal.Rptr.2d 826, 896 P.2d 119]; *People v. Moya* (1992) 4 Cal.App.4th 912, 916 [6 Cal.Rptr.2d 323].
- Substantial Distance Requirement. ▸ *People v. Derek Daniels* (1993) 18 Cal.App.4th 1046, 1053; *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058] [since movement must be more than slight or trivial, it must be substantial in character].

COMMENTARY

Penal Code section 207(a) uses the term "steals" in defining kidnapping not in the sense of a theft, but in the sense of taking away or forcible carrying away. (*People v. McCullough* (1979) 100 Cal.App.3d 169, 176 [160 Cal.Rptr. 831].) The instruction uses "take," "hold," or "detain" as the more inclusive terms, but includes in brackets the statutory terms "steal" and "arrest" if either one more closely matches the evidence.

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LESSER INCLUDED OFFENSES

- False Imprisonment ▸ Pen. Code, §§ 236, 237; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1120–1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866].

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Victim Must Be Alive

A victim must be alive when kidnapped. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 498 [117 Cal.Rptr.2d 45, 40 P.3d 754].)

Threat of Arrest

"[A]n implicit threat of arrest satisfies the force or fear element of section 207(a) kidnapping if the defendant's conduct or statements cause the victim to believe that unless the victim accompanies the defendant the victim will be forced to do so, and the victim's belief is objectively reasonable." (*People v. Majors* (2004) 33 Cal.4th 321, 331 [14 Cal.Rptr.3d 870, 92 P.3d 360].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 281–291, 316.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

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1243. Human Trafficking (Pen. Code, § 236.1(a) & (b))

The defendant is charged [in Count __] with human trafficking [in violation of Penal Code section 236.1].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant either deprived another person of personal liberty or violated that other person's personal liberty;**

AND

<Give Alternative 2A if the defendant is charged with a violation of subsection (a).>
[2A. When the defendant acted, (he/she) intended to obtain forced labor or services(./;)]

[OR]

<Give Alternative 2B if the defendant is charged with a violation of subsection (b).>
[2B. When the defendant acted, (he/she) intended to (commit/ [or] maintain) a [felony] violation of _____ <*insert appropriate code section[s]***>).]**

Depriving or violating another person's personal liberty*, as used here, includes substantial and sustained restriction of another person's liberty accomplished through _____<****insert terms that apply from statutory definition, i.e.: force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury***> to the victim or to another person under circumstances in which the person receiving or perceiving the threat reasonably believes that it is likely that the person making the threat would carry it out.**

[*Forced labor or services,* as used here, means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.]

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[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person to do [or submit to] something that he or she would not otherwise do [or submit to].]

[*Duress* includes (a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the other person/ [or] knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the other person).]

[*Violence* means using physical force that is greater than the force reasonably necessary to restrain someone.]

[*Menace* means a verbal or physical threat of harm[, including use of a deadly weapon]. The threat of harm may be express or implied.]

[*Coercion* includes any scheme, plan, or pattern intended to cause a person to believe that failing to perform an act would result in (serious harm to or physical restraint against someone else/ [or] the abuse or threatened abuse of the legal process/ [or] debt bondage/ [or] providing or facilitating the possession of any controlled substance to impair the other person's judgment).]

[When you decide whether the defendant (used *duress*/ [or] used *coercion*/ [or] *deprived another person of personal liberty or violated that other person's personal liberty*), consider all of the circumstances, including the age of the other person, (his/her) relationship to the defendant [or defendant's agent[s]], and the other person's handicap or disability, if any.]

New August 2009; Revised August 2013, February 2014, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If necessary, insert the correct Penal Code section into the blank provided in element 2B and give the corresponding CALCRIM instruction.

Give bracketed element three if the defendant is charged with a violation of Pen. Code, § 236.1(c).

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This instruction is based on the language of the statute effective November 7, 2012, and only applies to crimes committed on or after that date.

The court is not required to instruct sua sponte on the definition of "menace" or "violence" and Penal Code section 236.1 does not define these terms. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion.

AUTHORITY

- Elements and Definitions ▸ Pen. Code, § 236.1.
- Menace Defined [in context of false imprisonment]. ▸ *People v. Matian* (1995) 35 Cal.App.4th 480, 484–486 [41 Cal.Rptr.2d 459]
- Violence Defined [in context of false imprisonment]. ▸ *People v. Babich* (1993) 14 Cal.App.4th 801, 806 [18 Cal.Rptr.2d 60]

RELATED ISSUES

The victim's consent is irrelevant. *People v. Oliver* (2020) 54 Cal.App.5th 1084, 1097 [269 Cal.Rptr.3d 201].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 278.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14A (Matthew Bender).

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1244. Causing Minor to Engage in Commercial Sex Act (Pen. Code, § 236.1(c))

The defendant is charged [in Count __] with (causing, inducing, or persuading / (and/or) attempting to cause, induce, or persuade) a minor to engage in a commercial sex act [in violation of Penal Code section 236.1(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (caused/ [or] induced/ [or] persuaded) [or] attempted to (cause/ [or] induce/ [or] persuade)] another person to engage in a commercial sex act;**

2. **When the defendant acted, (he/she) intended to (commit/ [or] maintain) a [felony] violation of _____ <***insert appropriate code section[s]***>;**

   AND

3. **When the defendant did so, (the other person was under 18 years of age/ [or] the defendant believed that the person was under 18 years of age).**

A *commercial sex act* is sexual conduct that takes place in exchange for anything of value.

When you decide whether the defendant (caused/ [or] induced/ [or] persuaded) the other person to engage in a commercial sex act, consider all of the circumstances, including the age of the other person, (his/her) relationship to the defendant [or defendant's agent[s]], and the other person's handicap or disability, if any.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[The other person's consent is not a defense to this crime.]

[Being mistaken about the other person's age is not a defense to this crime.]

New February 2014; Revised March 2019, October 2021

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BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Insert the correct Penal Code section into the blank provided in element 2 and give the corresponding instruction or instructions.

This instruction is based on the language of the statute effective November 7, 2012, and applies only to crimes committed on or after that date.

~~If the charged crime is a Penal Code section 21a attempt to violate Penal Code section 236.1(c) (*e.g.* when the intended victim is an undercover officer), also give CALCRIM No. 460, Attempt Other Than Attempted Murder. If the charged crime includes a violation of the attempt provision of Penal Code section 236.1(c) (e.g., when the victim is a minor), do not give CALCRIM No. 460, Attempt Other Than Attempted Murder. *People v. Shields* (2018) 23 Cal.App.5th 1242, 1257 [233 Cal.Rptr.3d 701] ["the attempt prong of the statute is distinct from the separate crime of attempt because a completed violation of the statute requires a person under the age of 18 while an attempt to violate the statute does not."]~~

Related Instructions

CALCRIM No. 3184, *Sex Offenses: Sentencing Factors—Using Force or Fear to Cause Minor to Engage in Commercial Sex Act.*

AUTHORITY

- Elements and Definitions ▸ Pen. Code, § 236.1.
- Menace Defined [in context of false imprisonment] ▸ *People v. Matian* (1995) 35 Cal.App.4th 480, 484–486 [41 Cal.Rptr.2d 459].
- Calculating Age ▸ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].
- Attempt to Cause, Induce, or Persuade Does Not Require Minor Victim~~Actual Minor Required~~ ▸ -*People v. Moses* (2020) 10 Cal.5th 893, 912–913 [272 Cal.Rptr.3d 862, 477 P.3d 579]~~*People v. Shields* (2018) 23 Cal.App.5th 1242, 1256-1257 [233 Cal.Rptr.3d 701]~~.

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SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 278.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14A (Matthew Bender).

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1807. Theft From Elder or Dependent Adult (Pen. Code, § 368(d), (e))

The defendant is charged [in Count __] with theft of property from (an elder/a dependent adult) [in violation of Penal Code section 368].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant committed (theft[,]/ embezzlement[,]/ forgery[,]/ fraud[,]/ [or] identity theft);**

2. **The (property taken/ [or] personal identifying information used) was (owned by/that of) (an elder/a dependent adult);**

<Do not give element 3 in misdemeanor cases where the value is $950 or less.>

3. **[The property, goods, or services obtained was worth more than $950;]**

AND

<Alternative 4A—defendant not caretaker>

[4. The defendant knew or reasonably should have known that the (owner of the property/person to whom the identifying information belonged) was (an elder/a dependent adult).]

[OR]

<Alternative 4B—defendant caretaker>

[4. The defendant was a caretaker of the (elder/dependent adult).]

To decide whether the defendant committed (theft[,]/ embezzlement[,]/ forgery[,]/ fraud[,]/ [or] identity theft), please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].

[An *elder* is someone who is at least 65 years old.]

[A *dependent adult* is someone who is between 18 and 64 years old and has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights.] [This definition includes an adult who has physical or developmental disabilities or whose physical or

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mental abilities have decreased because of age.] [A *dependent adult* is also someone between 18 and 64 years old who is an inpatient in a [psychiatric] health facility [or chemical dependency recovery hospital/ or _____ <*insert relevant type of health facility from Health & Saf. ~~ety~~ Code, § 1250*>] that provides 24-hour inpatient care.]

[A *caretaker* is someone who has the care, custody, or control of (a/an) (elder/dependent adult), or is someone who stands in a position of trust with (a/an) (elder/dependent adult).]

[*Property* includes money, labor, or real or personal property.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised February 2012, February 2013, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of the underlying theft offense.

If the defendant is charged with taking property valued at more than $950 (see Pen. Code, § 368(d), (e)), give element 3.

If the person charged is not alleged to be a caretaker (see Pen. Code, § 368(i)), give alternative 4A. If the person charged stipulated to be a caretaker, give alternative 4B. If it is in dispute whether the person charged is a caretaker, give both alternatives 4A and 4B and the bracketed paragraph defining caretaker.

Give the bracketed definition of "elder" or "dependent adult" (see Pen. Code, § 368(g), (h)) on request depending on the evidence in the case. Give the second and/or third bracketed sentences of the definition of "dependent adult" if a further definition is requested.

The definition of "property" may be given on request. (See Pen. Code, § 368(d), (e).)

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

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AUTHORITY

- Elements ▸ Pen. Code, § 368(d), (e).
- Caretaker Defined ▸ Pen. Code, § 368(i).
- Dependent Adult Defined ▸ Pen. Code, § 368(h).
- Elder Defined ▸ Pen. Code, § 368(g).
- 24-Hour Health Facility ▸ Health & Saf. Code, §§ 1250, 1250.2, 1250.3.
- Felony Value Threshold Applies to Identity Theft ▸ *People v. Baratang* (2020) 56 Cal.App.5th 252, 260–263 [270 Cal.Rptr.3d 280].

LESSER INCLUDED OFFENSES

- Attempted Theft From Elder or Dependent Adult ▸ Pen. Code, §§ 664, 368(d), (e).
- Theft ▸ Pen. Code, § 484.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 179-184.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1], [4][h] (Matthew Bender).

1808–1819. Reserved for Future Use

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1930. Possession of Forged Document (Pen. Code, § 475(a))

The defendant is charged [in Count __] with (possessing/ [or] receiving) (a/an) (forged[,]/ [or] altered[,]/ [or] counterfeit) document [in violation of Penal Code section 475(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (possessed/ [or] received) (a/an) (forged[,]/ [or] altered[,]/ [or] counterfeit) (document/ [or] completed _____ *<insert type[s] of document[s] from Pen. Code, § 470(d)>*);**

2. **The defendant knew that the document was (forged[,]/ [or] altered[,]/ [or] counterfeit);**

3. **The defendant intended to (pass[,]/ [or] use[,]/ [or] aid the passage or use of) the document as genuine;**

AND

4. **When the defendant (possessed/ [or] received) the document, (he/she) intended to defraud.**

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

A person *(passes/* [or] *uses)* a document if he or she represents to someone that the document is genuine. The representation may be made by words or conduct and may be either direct or indirect.

[A person *alters* a document if he or she adds to, erases, or changes a part of the document that affects a legal, financial, or property right.]

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[The People allege that the defendant possessed the following documents: _____ <*insert description of each document when multiple items alleged*>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these documents and you all agree on which document (he/she) possessed.]

<*Sentencing factor for instruments specified in Penal Code section 473(b)*>
[If you find the defendant guilty of (possessing/ [or] receiving) (a/an) (forged[,]/ [or] altered[,]/[or] counterfeit) document, you must then decide whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) was more than $950. If you have a reasonable doubt whether the value of the _____ (check/bond/bank bill/note/cashier's check/traveler's check/money order) has a value of more than $950, you must find this allegation has not been proved.

New January 2006; Revised March 2019, October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple forged items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term "utter" as to "use" or "attempt to use" an instrument. The committee has omitted the unfamiliar term "utter" in favor of the more familiar terms "use" and "attempt to use."

Give the bracketed sentence that begins with "For the purpose of this instruction" if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with "It is not necessary" if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

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AUTHORITY

- Elements ▸ Pen. Code, § 475(a); *People v. Abrahamian* (2020) 45 Cal.App.5th 314, 330–333 [258 Cal.Rptr.3d 670].
- Intent to Defraud ▸ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▸ Pen. Code, § 8.
- Pass or Attempt to Use Defined ▸ *People v. Tomlinson* (1868) 35 Cal. 503, 509; *People v. Jackson* (1979) 92 Cal.App.3d 556, 562 [155 Cal.Rptr. 89], disapproved on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1123 [240 Cal.Rptr. 585, 742 P.2d 1306].
- Alteration Defined ▸ *People v. Nesseth* (1954) 127 Cal.App.2d 712, 718–720 [274 P.2d 479]; *People v. Hall* (1942) 55 Cal.App.2d 343, 352 [130 P.2d 733].
- Unanimity Instruction If Multiple Items ▸ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- Required Additional Findings ▸ Pen. Code, § 473(b).
- Scope of Pen. Code, § 473(b) ▸ *People v. Gonzales* (2018) 6 Cal.5th 44 [237 Cal.Rptr.3d 193, 424 P.3d 280].

RELATED ISSUES

Possession and Uttering

The defendant cannot be convicted of possessing and uttering the same document. (*People v. Reisdorff* (1971) 17 Cal.App.3d 675, 679 [95 Cal.Rptr.224].)

Possession of Multiple Documents Only One Offense

Even if the defendant possessed multiple forged documents at the same time, only one violation of Penal Code section 475 may be charged. (*People v. Bowie* (1977) 72 Cal.App.3d 143, 156–157 [140 Cal.Rptr.49] [11 checks supported 1 count, not 11].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 192.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict,* § 85.02[2][a][i] (Matthew Bender).

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6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property,* § 143.04[1], [2] (Matthew Bender).

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2045. False Personation (Pen. Code, § 530)

The defendant is charged [in Count _____] with falsely impersonating another person in that person's private or official capacity and performing certain acts [in violation of Penal Code section 530].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant falsely impersonated another person in the other person's private or official capacity;**

   AND

2. **While falsely impersonating that person:**

   A. The defendant received money or property;

   B. The defendant knew that the money or property was intended to be delivered to the person that (he/she) was falsely impersonating;

   [AND]

   C. When the defendant acted, (he/she) intended to deprive the true owner of the money or property, or to use it for (his/her) own benefit, or to let someone else use it(;/.)

   [AND]

<Do not give element 3 in misdemeanor cases where the value is $950 or less.>

[3. The money or property was worth more than $950.]

New October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

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AUTHORITY

- Elements ▸ Pen. Code, § 530.
- Determination of Grand vs. Petty Theft. ▸ Pen. Code, § 490.2.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 202

1 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 10, *Investigative Detention*, § 10.05[2] (Matthew Bender)

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2100. Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury (Veh. Code, § 23153(a), (f), (g))

The defendant is charged [in Count __] with causing injury to another person while (driving a vehicle/operating a vessel) under the [combined] influence of (an alcoholic beverage/ [or] a drug/ [or] an alcoholic beverage and a drug) [in violation of Vehicle Code section 23153(a)/(f)/(g)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant (drove a vehicle/operated a vessel);**

2. **When (he/she) (drove a vehicle/operated a vessel), the defendant was under the [combined] influence of (an alcoholic beverage/ [or] a drug/ [or] an alcoholic beverage and a drug);**

3. **While (driving a vehicle/operating a vessel) under the influence, the defendant also (committed an illegal act/ [or] neglected to perform a legal duty);**

AND

4. **The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.**

A person is *under the influence* if, as a result of (drinking [or consuming] an alcoholic beverage/ [and/or] taking a drug), his or her mental or physical abilities are so impaired that he or she is no longer able to (drive a vehicle/operate a vessel) with the caution of a sober person, using ordinary care, under similar circumstances.

The manner in which a person drives is not enough by itself to establish whether the person is or is not under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]. However, it is a factor to be considered, in light of all the surrounding circumstances, in deciding whether the person was under the influence.

[An *alcoholic beverage* is a liquid or solid material intended to be consumed that contains ethanol. Ethanol is also known as ethyl alcohol, drinking alcohol, or alcohol. [An *alcoholic beverage* includes _____ *<insert type[s] of beverage[s] from Veh. Code, § 109 or Bus. & Prof. Code, § 23004, e.g., wine, beer>*.]]

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[A *drug* is a substance or combination of substances, other than alcohol, that could so affect the nervous system, brain, or muscles of a person that it would appreciably impair his or her ability to (drive a vehicle/operate a vessel) as an ordinarily cautious person, in full possession of his or her faculties and using reasonable care, would (drive a vehicle/operate a vessel) under similar circumstances.]

[If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent or more at the time of the chemical analysis, you may, but are not required to, conclude that the defendant was under the influence of an alcoholic beverage at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Public Health.

[The People allege that the defendant committed the following illegal act[s]: _____ *<list name[s] of offense[s]>***.**

To decide whether the defendant committed _____*<list name[s] of offense[s]>***, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]**

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while (driving the vehicle/operating the vessel): (the duty to exercise ordinary care at all times and to maintain proper control of the (vehicle/vessel)/_____ *<insert other duty or duties alleged>***).]**

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>
[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>
[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in

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the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

[An act causes bodily injury to another person if the injury is the direct, natural, and probable consequence of the act and the injury would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of injury. An act causes bodily injury to another person only if it is a substantial factor in causing the injury. A *substantial factor* is more than a trivial or remote factor. However, it need not be the only factor that causes the injury.]

[It is not a defense that the defendant was legally entitled to use the drug.]

[If the defendant was under the influence of (an alcoholic beverage/ [and/or] a drug), then it is not a defense that something else also impaired (his/her) ability to (drive a vehicle/operate a vessel).]

New January 2006; Revised June 2007, April 2008, December 2008, August 2015, September 2017, March 2018, September 2019, October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra,* 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of "ordinary care."

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr.

401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the "direct, natural, and probable" language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the "substantial factor" definition. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent" explains a rebuttable presumption created by statute. (See Veh. Code, § 23610; Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with "If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent" if there is no substantial evidence that the defendant's blood alcohol level was at or above 0.08 percent at the time of the test. In addition, if the test falls within the range in which no presumption applies, 0.05 percent to just below 0.08 percent, do not give this bracketed sentence. (*People v. Wood* (1989) 207 Cal.App.3d Supp. 11, 15 [255 Cal.Rptr. 537].) The court should also consider whether there is sufficient evidence to establish that the test result exceeds the margin of error before giving this instruction for test results of 0.08 percent. (Compare *People v. Campos* (1982) 138 Cal.App.3d Supp. 1, 4–5 [188 Cal.Rptr. 366], with *People v. Randolph* (1989) 213 Cal.App.3d Supp. 1, 11 [262 Cal.Rptr. 378].)

The statute also creates a rebuttable presumption that the defendant was not under the influence if his or her blood alcohol level was less than 0.05 percent. (*People*

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v. Gallardo (1994) 22 Cal.App.4th 489, 496 [27 Cal.Rptr.2d 502].) Depending on the facts of the case, the defendant may be entitled to a pinpoint instruction on this presumption. It is not error to refuse an instruction on this presumption if the prosecution's theory is that the defendant was under the combined influence of drugs and alcohol. (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1250 [32 Cal.Rptr.2d 442].)

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with "In evaluating any test results in this case." (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Give the bracketed sentence stating that "it is not a defense that something else also impaired (his/her) ability to drive" if there is evidence of an additional source of impairment such as an epileptic seizure, inattention, or falling asleep.

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra,* 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125*, Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the "imminent peril/sudden emergency" doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

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Related Instructions

CALCRIM No. 2101, *Driving With 0.08 Percent Blood Alcohol Causing Injury*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 or 0.04 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements. ▸ Veh. Code, § 23153(a), (f), (g); *People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641].
- Alcoholic Beverage Defined. ▸ Veh. Code, § 109, Bus. & Prof. Code, § 23004.
- Drug Defined. ▸ Veh. Code, § 312.
- Presumptions. ▸ Veh. Code, § 23610; Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Under the Influence Defined. ▸ *People v. Schoonover* (1970) 5 Cal.App.3d 101, 105–107 [85 Cal.Rptr. 69]; *People v. Enriquez* (1996) 42 Cal.App.4th 661, 665–666 [49 Cal.Rptr.2d 710].
- Manner of Driving. ▸ *People v. Stockman* (2020) 56 Cal.App.5th 1093, 1099–1101 [270 Cal.Rptr.3d 812]; *People v. Weathington* (1991) 231 Cal.App.3d 69, 84 [282 Cal.Rptr. 170]; *People v. McGrath* (1928) 94 Cal.App. 520, 524 [271 P. 549].
- Must Instruct on Elements of Predicate Offense. ▸ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care. ▸ Pen. Code, § 7, subd. 2; Restatement Second of Torts, § 282; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243] [ordinary negligence standard applies to driving under the influence causing injury].
- Causation. ▸ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Legal Entitlement to Use Drug Not a Defense. ▸ Veh. Code, § 23630.
- Unanimity Instruction. ▸ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188

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Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].

- Prior Convictions. ▸ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

LESSER INCLUDED OFFENSES

- Misdemeanor Driving Under the Influence or With 0.08 Percent. ▸ Veh. Code, § 23152(a) & (b); *People v. Capetillo* (1990) 220 Cal.App.3d 211, 220 [269 Cal.Rptr. 250].

- Driving Under the Influence Causing Injury is not a lesser included offense of vehicular manslaughter without gross negligence. ▸ *People v. Binkerd* (2007) 155 Cal.App.4th 1143, 1148–1149 [66 Cal.Rptr.3d 675].

- Violations of Vehicle Code section 23153(a), are not lesser included offenses of Vehicle Code section 23153(f) [now 23153(g)]. ▸ *People v. Cady* (2016) 7 Cal.App.5th 134, 145-146 [212 Cal.Rptr.3d 319].

RELATED ISSUES

DUI Cannot Serve as Predicate Unlawful Act

"[T]he evidence must show an unlawful act or neglect of duty *in addition* to driving under the influence." (*People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641] [italics in original]; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 668 [219 Cal.Rptr. 243].)

Act Forbidden by Law

The term " 'any act forbidden by law' . . . refers to acts forbidden by the Vehicle Code . . . ." (*People v. Clenney* (1958) 165 Cal.App.2d 241, 253 [331 P.2d 696].) The defendant must commit the act when driving the vehicle. (*People v. Capetillo* (1990) 220 Cal.App.3d 211, 217 [269 Cal.Rptr. 250] [violation of Veh. Code, § 10851 not sufficient because offense not committed "when" defendant was driving the vehicle but by mere fact that defendant was driving the vehicle].)

Neglect of Duty Imposed by Law

"In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of [the Vehicle Code] was violated." (Veh. Code, § 23153(c); *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243].) "[The] neglect of duty element . . . is satisfied by evidence which establishes that the defendant's conduct amounts to no more than ordinary negligence." (*People v. Oyaas, supra,* 173 Cal.App.3d at p. 669.) "[T]he law imposes on any driver [the duty] to exercise ordinary care at all times and to maintain a proper control of his or her vehicle." (*Id.* at p. 670.)

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Multiple Victims to One Drunk Driving Accident

"In *Wilkoff v. Superior Court* [(1985) 38 Cal.3d 345, 352 [211 Cal.Rptr. 742, 696 P.2d 134]] we held that a defendant cannot be charged with multiple counts of felony drunk driving under Vehicle Code section 23153, subdivision (a), where injuries to several people result from one act of drunk driving." (*People v. McFarland* (1989) 47 Cal.3d 798, 802 [254 Cal.Rptr. 331, 765 P.2d 493].) However, when "a defendant commits vehicular manslaughter with gross negligence[,] . . . he may properly be punished for [both the vehicular manslaughter and] injury to a separate individual that results from the same incident." (*Id.* at p. 804.) The prosecution may also charge an enhancement for multiple victims under Vehicle Code section 23558.

See also the Related Issues section in CALCRIM No. 2110, *Driving Under the Influence*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 272-277.

2 Witkin, California Evidence (5th ed. 2012) Demonstrative, Experimental, and Scientific Evidence § 56.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.36 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

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2200. Reckless Driving (Veh. Code, § 23103(a) & (b))

The defendant is charged [in Count __] with reckless driving [in violation of Vehicle Code section 23103].

To prove that the defendant is guilty of this crime, the People must prove that:

1. **The defendant drove a vehicle (on a highway/in an off-street parking facility);**

AND

2. **The defendant intentionally drove with wanton disregard for the safety of persons or property.**

A person acts with *wanton disregard for safety* when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk of harm, and (2) he or she intentionally ignores that risk. The person does not, however, have to intend to cause damage.

[If you conclude that the defendant drove faster than the legal speed limit, that fact by itself does not establish that the defendant drove with wanton disregard for safety. You may consider the defendant's speed, along with all the surrounding circumstances, in deciding whether the defendant drove with wanton disregard for safety.]

[A *vehicle* is a device by which people or things may be moved on a road or highway. A vehicle does not include a device that is moved only by human power or used only on stationary rails or tracks.]

[The term *highway* describes any area publicly maintained and open to the public for purposes of vehicular travel, and includes a street.]

[The term[s] (*vehicle/* [and] *highway*) (is/are) defined in another instruction to which you should refer.]

[An *off-street parking facility* is an off-street facility open for use by the public for parking vehicles. It includes a facility open to retail customers, where no fee is charged for parking.

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BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the defendant is charged with reckless driving on a highway (Veh. Code, § 23103(a)), select the phrase "on a highway" in element 1. If the defendant is charged with reckless driving in an off-street parking facility (Veh. Code, § 23103(b)), select that phrase in element 1.

Give the bracketed paragraph that begins with "If you conclude that the defendant was driving faster than" on request if relevant based on the evidence. (*People v. Nowell* (1941) 45 Cal.App.2d Supp. 811, 813–814 [114 P.2d 81].)

The court must define the terms "highway" and "vehicle." Give the bracketed definitions of the terms unless the court has already given these definitions in other instructions. In such cases, the court may give the bracketed sentence stating that the terms are defined elsewhere.

If the People allege that defendant violated Vehicle Code section 23105(b) in committing this crime, give CALCRIM No. 3223, *Reckless Driving With Specified Injury*, in addition to this instruction.

Give CALCRIM No. 2241, *Driver and Driving Defined*, on request.

AUTHORITY

- Elements. ▸ Veh. Code, § 23103(a) & (b).
- Vehicle Defined. ▸ Veh. Code, § 670.
- Highway Defined. ▸ Veh. Code, § 360.
- Off-Street Parking Facility Defined. ▸ Veh. Code, § 12500(c).
- Willful or Wanton Disregard. ▸ *People v. Schumacher* (1961) 194 Cal.App.2d 335, 340 [14 Cal.Rptr. 924]; *People v. Young* (1942) 20 Cal.2d 832, 837 [129 P.2d 353].
- Gross Negligence Insufficient. ▸ *People v. Allison* (1951) 101 Cal.App.2d Supp. 932, 935 [226 P.2d 85].
- Speeding May Constitute Recklessness Based on Circumstances. ▸ *People v. Nowell* (1941) 45 Cal.App.2d Supp. 811, 813–814 [114 P.2d 81].

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- Requires Reckless Act of Driving, Not Merely Mental State. ▸ *People v. McNutt* (1940) 40 Cal.App.2d Supp. 835, 838–839 [105 P.2d 657]; *People v. Smith* (1939) 36 Cal.App.2d Supp. 748, 751 [92 P.2d 1039].
- This Instruction Upheld. ▸ *People v. Barber* (2020) 55 Cal.App.5th 787, 808 [269 Cal.Rptr.3d 712].

RELATED ISSUES

Offense Is a Misdemeanor, Not an Infraction

Reckless driving is a misdemeanor and may not be reduced to an infraction. (*People v. Dibacco* (2004) 117 Cal.App.4th Supp. 1, 4 [12 Cal.Rptr.3d 258].)

Speeding Not Necessarily Lesser Included Offense

Speeding is not a necessarily lesser included offense of reckless driving. (*People v. Dibacco* (2004) 117 Cal.App.4th Supp. 1, 4 [12 Cal.Rptr.3d 258].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 271.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, §§ 91.60[2][b][i], [ii], 91.81[1][d], [8] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

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2656. Resisting Peace Officer, Public Officer, or EMT (Pen. Code, § 148(a))

The defendant is charged [in Count __] with (resisting[,]/ [or] obstructing[,]/ [or] delaying) a (*peace officer/public officer/emergency medical technician*) in the performance or attempted performance of (his/her) duties [in violation of Penal Code section 148(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. _____ <*insert name, excluding title*> **was (a/an) (*peace officer/public officer/emergency medical technician*) lawfully performing or attempting to perform (his/her) duties as a (*peace officer/public officer/emergency medical technician*);**

2. **The defendant willfully (resisted[,]/ [or] obstructed[,]/ [or] delayed) _____ <*insert name, excluding title*> in the performance or attempted performance of those duties;**

AND

3. **When the defendant acted, (he/she) knew, or reasonably should have known, that _____ <*insert name, excluding title*> was (a/an) (*peace officer/public officer/emergency medical technician*) performing or attempting to perform (his/her) duties.**

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[A person who is employed as a police officer by _____ <*insert name of agency that employs police officer*> is a *peace officer*.]

[A person employed by _____ <*insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife"*> is a *peace officer* if _____ <*insert description of facts necessary to make employee a peace officer, e.g., "designated by the director of the agency as a peace officer"*>.]

[An officer or employee of _____ <*insert name of state or local government agency that employs public officer*> is a *public officer*.]

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[An *emergency medical technician* is someone who holds a valid certificate as an emergency medical technician.]

[The duties of (a/an) _____ *<insert title of peace officer, public officer, or emergency medical technician>* **include** _____ *<insert job duties>***.]**

[Taking a photograph or making an audio or video recording of a (*peace officer*/*public officer*/*emergency medical technician*) while the officer is in a public place or the person taking the photograph or making the recording is in a place where he or she has the right to be is not, by itself, a crime.]

<When lawful performance is an issue, give the following paragraph and Instruction 2670, Lawful Performance: Peace Officer.>
[A *peace officer* is not lawfully performing his or her duties if he or she is (unlawfully arresting or detaining someone/ [or] using unreasonable or excessive force in his or her duties). Instruction 2670 explains (when an arrest or detention is unlawful/ [and] when force is unreasonable or excessive).]

[[The People allege that the defendant (resisted[,]/ [or] obstructed[,]/ [or] delayed) _____ *<insert name, excluding title>* **by doing the following:** _____ *<insert description of acts when multiple acts alleged>***.] You may not find the defendant guilty unless you all agree that the People have proved that the defendant committed at least one of the alleged acts of (resisting[,]/ [or] obstructing[,]/ [or] delaying) a (*peace officer/public officer/emergency medical technician*) who was lawfully performing his or her duties, and you all agree on which act (he/she) committed.]**

[If a person intentionally goes limp, requiring an officer to drag or carry the person in order to accomplish a lawful arrest, that person may have willfully (resisted[,]/ [or] obstructed[,]/ [or] delayed) the officer if all the other requirements are met.]

New January 2006; Revised June 2007, August 2016, October 2021

BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court may use the optional bracketed language in the penultimate paragraph to insert a description of the multiple acts alleged if appropriate.

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"[I]f a defendant is charged with violating section 148 and the arrest is found to be unlawful, a defendant cannot be convicted of that section." (*People v. White* (1980) 101 Cal.App.3d 161, 166 [161 Cal.Rptr. 541].) An unlawful arrest includes both an arrest made without legal grounds and an arrest made with excessive force. (*Id.* at p. 167.) "[D]isputed facts bearing on the issue of legal cause must be submitted to the jury considering an engaged-in-duty element." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217 [275 Cal.Rptr. 729, 800 P.2d 1159].) The court has a **sua sponte** duty to instruct that the defendant is not guilty of the offense charged if the arrest was unlawful. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of an arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122 Cal.App.3d 138, 145 [175 Cal.Rptr. 651].)

If lawful performance is an issue, give the bracketed paragraph on lawful performance and the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*. When giving the portion of CALCRIM No. 2670 on the "use of force," the court **must** either delete the following sentence or specify that this sentence does not apply to a charge of violating Penal Code section 148: "If a person knows, or reasonably should know, that a peace officer is arresting or detaining him or her, the person must not use force or any weapon to resist an officer's use of reasonable force." (*People v. White, supra,* 101 Cal.App.3d at pp. 168–169 [court must clarify that Pen. Code, § 834a does not apply to charge under section 148].)

If the prosecution alleges multiple, distinct acts of resistance, the court has a **sua sponte** duty to instruct on unanimity. (*People v. Moreno* (1973) 32 Cal.App.3d Supp. 1, 9 [108 Cal.Rptr. 338].) Give CALCRIM No. 3500, *Unanimity*, if needed.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of "peace officer" from the statute (e.g., "a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers"). *(Ibid.)* However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., "Officer Reed was a peace officer"). *(Ibid.)* If the alleged victim is a police officer, give the bracketed sentence that begins with "A person employed as a police officer." If the alleged victim is another type of peace officer, give the bracketed sentence that begins with "A person employed by."

The court may give the bracketed sentence that begins with "The duties of a _____ <*insert title . . .* > include" on request. The court may insert a

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description of the alleged victim's duties such as "the correct service of a facially valid search warrant." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr. 729, 800 P.2d 1159].)

If the facts indicate passive resistance to arrest, give the bracketed sentence that begins with "If a person goes limp." (*In re Bacon* (1966) 240 Cal.App.2d 34, 53 [49 Cal.Rptr. 322].)

There is a split in authority over the knowledge requirement in Penal Code section 148(a). (Compare *People v. Mackreth* (2020) 58 Cal.App.5th 317, 334 [272 Cal.Rptr.3d 498] [actual knowledge that person is an officer not required] with *In re A.L.* (2019) 38 Cal.App.5th 15, 22 [250 Cal.Rptr.3d 572] [defendant must have actual knowledge he or she is resisting an officer in the performance of duty].) If the trial court agrees with *Mackreth*, give the instruction as written. If the trial court agrees with *A.L.*, modify the instruction.

AUTHORITY

- Elements ▸ Pen. Code, § 148(a); see *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329 [116 Cal.Rptr.2d 21].
- General-Intent Crime ▸ *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329 [116 Cal.Rptr.2d 21].
- Knowledge Required ▸ *People v. Lopez* (1986) 188 Cal.App.3d 592, 599–600 [233 Cal.Rptr. 207].
- Multiple Violations Permissible If Multiple Officers ▸ Pen. Code, § 148(e).
- Peace Officer Defined ▸ Pen. Code, § 830 et seq.
- Emergency Medical Technician Defined ▸ Health & Saf. Code, §§ 1797.80–1797.84.
- Delaying Officer From Performing Duties ▸ *People v. Allen* (1980) 109 Cal.App.3d 981, 985–986, 987 [167 Cal.Rptr. 502].
- Verbal Resistance or Obstruction ▸ *People v. Quiroga* (1993) 16 Cal.App.4th 961, 968, 970–972 [20 Cal.Rptr.2d 446] [nondisclosure of identity following arrest for felony, not misdemeanor]; *People v. Green* (1997) 51 Cal.App.4th 1433, 1438 [59 Cal.Rptr.2d 913] [attempt to intimidate suspected victim into denying offense].
- Passive Resistance to Arrest ▸ *In re Bacon* (1966) 240 Cal.App.2d 34, 53 [49 Cal.Rptr. 322].

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- Unanimity ▸ *People v. Moreno* (1973) 32 Cal.App.3d Supp. 1, 9 [108 Cal.Rptr. 338].
- Merely Photographing or Recording Officers Not a Crime ▸ Pen. Code, § 148(g).

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, §§ 18–19.

1 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 11, *Arrest,* § 11.06[3][b] (Matthew Bender).

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3185. Sex Offenses: Sentencing Factors—Using Force or Fear Against Minor Under 14 Years/14 Years or Older (Pen. Code, §§ 264.1(b), 286(c)(2)(B)&(C), 286(d)(2)&(3), 287(c)(2)(B)&(C), 287(d)(2)&(3), 289(a)(1)(B)&(C))

If you find the defendant guilty of the crime[s] charged in Count[s] _____[,] [or of attempting to commit (that/those) crime[s]], you must then decide whether[, for each crime,] the People have proved the additional allegation that when the defendant committed (that/those) crime[s], the defendant used

<Violations of Pen. Code §§ 286(c)(2)(B)&(C), 287(c)(2)(B)&(C), 289(a)(1)(B)&(C)>
[(force[,]/[or] violence[,]/[or] duress[,]/[or] menace[,]/[or] fear of immediate and unlawful bodily injury [to another person]) on]

<Violations of Pen. Code § 264.1(b)>
[(force/[or] violence) and against the will of]

<Violations of Pen. Code §§ 286(d)(2)&(3) and 287(d)(2)&(3)>
[(force/[or] fear of immediate and unlawful bodily injury [to another person]) on]

a minor who was (under the age of 14 years/14 years of age or older).

[A *minor* is a person under the age of 18.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction on the sentencing factor. (See *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

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AUTHORITY

- Elements and Definitions ▸ Pen. Code, §§ 264.1(b), 286(c)-(d), 287(c)-(d), 289(a)(1).
- Calculating Age ▸ Fam. Code, § 6500; *People v. Cornett* (2012) 53 Cal.4th 1261, 1264, 1275 [139 Cal.Rptr.3d 837, 274 P.3d 456] ["10 years of age or younger" means "under 11 years of age"]; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].

3186–3199. Reserved for Future Use

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3411. Mistake of Law As a Defense

[I have already explained that it is not a defense to the crime[s] of _____ <*insert crime[s]*> that the defendant did not know (he/she) was breaking the law or that (he/she) believed (his/her) act was lawful. But when you consider the crime[s] of _____ <*insert crime[s]*>, a different rule applies.]

_____ <*insert crime[s]*> require[s] that a defendant act with a specific (intent/ [and/or] mental state). The act and the specific (intent/ [and/or] mental state) required are explained in the instruction for (that/those) crime[s].

The defendant is not guilty of _____<*insert crime[s]*> if (he/she) made an honest or good faith mistake about the law, if that mistake shows that (he/she) did not have the specific (intent/ [and/or] mental state) required for the crime[s] of _____<*insert crime[s]*>.

If you have a reasonable doubt about whether the defendant had the specific (intent/ [and/or] mental state) required for _____ <*insert crime[s]*>, you must find (him/her) not guilty of (that/those) crime[s].

New August 2013; Revised October 2021

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction if a defendant charged with a specific intent crime is appropriately relying on this defense or there is substantial evidence that a defendant's good faith mistake of law provides a valid defense to a specific intent crime and the defense is not inconsistent with the defendant's theory of the case. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 774-780 [33 Cal.Rptr.3d 859]).

Many defendants seek to rely on the defense of mistake of law, but few are successful, because it is limited to crimes in which a specific intent or mental state is negated by the mistake. (*People v. Koenig* (2020) 58 Cal.App.5th 771, 809 [272 Cal.Rptr.3d 732] [instruction appropriate where defendant relied on advice of counsel to establish mistake of law related to omission of material fact in sale of security]; *People v. Cole* (2007) 156 Cal.App.4th 452, 483-484 [67 Cal.Rptr.3d 526] [no error in instructing jury that mistake of law is no defense when defendant was charged with a general intent crime]; *People v. Vineberg* (1981) 125

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Cal.App.3d 127, 137 [177 Cal.Rptr. 819] [defendants' belief that they had a legal right to use clients' gold reserves to buy future contracts could be a defense if held in good faith]; *People v. Stewart* (1976) 16 Cal.3d 133, 140 [127 Cal.Rptr. 117, 544 P.2d 1317] [defendant's good faith belief that he was legally authorized to use property could be defense to embezzlement]; *People v. Flora* (1991) 228 Cal.App.3d 662, 669–670 [279 Cal.Rptr. 17] [defendant's belief, if held in good faith, that out-of-state custody order was not enforceable in California could have been basis for defense to violating a child custody order]).

Although concerned with knowledge of the law, a mistake about legal status or rights is a mistake of fact, not a mistake of law. (See CALCRIM No. 3406, *Mistake of Fact*.) If the defendant is charged with a general intent crime and raises a mistake of law defense, give instead CALCRIM No. 3407, *Defenses: Mistake of Law.* If both general and specific intent crimes are charged, use the bracketed first paragraph of this instruction as necessary.

AUTHORITY

- Instructional Requirements ▸ *People v. Cole* (2007) 156 Cal.App.4th 452, 483-484 [67 Cal.Rptr.3d 526]; *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 585-587, 592 [35 Cal.Rptr. 401].

RELATED ISSUES

Good Faith Reliance on Statute or Regulation
Good faith reliance on a facially valid statute or administrative regulation (which turns out to be void) may be considered an excusable mistake of law. Additionally, a good faith mistake-of-law defense may be established by special statute. (See 1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, § 46.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 44-45.

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3451. Present Mental Competence of Defendant

You must decide whether the defendant is mentally competent to stand trial. That is the only purpose of this proceeding. Do not consider whether the defendant is guilty or not guilty of any crime or whether (he/she) was sane or insane at the time that any alleged crime was committed.

The defendant is mentally competent to stand trial if (he/she) can do all of the following:

1. **Understand the nature and purpose of the criminal proceedings against (him/her);**

2. **Assist, in a rational manner, (his/her) attorney in presenting (his/her) defense;**

AND

3. **Understand (his/her) own status and condition in the criminal proceedings.**

The law presumes that a defendant is mentally competent. In order to overcome this presumption, ((the defendant/the People) must prove/it must be proved) that it is more likely than not that the defendant is now mentally incompetent because of a (mental disorder/developmental disability).

[A *developmental disability* is a disability that begins before a person is 18 years old and continues, or is expected to continue, for an indefinite period of time. It must be a substantial handicap and does not include other handicapping conditions that are solely physical in nature. Examples of developmental disabilities include intellectual disability~~mental retardation~~, cerebral palsy, epilepsy, autism, and conditions closely related to intellectual disability~~mental retardation~~ or requiring treatment similar to that required for intellectually disabled~~mentally retarded~~ individuals.]

New January 2006; Revised October 2021

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BENCH NOTES

Instructional Duty
The court has a **sua sponte** duty to instruct the jury on the standard for competence.

The party that seeks a finding of incompetence bears the burden of proof. If the court raises the issue, neither party bears that burden. Choose the appropriate language regarding which party bears the burden of proof in the paragraph that begins with "The law presumes that . . . ." (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459–460 [280 Cal.Rptr. 175].)

Give CALCRIM No. 3550, *Pre-Deliberation Instructions*, and any other relevant post-trial instructions, such as CALCRIM No. 222, *Evidence*, or CALCRIM No. 226, *Witnesses*.

Do **not** give CALCRIM No. 224, *Circumstantial Evidence: Sufficiency of Evidence*, or CALCRIM No. 225, Circumstantial Evidence: Intent or Mental State. These instructions have "no application when the standard of proof is preponderance of the evidence." (*People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1274 [18 Cal.Rptr.3d 286]).

AUTHORITY

- Instructional Requirements ▸ Pen. Code, §§ 1367–1370.
- Developmental Disability Defined ▸ Pen. Code, § 1370.1(a)(1)(H).
- Presumption of Competence ▸ Pen. Code, § 1369(f).
- Unanimous Verdict ▸ Pen. Code, § 1369(f).
- Mental Competence Defined ▸ Pen. Code, § 1367(a); *Dusky v. United States* (1960) 362 U.S. 402, 402 [80 S.Ct. 788, 4 L.Ed.2d 824]; *People v. Jablonski* (2006) 37 Cal.4th 774, 807–808 [38 Cal.Rptr.3d 98, 126 P.3d 938].

RELATED ISSUES

Threshold for Section 1368 Hearing
A trial court must conduct a section 1368 hearing when there is substantial evidence of incompetence. (*People v. Cox* (1978) 82 Cal.App.3d 221, 225–226 [147 Cal.Rptr. 73].) Substantial evidence raises a reasonable doubt about the defendant's competence to stand trial. (*People v. Frye* (1998) 18 Cal.4th 894, 951–952 [77 Cal.Rptr.2d 25, 959 P.2d 183].)

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Defense Counsel May Seek Finding Contrary to Client's Wishes
A section 1368 hearing is civil in nature. Since neither guilt nor innocence is at issue, defense counsel must "advocate the position counsel perceives to be in the client's best interests even when that interest conflicts with the client's stated position [citation]." (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [42 Cal.Rptr.2d 543, 897 P.2d 481].)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, § 824.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 64, *Suspension of Criminal Proceedings,* §§ 64.01, 64.02 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 124, *Jurisdiction and Disposition Hearings,* § 124.04 (Matthew Bender).

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Item number: 04 (21-162)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Civil Practice and Procedure: Remote Depositions

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rule 3.1010

Committee or other entity submitting the proposal:
Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Item 4. Senate Bill 1146 amends Code of Civil Procedure section 2025.310 and authorizes the greate use of remote technology in deposition, allowing parties, witnesses, and deposition officers to be in separate locations. Current Rules of Court, rule 3.1010 regarding remote deposition must be amended in light of the new statute.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-162
For business meeting on: September 30–October 1, 2021

Title
Civil Practice and Procedure: Remote Depositions

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 3.1010

Recommended by
Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
July 29, 2021

Contact
James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending rule 3.1010 of the California Rules of Court governing remote depositions. The proposed amendments reflect recent statutory changes enacted in Senate Bill 1146 (Stats. 2020, ch. 112, § 3) that (1) removed the requirement that deponents appear in the physical presence of the deposition officer, and (2) eliminated the different treatment for party and nonparty deponents. The revised law also permits any party or attorney of record to be physically present with the deponent during the deposition, and the proposed rule amendment requires notice for a party or attorney to make such an appearance at a remote deposition.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 3.1010, effective January 1, 2022.

The proposed amended rule is attached at pages 6–7.

Relevant Previous Council Action

In April 2020, as part of the emergency rules of court adopted in response to the public safety concerns raised by the COVID-19 pandemic, the Judicial Council adopted emergency rule 11,[1] which provided that the deponent "is not required to be present with the deposition officer at the time of the deposition." In September 2020, the California Legislature passed, and the Governor signed, Senate Bill 1146 (Link A), which took effect immediately. Among other modifications, SB 1146 changed Code of Civil Procedure section 2025.310,[2] which regulates the conduct of depositions. SB 1146 deleted the prior provisions of section 2025.310 that, with certain limitations, allowed for remote depositions and replaced them with language from emergency rule 11. Thereafter, emergency rule 11 was repealed by the Judicial Council.

Analysis/Rationale

Senate Bill 1146 made several substantial changes to section 2025.310. The law previously treated party deponents and nonparty deponents differently—party deponents had to appear in person at a deposition, while nonparty deponents could, by court order for good cause, appear remotely so long as in the presence of the deposition officer. The Legislature eliminated those differences and added provisions that the deponent or deposing party may elect that the deposition officer attend the deposition and swear in the witness from a different location than the deponent. Additionally, subject to existing law on protective orders, any party or attorney of record may now be physically present with the deponent—thus eliminating from the statute the express provision that the nonparty could appear remotely from all others if good cause was shown. The amended law also makes clear that the provisions allowing the deposition officer and other participants to appear remotely do not waive any other requirements regarding the time, place, or manner of conducting a deposition. Finally, the new law contains a provision clarifying that the law does not change who may lawfully serve as a deposition officer under California law.

To address the amendments to section 2025.310, the committee recommends making the following amendments to rule 3.1010:

- To eliminate the different treatment of party and nonparty deponents in current rule 3.1010, the recommendation deletes subsection (d) and makes subsection (c) applicable to all deponents.[3]
- Since section 2025.310 allows the deponent to have the deposition officer attend the deposition in a different location, the recommended proposal also deletes the requirement that deponents be in the presence of the deposition officer in rule 3.1010(c) and instead

[1] All further rule references are to the California Rules of Court unless otherwise noted.

[2] All statutory references are to the Code of Civil Procedure unless otherwise noted.

[3] The elimination of different subsections for party and nonparty deponents presented some confusion as to whether party deponents could elect to appear remotely under subsection (b), which currently applies to any party. To eliminate such confusion, the committee recommends that subsection (b) of the amended rule be directed to "any party, *other than the deponent*, ..."

obligates deponents to appear "as required by statute or as agreed to by the parties and deponent."

- To address the provision of revised section 2025.310 that permits a party or attorney of record to be physically present with the deponent, the amended rule adds a requirement to subsection (a)(3) that any party or attorney of record intending to appear in the physical presence of the deponent at a deposition that is taken remotely must provide written notice of such attendance at least five court days before the deposition.[4] However, the deponent's attorney is expressly exempt from the new notice requirements under the proposal.
- The recommended proposal also replaced or added language in the rule to mirror the statute. The proposed rule now includes the phrase "or attorney of record" after any mention of "party" and uses "physically present" instead of "personally present."
- The recommendation retains current subsection (e) of the rule, allowing the court to make other orders, as appropriate, in specific cases. A similar provision is also present in amended section 2025.310(c).

Policy implications

Rule 3.1010 and section 2025.310 concern a complex policy area that the COVID-19 pandemic has brought focus and attention to—remote legal processes, specifically remote depositions. Many practitioners and court officers (including commenters to the proposal and members of the committee) support expanding the ability to take and participate in depositions remotely. Benefits of remote depositions include reduced costs to litigants and a greater ease at which distant witnesses are able to be deposed. While remote depositions offer benefits, they also present logistical hurdles and concerns about a party's right to be present at a deposition, which also implicates privacy and safety concerns.

Accordingly, the proposed amendments aim to reflect the statute and expand the ability for litigants to depose witnesses remotely, but also set up a reasonable process whereby parties and attorneys can attend remote depositions in person, and retain maximum flexibility for an alternative process to be agreed to by the parties or ordered by the court. Specifically, following the statutory changes, the recommended rule no longer requires party deponents to attend their deposition in person and no longer requires a nonparty deponent to show good cause to sit for a deposition remotely. Rather, deponents can sit remotely if the parties agree (or if the court so orders).

Additionally, while any party or attorney can attend a remote deposition in person, the proposal requires five court days' notice to afford ample time for the parties to work out logistics (including the location), resolve any objections, and obtain a protective order, if needed. The committee believes the proposed rule balances the competing concerns and closely adheres to the amended statute.

[4] Since the committee recommends a notice period of five court days, the proposal also includes a conforming change to the notice requirement for appearing at the deposition remotely found in subsection (b)(1).

Comments

The proposed amendments to rule 3.1010 were circulated for public comment between April 15 and May 27, 2021, as part of the regular spring comment cycle. Comments were received by 13 individuals and entities. The commenters included eight attorneys or law firms in private practice, the California Defense Counsel (CDC), the Consumer Attorneys of California (CAOC), the Orange County Bar Association, the Family Law and Juvenile Division of the Superior Court of Orange County, and the Superior Court of San Diego County. Of the 13 commenters, seven commenters agreed with the proposal without modification, one agreed if modified, three did not indicate a position but offered specific comments, and two did not agree with the proposal.

A chart setting forth all the comments and the committee's responses to the comments is attached at pages 8–18. The most significant comments are discussed below.

Notice to attend remote depositions in person

When the committee circulated the proposal for comment, subsection (a)(3) of the amended rule mandated *three* court days' notice for a party or attorney to be physically present with a remote deponent. The committee initially proposed three court days to be consistent with current subsection (b)(1), which contains a three-court-day-notice requirement to attend a deposition remotely. Two commenters, however, suggested that five court days' notice for an attorney or party to be physically present with a remote deponent is preferable to afford ample time for parties to object, to take protective action, or to make additional preparations. The committee also notes that in practice many parties are agreeing to arrangements for remote depositions, and the suggested change would provide more time for parties to reach agreement without court intervention. In addition to including this suggestion in the recommended proposal, the committee also proposes changing the notice requirements in subsection (b)(1) to five court days to retain consistency across the rule.

Physical presence at remote depositions

Multiple commenters also raised logistical and privacy concerns about the ability of a party or attorney to be physically present at a remote deposition, which is now permitted by statute. With regard to logistics, a party or attorney attending a remote deposition in person would need to know where the deponent will sit for the deposition and the current or proposed rule does not specifically address such a process. That said, the amendments to section 2025.310 and the proposed amendments to rule 3.1010 do not alter or shift the burden away from the party taking the deposition to determine the logistics of the deposition. Indeed, section 2025.310(d) expressly states that it does not "waive any other provision of this title, including, but not limited to, provisions regarding the time, place, or manner in which a deposition shall be conducted." Furthermore, subsection (c) of the rule affords the ability of parties to agree as to how the deponent will appear, and the notice requirement of subsection (a) provides the deposing party time to make appropriate arrangements if another party or attorney wishes to attend the deposition in person. As a final backstop, both the rule and the statute permit the court to make other orders in a specific action. (See proposed rule 3.1010(d) and § 2025.310(c).)

Another commenter suggested that an attorney could use the proposed rule to "intrude on a deponent's home." However, as discussed above, the committee recommends a requirement that advance notice be provided for an attorney to be physically present with a remote deponent in order to provide time for the deponent or other parties to object or make arrangements acceptable to all parties. Additionally, the proposed rule and the statute provide that a party or attorney's ability to attend a deposition in the physical presence of the deponent is subject to section 2025.420, which allows any party, deponent, or affected person to move for a protective order and allows a court to issue an order protecting that person.

Alternatives considered

Because SB 1146 went into effect last September and expressly contradicts the current provisions of rule 3.1010, the advisory committee determined it must act and that taking no action would be inappropriate.

In addition to this recommendation, the committee considered the alternative of deleting rule 3.1010 altogether, to remove the conflict between rule 3.1010 and section 2025.310 without providing for anything further. A majority of the advisory committee ultimately decided, however, that providing guidance in the form of a rule of court is preferable. In particular, the committee concluded that amending rule 3.1010 to add a notice requirement for a party appearing at the deposition in the physical presence of a remote deponent was appropriate because the statute is silent on any such notice. Given the possibility that deponents may plan to participate in remote depositions from their homes, a notice requirement in order for other parties to be physically present was deemed crucial.

The committee also considered developing new rules governing the conduct of remote depositions, but concluded that it was too early in the process to determine what rules were needed. The committee will contemplate adding the issue to its agenda for next year.

Fiscal and Operational Impacts

Given that depositions, whether in person or remote, are primarily conducted without significant involvement of courts, the proposal is unlikely to have substantial fiscal and operational impacts on courts. The courts that commented on the proposal indicated that operational impacts will be limited to notifying court staff of the changes. The proposal may provide some cost savings to litigants and courts if more remote depositions are taken and fewer discovery disputes are brought before the courts.

Attachments and Links

1. Cal. Rules of Court, rule 3.1010, at pages 6–7
2. Chart of comments, at pages 8–18
3. Link A: SB 1146, *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1146*

Rule 3.1010 of the California Rules of Court is amended, effective January 1, 2022, to read:

Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means

(a) Taking depositions

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Notice is served with the notice of deposition or the subpoena;

(2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;

(3) Any party or attorney of record may be ~~personally~~ physically present at the deposition at the location of the deponent with~~out giving prior~~ written notice of such appearance served by personal delivery, email, or fax, at least five court days before the deposition, and subject to Code of Civil Procedure section 2025.420. An attorney for the deponent may be physically present with the deponent without notice.

(b) Appearing and participating in depositions

Any party, other than the deponent, or attorney of record may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

(1) Written notice of such appearance is served by personal delivery, email, or fax at least ~~three~~ five court days before the deposition;

(2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(c) ~~Party d~~Deponent's appearance

A ~~party~~ deponent must appear as required by statute or as agreed to by the parties and deponent ~~at his or her deposition in person and be in the presence of the deposition officer~~.

~~(d) Nonparty deponent's appearance~~

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~~A nonparty deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means with court approval upon a finding of good cause and no prejudice to any party. The deponent must be sworn in the presence of the deposition officer or by any other means stipulated to by the parties or ordered by the court. Any party may be personally present at the deposition.~~

~~(e)~~ (d) Court orders

On motion by any person, the court in a specific action may make such other orders as it deems appropriate.

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SPR21-03

Discovery: Remote Depositions (Amend Cal. Rules of Court, rule 3.1010)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Defense Counsel By Christopher E. Faenza President	N	On behalf of the California Defense Counsel, we appreciate the opportunity to comment on proposed changes to California Rule of Court 3.1010, dealing with remote depositions. The California Defense Counsel is the legislative arm of the combined membership in the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel. Our members specialize in the representation of defendants in civil litigation. Respectfully we believe that the proposed rule changes should be withdrawn until further discussion can occur over issues of clarity and unintended consequences. Specifically, we would raise the following concerns: • Although we recognize that the proposed rule changes are based upon the language of SB 1146 (Chapter 112, Statutes of 2020), which eliminated distinctions between party/party affiliated and third-party deponents, we believe that at the implementation level, distinctions are still necessary. While it makes sense, for example, for lawyers to advise third-party witnesses of an intention to be present at a remote deposition, the same obligation is unnecessary for affiliated witnesses;	The committee declines to withdraw the proposed rule changes because as it stands, rule 3.1010 does not conform to statute. The committee considered deleting rule 3.1010 altogether, but decided that the rule should be retained and require notice for a party appearing at the deposition in the physical presence of a remote deponent. To the extent the commenter suggests retaining the current rule's different treatment of party and nonparty deponents, the committee declines to make this change because it would be inconsistent with the statute. The committee believes that notice of an intention to be physically present with a remote deponent is proper for all witnesses due to privacy and safety concerns and to allow the deponent, or their attorney, to object. Moreover, the notice also permits time for all the parties in the action to agree to other arrangements.

	Commenter	Position	Comment	Committee Response
			• We recommend that the Advisory Committee reconsider the timing of notices for parties and lawyers to attend remote depositions in person, and to object or seek protective orders concerning such attendance. First, we believe that the notice should be provided five days in advance of the deposition instead of the proposed three, in order to timely object, and second, we recommend that the Advisory Committee consider permitting a simple objection to attendance pursuant to Code of Civil Procedure Section 2025.410 rather than requiring a motion for protective order under Section 2025.420. Especially in the current environment, the protective order procedure could unintentionally assist lawyers in tying up the depositions they do not want to see occur.	In light of this and other comments, the proposal has been modified to require at least five court days' notice. To the extent commenter suggests that the reference to section 2025.420 be replaced with a reference to 2025.410, the committee declines the suggestion because the statute expressly provides that the remote appearances are subject to section 2025.420.
			• Practical problems may arise particularly in the context of a third-party witness who opts to appear remotely in the privacy of his/her own home, office or other setting. As currently proposed, an attorney could give written notice of his/her intention to be physically present at the location of the third-party witness. First, the attorney would need to know where the witness was located. Second, what if the	The committee recognizes that remote depositions may raise logistical questions that might not arise with in-person depositions. That said, the committee notes that neither the recommended rule, nor section 2025.310, shifted the burden to determine the location of the deposition away from the deposing party. Additionally, both the recommended rule, and the Code of Civil Procedure permit parties to determine how a given deposition will be conducted through agreement. Finally, the required notice to be present in the

	Commenter	Position	Comment	Committee Response
			witness refused to allow the attorney to be present in his/her home or office? The privacy rights of an unrepresented third-party witness should be considered. These are examples of practical problems that need to be fleshed out. Thank you for considering our view. We would be happy to answer any questions or provide additional information upon request.	recommended rule provides an opportunity for the parties to make arrangements that accommodate a party or attorney's physical presence at a remote deposition, or for the deponent to request a protective order under section 2025.420.
2.	Consumer Attorneys of California By Saveena Takhar, Esq. Legislative Counsel	NI	I write on behalf of the Consumer Attorneys of California (CAOC) to comment on "SPR21-03 Discovery: Remote Depositions." CAOC is a voluntary non-profit membership organization of over 3,400 consumer attorneys practicing throughout California. The organization was founded in 1962 and many of our members represent consumers in various practice areas and have utilized remote depositions authorized by the Judicial Council Emergency Rules and SB 1146 (2020-Umberg). **Background: The Civil Court Shutdown** As a result of the COVID-19 pandemic, civil trials have been suspended and hearings are delayed and restricted. The civil courts are suffering their biggest hit possibly of all time. On March 27, 2020 the governor responded to civil justice issues by authorizing Chief Justice Tani Cantil-Sakauye to "take any action she	The committee appreciates the information provided.

	Commenter	Position	Comment	Committee Response
			deems necessary to maintain the safe and orderly operation of that court." [FN 1 https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf] Governor Newsom also specifically suspended CCP § 2025.310 relating to remote depositions. [FN 2 https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf] The statutory suspension was intended to allow attorneys to utilize remote depositions in every case, circumventing a law that previously had required that parties be deposed in the physical presence of a reporter unless there was a stipulation to the contrary. Chief Justice Tani Cantil-Sakauye and the Judicial Council responded to these requests during their April 6 emergency meeting, issuing a series of rules including Emergency Rule 11, which enacted rules for depositions through remote electronic means. [FN 3 https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349] CAOC then joined with the California Defense Counsel (CDC) to sponsor SB 1146 (Umberg) in 2020. SB 1146 took a must needed, first step towards allowing justice to continue outside the courtroom by codifying Judicial Council Emergency Rules 11 to allow for remote depositions.	

	Commenter	Position	Comment	Committee Response
			General Comments As soon as Emergency Rule 11went into effect, the plaintiffs bar began to utilize remote depositions. Removing the requirement that the deponent be physically in the presence of the deposition officer opened up not only a means for depositions to be conducted safely during a pandemic but it also created more efficient procedures overall. Court reporters can now offer their remote deposition services throughout the state. Litigation in general has also become more efficient by avoiding travel costs and other expenses of in person depositions. Remote depositions are not without their flaws. Our membership has reported being met with resistance by opposing counsel either though delay tactics or gamesmanship. However, on balance remote depositions are an important tool both during the pandemic and as we move forward. **Requested Amendment** CAOC agrees with the Judicial Council's recommendation to require notice if the party or attorney of record decides to exercises their right under 2025.310 to be physically present with the deponent. Many deponents sit for their remote deposition in their home or a private place. Given health concerns due to the COVID-19 pandemic and general privacy concerns we support an amendment to Rule	In light of this and other comments, the proposal has been modified to require at least five court days' notice.

	Commenter	Position	Comment	Committee Response
			3.1010(a)(3) requiring notice with a caveat. CAOC urges the Judicial Council to extend the time required from three court days to five court days to give the deponent and their counsel the necessary time to take any protective action or make additional arrangements. Requested amendment highlighted below: (a) Taking depositions Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided: (1) Notice is served with the notice of deposition or the subpoena; (2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it; (3) Any party **or attorney of record** may be ~~personally~~ physically present at the deposition **at the location of the deponent** witho~~ut giving prior~~ written notice **of such appearance served by personal delivery, email, or fax, at least ~~three~~ five court days before the deposition, and subject to Code of Civil Procedure section 2025.420.**	
3.	Evans, Wieckowski, & Ward By Cathleen Fralick Attorney Sacramento	A	No specific comment.	The committee notes the commenter's agreement with the proposal.

SPR21-03

Discovery: Remote Depositions (Amend Cal. Rules of Court, rule 3.1010)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
4.	Frederico Stea Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
5.	Matthew Gardner Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
6.	Allegra Gorchynski Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
7.	Meechan, Rosenthal & Karpilow, P.C. By Rebecca Slay Paralegal Santa Rosa	A	These comments relate to the proposed changes for Civil practice. Yes, continue remote depositions with the recorder and deponent in separate locations!!!	The committee notes the commenter's agreement with the proposal.
8.	Orange County Bar Association By Larisa M. Dinsmoor President	N	The proposal attempts to address the stated purpose but introduces several ambiguities that would likely create confusion, uncertainty, and unnecessary litigation. Below are a few examples. First, under Subsection (a)(3), an attorney of record who wishes to appear in person at the location must provide written notice at least three court days before the deposition. But the proposal also adds "attorney of record" to the language in subsection (b), meaning that under Subsection (b)(1), an attorney of record must provide written notice that they intend to appear remotely at least three days before the deposition. As a result, when subsections (a)(3) and (b)(1) are read together, a party's attorney—*including the deposing or defending attorney*—would be required to provide notice three days before the deposition whether they	In light of this and other comments, the proposal has been modified to expressly exclude the deponent's attorney from the required notice in subsection (a)(3). The committee also notes that subsection (a) of the recommended rule only applies when the party taking the deposition does so remotely, meaning that notice for a physical appearance at a deposition is only required at remote depositions. Furthermore, in California Rules of Court, rule 1.6 the term "party" includes "the party's attorney of record." Accordingly, the recommended amendment to subsection (b) does not impose any new notice requirement on attorneys of record.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			intended to appear in person or remotely. The rule does not specify what the consequence would be for a failure to provide the required notice, but the language could be interpreted to prohibit the attorney from attending the deposition at all. Second, the proposed language in Subsection (c) creates additional ambiguity by striking "party" and replacing it with "deponent." Under the proposed language, a deponent must appear as required by statute. But, under Subsections (a) and (b), "any party" may appear at a deposition in person or remotely, so long as the party provides three days' notice. Accordingly, if the person being deposed is a party, the language is unclear as to which Subsection needs to be followed. Again, this tension in the language will create confusion and result in unnecessary motion practice that could be avoided if the rule were clarified. Finally, the heading of the Rule ("Oral depositions by telephone, videoconference, or other remote electronic means") indicates the subsection is intended to apply only when the deposition is noticed as a telephonic/videoconference deposition. But, Subsection (c) allows for a deponent to be required to attend in person. It is therefore unclear whether the rule is also intended to apply when the deposition notice designates the deposition as being in person. In those cases,	The committee declines to recommend an amendment to the rule to specify the consequences of not providing notice. The recommended amendments, including the notice in (a)(3), are intended only to implement the provisions of revised section 2025.310. In light of this comment, the proposal has been modified to include "other than the deponent" in subsection (b). The committee declines to recommend modifying the heading of the rule because subsections (a) and (b) apply to remote deposition participants and subsection (c) does not provide any additional requirements or protections for remote or in-person deponents.

	Commenter	Position	Comment	Committee Response
			would this rule apply? Would certain subsections apply? Given that the rule could be interpreted to cover in-person depositions as well, the language of the rule should be clarified to specify whether the Judicial Council believes it applies only in "remote" depositions or all depositions.	
9.	Marcy L. Gribin Sanchez Associate Attorney Los Angeles	A	No specific comment.	The committee notes the commenter's agreement with the proposal.
10.	Spinelli, Donald, Nott By Natasha N. Langenfeld Attorney Sacramento	NI	Regarding the below rule amendment, we are concerned that an attorney could use this proposed rule to intrude on a deponent's home for a deposition. We appreciate your consideration of this concern.	The committee appreciates the concern and notes that revised Code of Civil Procedure section 2025.310 expressly provides the right of parties and attorneys to be physically present with deponents. The committee added the required notice to subsection (a) of the rule to address the safety and privacy concerns by providing time for deponents to object, request a protective order, or make other arrangements. Additionally, the committee notes that neither the recommended rule, nor section 2025.310 shifted the burden to determine the location of the deposition away from the deposing party. In light of this and other comments, the rule has been amended to require at least five court days' notice to physically appear at a remote deposition.
11.	Superior Court of California, County of Orange By Family Law and Juvenile Division	NI	Request for Specific Comments • Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the information provided and has included the implementation requirements in the report to the Judicial Council.

	Commenter	Position	Comment	Committee Response
			• Would the proposal provide cost savings? If so, please quantify. No, I don't believe the proposal will provide cost savings. • 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? This proposal will not have significant implementation requirements. Training will consist of informing staff of the notice requirement. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, 3 months is sufficient time for implementation. • How well would this proposal work in courts of different sizes? I believe this proposal will work in courts of different sizes.	
12.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • Would the proposal provide cost savings? If so, please quantify.	The committee appreciates the information provided and has included the implementation requirements in the report to the Judicial Council.

SPR21-03

Discovery: Remote Depositions (Amend Cal. Rules of Court, rule 3.1010)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			No. • 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? Implementation would be limited to notifying staff of the changes. • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? It appears the proposal will work for courts of various sizes.	
13.	Patricia Valenzuela Attorney Anaheim	AM	Instead of the notice requirement of "3 days", all would be better served if the notice period is counted by court days, either 2 or 3 seems reasonable. The use of "court days" will eliminate any gamesmanship stemming from the "5:00 pm Friday service" or shortening of time to object or seek a protective order, due to weekends or holidays. Thank you!	The committee appreciates the comment and has retained the use of "court days" in the proposal.

Item number: 05

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Circulate for comment (January 1 cycle)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Updating the Collaborative Justice Courts Advisory Committee's Area of Focus and Duties

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend rule 10.56 of the California Rules of Court

Committee or other entity submitting the proposal:
Collaborative Justice Courts Advisory Committee

Staff contact (name, phone and e-mail): Francine Byrne,415-865-8069, francine.byrne@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date:
Project description from annual agenda: Project title: Review California Rule of Court 10.56 to ensure that the CJCAC charge adequately serves collaborative court model programs and participants that struggle with behavioral health issues.

The Collaborative Justice Courts Advisory Committee (CJCAC) set forth in its 2021 Annual Agenda to review rule 10.56 and to propose any needed amendments. Rule 10.56 (originally adopted as rule 6.56 and renumbered effective January 1, 2007) was adopted in 2000 to establish the Collaborative Justice Courts Advisory Committee. Numerous program and policy changes have occurred since then, including the implementation of a variety of diversion programs that incorporate many collaborative justice elements. The CJCAC recommends updating its defining rule to ensure that its role reflects the work that is happening in the field and that the courts and the public are appropriately supported by the committee.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-143
For business meeting on October 1, 2021

Title
Collaborative Justice: Collaborative Justice Courts Advisory Committee's Area of Focus and Duties

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.56

Recommended by
Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 13, 2021

Contact
Francine Byrne, 415-865-8069
francine.byrne@jud.ca.gov

Executive Summary

The Collaborative Justice Courts Advisory Committee recommends amending rule 10.56 of the California Rules of Court to update the committee's areas of focus and duties by incorporating diversion and other collaborative justice–related programs. This recommendation would allow the advisory committee to better address judicial leadership and the court processes of collaborative justice courts and similar programs that affect individuals who are moving through the court system and have mental illnesses, substance use disorders, or co-occurring disorders.

Recommendation

The Collaborative Justice Courts Advisory Committee recommends that the Judicial Council amend rule 10.56 of the California Rules of Court, effective January 1, 2022, to:

1. Include within the scope of the advisory committee's area of focus programs that incorporate judicial supervision, court monitoring, collaboration among justice system partners, or rehabilitative services aimed at improving outcomes for individuals with mental health issues, substance use disorders, or co-occurring disorders;

2. Eliminate the obsolete list of specific types of collaborative justice courts;

3. Establish a focus on education and training opportunities for judicial officers, court staff, and justice system partners; and

4. Specify the nature of recommendations that can be made to the Judicial Council about funding and outreach activities that can benefit collaborative justice courts and similar collaborative programs focused on individuals with mental health issues, substance use disorders, or co-occurring disorders.

The proposed amended rule is attached at pages 6-7.

Relevant Previous Council Action

Rule 6.56 (now rule 10.56) was adopted effective January 1, 2000. It was subsequently amended, effective January 1, 2002, to remove subdivision (d), which required the committee to submit to the Judicial Council by November 1, 2001, a report that assessed whether the committee should be dissolved or should continue to exist. Otherwise, there have been no substantive amendments to the rule since it was first adopted.

Analysis/Rationale

The Judicial Council's Collaborative Justice Courts Advisory Committee was created in 2000 by Chief Justice Ronald M. George to support the growing number of collaborative justice courts in California. The areas of focus, duties, and structure that were established for the committee in January 2000 via rule 6.56 (now rule 10.56) remain in place.

The proposed amendments to subdivision (a) of rule 10.56 will modernize the criteria originally used to define collaborative justice courts to better reflect the evolution of these courts. Specifically, these amendments:

- Require the advisory committee to include within its area of focus all programs that incorporate judicial supervision, collaboration among justice system partners, or rehabilitative services aimed at improving outcomes for individuals with mental illnesses, substance use disorders, or co-occurring disorders;

- Would eliminate the obsolete list of specific types of collaborative justice courts; and

- Move specific duties to subdivision (b) Additional duties.

The proposed amendments to subdivision (b) of rule 10.56 will assist the advisory committee in aligning its focus with recent reforms that affect court, criminal justice, and behavioral health systems and recent shifts in the legislative and executive branches to establish collaborative programs that impact adult and youth with mental illnesses, substance use disorders, and co-occurring disorders. The specific changes to subdivision (b) and the committee's rationale for the change are as follows:

- The duty in subdivision (b)(1) was originally included in subdivision (a), and it is moved for consistency and clarity into subdivision (b) with the other additional duties for the committee;

- In subdivision (b)(2), the word "local" is removed to enable assessment of statewide programs, and the word "effectiveness" is removed for brevity and to reduce redundant use of the term. The term "data collection methods" is specified to ensure that programs collect standard data elements to support courts' ability to engage in ongoing self-assessment;

- In subdivision (b)(3), the term "nationally recognized" is added to allow the committee to identify and distribute to courts national standards that have been developed for adult and dependency collaborative justice courts. "Training and program implementation activities" is added so that the committee can advise courts of relevant activities that assist courts in implementing new programs, such as mental health diversion programs created pursuant to Penal Code sections 1001.35 and 1001.36;

- In subdivision (b)(4), the committee recommends amendments that improve the sentence structure for greater clarity, updates the name of the Center for Judicial Education and Research Advisory Committee, and clarifies that the recommendations it makes to that advisory committee relate to minimum judicial education standards concerning collaborative programs, consistent with the proposed changes to subdivision (a);

- In subdivision (b)(5), the committee recommends amendments that will clarify that its duty to advise the council of potential funding sources includes those that may advance collaborative programs. This will enable the committee and the Judicial Council to be prepared in the event that federal funding for collaborative courts becomes available in the form of block grants, or in the event that state and local funding sources for collaborative programs become available;

- In subdivision (b)(6), the amendment will expand the authority of the committee to make recommendations to the council on allocation of grant funding related to any collaborative program and not just "drug and other treatment courts," consistent with the proposed amendments to subdivision (a); and

- In subdivision (b)(7), the amendment will change "recommend" to "identify and disseminate" to more clearly reflect the committee's role in identifying and implementing appropriate outreach activities. The term "collaborative justice courts" is replaced and expanded with "collaborative programs" consistent with the amendments to subdivision (a). The amendment also adds specific examples of partners with which the committee may collaborate.

The proposed amendments to subdivision (c) of rule 10.56 simplifies the language of the section.

Policy implications

The proposal will enable the Collaborative Justice Courts Advisory Committee to more effectively carry out its duties of making recommendations to the Judicial Council, assessing the success of programs, and identifying and disseminating to courts best practices and outreach activities. The proposal will allow the advisory committee to expand its area of focus to align with recent reforms that affect court, criminal justice, and behavioral health systems and recent shifts in the legislative and executive branches to establish collaborative programs that affect adults and youth with mental health issues, substance use disorders, and co-occurring disorders.

Comments

This proposal circulated for comment from April 15 to May 27, 2021. The proposal was circulated to the California Association of Collaborative Courts, relevant Judicial Council advisory committees and posted on the California Courts website. Six comments were received, and all commenters agreed with the proposed changes. In addition to public input on the rule, the Collaborative Justice Courts Advisory Committee solicited comments from other advisory bodies to ensure that the scope of the amendments did not raise purview-related concerns. As part of this process, the Probate and Mental Health Advisory Committee suggested that the amended rule more precisely define "collaborative programs" and clarify that these programs are limited to those under court jurisdiction. Based on this feedback, the committee added language specifying that these programs are "court monitored."

Alternatives considered

The advisory committee considered proposing the creation of a new advisory committee focused on specific matters of importance to the courts and judicial branch—matters that are consistent with the scope of the Collaborative Justice Courts Advisory Committee but not explicitly included in the list of types of collaborative courts in the current rule 10.56. This alternative was rejected because (1) the duties and responsibilities of a new advisory committee would overlap with those of the Collaborative Justice Courts Advisory Committees on certain matters, creating an inefficient redundancy and confusion as to responsibilities between the existing committee and any proposed additional committee, (2) the expertise encompassed across the Collaborative Justice Courts Advisory Committee membership equips the advisory committee to accomplish the duties and responsibilities in the proposed amendment to rule 10.56, (3) the creation of a new advisory committee would impose fiscal and operational impacts on the Judicial Council, and (4) rule 10.30 favors giving new tasks to an existing committee instead of creating a new advisory body.[1]

The advisory committee also considered not amending rule 10.56. This alternative was rejected, however, to ensure that the scope of the advisory committee's focus reflects the numerous recent reforms that affect court, criminal justice, and behavioral health systems, and to ensure that the committee's work aligns with and can adapt to the future of collaborative justice. The advisory

[1] Rule 10.30(e), *Preference for Using Existing Advisory Committees*, states "Unless substantial reasons dictate otherwise, new projects requiring committee involvement must be assigned to existing advisory committees."

committee rule was originally created more than 20 years ago, when collaborative justice courts became nationally recognized and when the foundation and principles of these courts were becoming solidified. Although the advisory committee rule remains largely unchanged, the same cannot be said for the field of collaborative justice courts. Amending the rule will position the committee to accommodate the foreseeable growth and continued evolution of these courts in the years to come and in a manner that may not be sufficient under the current parameters of rule 10.56.

Fiscal and Operational Impacts

The updates made in this proposal can be accomplished with existing resources and, as such, this proposal will have no fiscal or operational impact on the courts or the Judicial Council, including Judicial Council staff. Court commenters who addressed the issue agreed that the proposal will impose no fiscal or operational costs on the courts.

Attachments and Links

1. Cal. Rules of Court, rule 10.56, at pages 6-7
2. Chart of comments, at pages 8–10

Rule 10.56 of the California Rules of Court is amended, effective January 1, 2022, to read:

Rule 10.56. Collaborative Justice Courts Advisory Committee

(a) Area of focus

The committee makes recommendations to the Judicial Council on criteria for ~~identifying and~~ evaluating and improving adult and youth collaborative ~~justice courts and~~ programs that incorporate judicial supervision, collaboration among justice system partners, or rehabilitative services. Collaborative programs include collaborative justice courts, diversion programs, and similar court-monitored programs that seek to improve outcomes and address problems facing court-involved and justice system–involved individuals and those at risk of becoming involved with the justice system, including, but not limited to, individuals with mental health issues, substance use disorders, or co-occurring disorders. ~~for improving the processing of cases in these courts, which include drug courts, domestic violence courts, youth courts, and other collaborative justice courts. Those recommendations include "best practices" guidelines and methods for collecting data to evaluate the long-term effectiveness of collaborative justice courts.~~

(b) Additional duties

In addition to the duties described in rule 10.34, the committee must:

(1) Make recommendations to the council on best practices and guidelines for collaborative programs;

(2) Assess and measure the success ~~and effectiveness~~ of ~~local~~ collaborative ~~justice courts~~ programs, including assessing and recommending methods for collecting data to evaluate the effectiveness of these programs;

~~(2)~~(3) Identify and disseminate to trial courts locally generated and nationally recognized best practices for collaborative programs, and training and program implementation activities that support collaborative programs;

~~(3)~~(4) Recommend to the Center for Judicial Education and Research Advisory Committee minimum judicial education standards on collaborative programs, and educational activities to support those standards ~~to the Governing Committee of the Center for Judicial Education and Research~~;

~~(4)~~(5) Advise the council of potential funding sources, including those that may advance collaborative programs;

~~(5)~~(6) Make allocation recommendations regarding Judicial Council–administered grant funding programs ~~staff for~~ that support ~~drug courts and other treatment courts~~ collaborative programs; and

~~(6)~~(7) ~~Recommend~~ Identify and implement appropriate outreach activities needed to support collaborative ~~justice courts~~ programs, including but not limited to collaborations with educational institutions, professional associations, and community-based organizations.

(c) Membership

The committee must include the following:

~~(1)~~ At least five judicial officers. Nominations for these appointments must be made in accordance with rule 10.32. The list of nominees should enable the Chair of the Judicial Council to appoint a committee with members from courts of varying sizes and locations and that reflects a variety of experience and expertise in different cases types ~~that reflects a variety of court experience (e.g., criminal, juvenile, family, general civil), expertise, and court sizes and types (e.g., urban, suburban, and rural; and small, medium, and large)~~.

(2) * * *

SPR21-04

Collaborative Justice: Updating the Collaborative Justice Courts Advisory Committee's Area of Focus and Duties (amend Cal. Rules of Court, rule 10.56)

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
1.	California Association of Collaborative Court Professionals by John Domantay, Treasurer, Board of Directors	A	At the May 18, 2021 meeting of the Board of Directors of the California Association of Collaborative Courts (CACC), the Board reviewed the Rule Change Proposal for Rule 10.56 regarding the Collaborative Justice Courts Advisory Committee to the Judicial Council. The CACC Board approved a motion to Endorse the Rule Change Proposal as drafted.	No response required.
2.	California Health Policy Strategies by David R. Panush, President	A	I support the proposed changes. It's about time!	No response required.
3.	Orange County Bar Association by Larisa M. Dinsmoor, President	A	The OCBA "Agrees" with the following proposals (one comment form): SPR21-04	No response required.
4.	Superior Court of California, County of Orange, Family Law and Juvenile Division by Vivian Tran, Administrative Analyst	A	**Rule 10.56. Collaborative Justice Courts Advisory Committee** ▪ The proposal is as to the Collaborative Justice Courts Advisory Committee and how the committee functions/makes recommendations to the Judicial Council. ▪ The proposed amendments will allow the Collaborative Justice Courts Advisory Committee to make recommendations to the Judicial Council (including grant funding recommendations the Judicial Council oversees that support collaborative programs), assess and measure the collaborative programs success, and to identify and disseminate the best practices	No response required.

	Commenter	Position	Comment	Committee Response
			for collaborative programs to local trial courts. ▪ Additionally, the amendments will allow the Collaborative Justice Courts Advisory Committee to identify advanced collaborative programs and advise the Judicial Council of potential funding sources, as well as support collaborative programs that include educational institutions, professional associations, and community-based organizations. ▪ **Will have no impact (fiscal or operational) on the courts.** **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?* ▪ Yes, the proposal addresses the stated purpose. **The advisory committee also seeks comments from *courts* on the following cost and implementation matters:**	No response required. No response required.

SPR21-04
Collaborative Justice: Updating the Collaborative Justice Courts Advisory Committee's Area of Focus and Duties (amend Cal. Rules of Court, rule 10.56)
All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Position	Comment	Committee Response
			▪ *Would the proposal result in fiscal or operational costs for the courts? If so, please quantify* ▪ No fiscal or operational costs for the courts. ▪ *Are there implementation requirements for the courts as a result of this change?* ▪ No, the change will only affect the Collaborative Justice Courts Advisory Committee.	No response required. No response required.
5.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	Request for Specific Comments • Does the proposal appropriately address the stated purpose? Yes. • Would the proposal result in fiscal or operational costs for the courts? If so, please quantify. No. •Are there implementation requirements for the courts as a result of this change? No.	No response required. No response required. No response required. No response required.
6.	Verenice Zamora Martinez	A	No additional comments	No response required.

Item number: 06

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Rules and Forms: Incarcerated Individual Hand Crew Conviction Relief

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Approve forms CR-430, CR-430-INFO, CR 431, and CR-432

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Alex Bender, 415-865-7995, Alex.Bender@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: Develop forms to implement AB 2147, which grants criminal record relief to persons who have fought fires while incarcerated.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-053
For business meeting on September 30–October 1, 2021

Title
Rules and Forms: Incarcerated Individual Hand Crew Conviction Relief

Rules, Forms, Standards, or Statutes Affected
Approve forms CR-430, CR-430-INFO, CR-431, and CR-432

Recommended by
Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 4, 2021

Contact
Alex Bender, 415-865-7995
Alex.Bender@jud.ca.gov

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Executive Summary

The Criminal Law Advisory Committee recommends four new optional forms to implement the provisions of Assembly Bill 2147 (Stats. 2020, ch. 60), which authorizes conviction relief for a petitioner who successfully participated as an incarcerated individual hand crew member in a fire camp program operated by a county or the California Department of Corrections and Rehabilitation, and has been released from custody.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2022, approve:

1. *Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430), for use by individuals who have been criminally convicted and are no longer in custody to petition the court to (1) withdraw the plea of guilty or nolo contendere or set aside the verdict of guilty, and (2) dismiss the case in the interests of justice, based on the petitioner's successful participation as an incarcerated individual hand crew member in a fire camp program operated by a county or the California Department of Corrections and Rehabilitation (CDCR).

2. *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430-INFO), for use by individuals seeking directions for filling out the petition form and additional information regarding the petition process.

3. *Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew* (form CR-431), for use by courts to (1) provide a copy of the petition to the appropriate county authority or the CDCR, and (2) request certification of the petitioner's successful participation as an incarcerated individual hand crew member in a fire camp program.

4. *Order on Petition—Incarcerated Individual Hand Crew* (form CR-432), for use by courts to grant or deny the petition in the interests of justice, based on the petitioner's successful participation as an incarcerated individual hand crew member in a fire camp program operated by a county or the CDCR.

The proposed forms are attached at pages 7–15.

Relevant Previous Council Action

The council has taken no previous action regarding conviction relief under Assembly Bill 2147.

Analysis/Rationale

Effective January 1, 2021, Assembly Bill 2147 (Stats. 2020, ch. 60) added Penal Code section 1203.4b,[1] authorizing conviction relief for a petitioner who successfully participated as an incarcerated individual hand crew member in the California Conservation Camp program—a fire camp program operated by the CDCR—or as a member of a county incarcerated individual hand crew. Under section 1203.4b, a court may, in its discretion and in the interests of justice, permit a qualifying petitioner to withdraw a guilty or nolo contendere plea, or the court may set aside a verdict of guilt, and in either case, the court may dismiss the accusations or information against the petitioner.

For the court to order the requested relief, section 1203.4b(b)(2) requires the CDCR secretary or the appropriate county authority to certify to the court that the petitioner successfully participated in the incarcerated individual conservation camp program or as a member of a county incarcerated individual hand crew.[2] Additionally, the petitioner must have been released from

[1] All subsequent references are to the Penal Code.

[2] Incarcerated individuals who are state prison inmates may participate in fire camps operated under the CDCR's conservation camp program. Currently, the CDCR has agreements with at least 10 counties (Alpine, Kings, Los Angeles, Orange, Riverside, San Diego, San Joaquin, Santa Cruz, Shasta, and Sierra) for county jail inmates to also participate in CDCR fire camps. (Los Angeles operates fire camps in conjunction with the CDCR.) These county jail inmates are placed in CDCR custody and issued CDCR numbers for the sole purpose of participation in fire camps. Thus, the vast majority of county jail inmates who participate in a fire camp are in a CDCR-operated camp. Currently, only one county, San Bernardino, operates its own fire camp through a program of the San Bernardino County Sheriff's Department in conjunction with the San Bernardino County Fire Department.

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custody. Section 1203.4b(a)(3) defines successful participation to mean that the incarcerated individual adequately performed their duties without any conduct that warranted removal from the program.

If the court grants the requested relief, under section 1203.4b, the petitioner is released from all penalties and disabilities resulting from the offense, with specified exceptions. The relief applies to all eligible convictions for which the petitioner served a sentence at the time the petitioner successfully participated in a qualifying program. (Section 1203.4b(a)(1) specifies the offenses ineligible for relief.)

Based on communications from courts, defense counsel, and advocacy organizations, the committee determined that optional forms would facilitate the above-described process of providing conviction relief to eligible petitioners under section 1203.4b.

Policy implications

This proposal furthers the council's policy of ensuring access to justice for all litigants. Without the availability of forms, pro se petitioners, in particular, may encounter difficulties in requesting conviction relief under section 1203.4b. Additionally, forms would facilitate coordination between the courts and the CDCR or the appropriate county authority, to the extent such is required under the statute.

Comments

This proposal circulated for comment from to April 15 to May 27, 2021. Ten comments were received from a range of stakeholders: courts (Orange and San Diego), the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, a public defender's office (Los Angeles), advocacy organizations (California Occupational Licensing Coalition, Legal Services of Northern California, Neighborhood Legal Services of Los Angeles County), a bar association (Orange County), and members of the public. Three commenters agreed with the proposal; four agreed if modified; and three did not indicate a position but appeared to agree if modified. The bulk of the comments consisted of suggestions for statutory adherence, administrative ease, user-friendliness, and clarity. As described in greater detail below, the committee incorporated some modifications to the proposed forms based on a number of the comments. A chart with all comments received and the committee's responses is attached at pages 16–38.

Eligibility for relief

One commenter suggested changing item 2 in the petition (form CR-430) to clarify that a court, in determining a petitioner's eligibility for relief, should only look to the convictions that are the subject of the petition (i.e., convictions that resulted in a term of incarceration during which the petitioner participated as an individual hand crew member, and which the petitioner is asking the court to dismiss), rather than to the petitioner's entire criminal history. The committee determined that, as a matter of statutory interpretation, neither the plain text of the statute nor the legislative history provide a definitive answer as to the legislative intent. The committee

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concluded that the language in the circulated form was appropriate and declined to make the suggested change.

Space for interest of justice arguments
Three commenters suggested adding a space on the petition (form CR-430) to allow a petitioner to make an interest of justice argument, and/or the option to include an attached declaration. The committee agreed with this suggestion and incorporated it into the proposed form.

Multiple cases on a single form
One commenter suggested modifying the forms to allow a petitioner to accommodate multiple case numbers on a single form. The committee declined to incorporate the suggestion, given that allowing multiple cases on a single form could result in increased administrative confusion—for example, if a petitioner requested relief for convictions originating in different courts.

Other forms of conviction relief
One commenter suggested modifying the petition (form CR-430) to allow a petitioner to simultaneously request reduction relief under section 17(b) and (d).[3] The committee declined to incorporate the suggestion, as this would be a substantive change to the proposal that would necessitate an additional public comment period and thereby delay consideration for approval. The committee may consider this suggestion during a future rule and form cycle.

Early termination of supervision provisions
Four commenters suggested modifying item 2 in the information sheet (form CR-430-INFO) to clarify the information provided regarding the early termination of supervision provisions of section 1203.4b. Specifically, three commenters suggested that, contrary to the information in the circulated form, nothing in section 1203.4b prevents a court from granting relief even if a petitioner has violated the terms or conditions of supervision. A fourth commenter stated that the information provided in item 2 was confusing. The committee agreed that some of the information in item 2 was confusing and possibly not in conformity with the text of section 1203.4b, and after revisiting the statute, the committee determined that section 1203.4b does not directly address whether early termination of supervision may be granted when there has been a violation of the terms or conditions of supervision. The committee concluded that the best way to address the aforementioned comments would be to modify the language in item 2 to more closely match the statutory language.

Relatedly, one commenter suggested adding a checkbox to the court order (form CR-432) that would allow a court to grant early termination of supervision in its discretion even when there has been a violation of the terms or conditions of supervision. The committee declined to add the suggested checkbox, given that section 1203.4b does not directly address whether early

[3] Section 17(b) authorizes a court to, under certain circumstances, reduce a felony to a misdemeanor. Similarly, section 17(d) authorizes a court to, under certain circumstances, reduce a misdemeanor to an infraction.

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termination of supervision may be granted when there has been a violation of the terms or conditions of supervision.

Court's discretion to grant or deny relief

One commenter suggested deleting the option to dismiss only certain convictions within an eligible case on the court order (form CR-432), as section 1203.4b(b)(4) arguably requires a court to grant relief for all convictions within an eligible case. The committee declined to incorporate the suggestion, as it does not read subdivision (b)(4) of section 1203.4b as limiting a court's ability to grant relief in its discretion and in the interests of justice under subdivisions (b)(2) and (c)(1), and accordingly, a court could conceivably exercise its discretion by granting relief for only certain convictions within a case.

Alternatives considered

The number of formerly incarcerated individuals who have participated as a hand crew member in a CDCR or county-operated fire camp program appears to be relatively low. The committee thus considered whether it was necessary for the Judicial Council to approve or adopt a new set of forms for this type of conviction relief. As noted, the committee determined that forms could facilitate the process of providing relief to eligible petitioners, given the apparent high level of interest by pro se petitioners and because relief under the statute requires coordination between the courts and the CDCR or the appropriate county authority.

The committee considered whether any existing forms, such as *Petition for Dismissal (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)* (form CR-180) and *Order for Relief (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, 1203.49)* (form CR-181) could be amended to provide for relief under section 1203.4b. The committee determined that new forms would be preferable because the requirements for petitioning for relief under section 1203.4b are distinct from other forms of relief, and adding section 1203.4b relief to the existing forms would make them overlong and cumbersome.

The committee discussed whether the forms should be mandatory or optional. Because some courts prefer to use optional forms as models to be adapted to their specific court processes, and because some petitioners (especially those with counsel) may prefer to use a more extensive format for petitioning the court, the committee determined that optional forms would be preferable.

The committee considered whether the order (form CR-432) should have the court state the reasons why, in the case of a denial of relief, granting relief to the petitioner would not serve the interests of justice. The committee decided that the order should include this information, as this would help instill confidence in judicial decision-making, benefit a petitioner filing a subsequent petition for the same relief, and provide the opportunity for effective appellate review.

Fiscal and Operational Impacts

As forms CR-430, CR-430-INFO, CR-431 and CR-432 would be optional, expected costs are limited to training, possible case management system updates, and the production of new forms.

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Two superior courts submitted comments regarding this proposal's operational impacts on courts. One court indicated that staff training would be minimal, and case management system updates were not anticipated. The other court indicated that some courts have already created local forms for petitioning for relief under section 1203.4b, and that standardizing the forms will promote consistency across the state. No other implementation requirements or major operational impacts are expected.

Attachments and Links

1. Proposed forms CR-430, CR-430-INFO, CR-431, and CR-432, at pages 7–15
2. Chart of comments, at pages 16–38
3. Link A: Assem. Bill 2147 (Stats. 2020, ch. 60), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2147*
4. Link B: Pen. Code, § 1203.4b, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1203.4b&lawCode=PEN*

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CR-430 Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Clerk stamps date here when form is filed.

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Not approved by the Judicial Council

Before using this form, read *Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)* (form CR-430-INFO), available at www.courts.ca.gov/forms).

A copy of this petition must be served on the prosecuting attorney and a proof of service must be filed with the court (you may use *Proof of Service* (form CR-106), available at www.courts.ca.gov/forms).

PEOPLE OF THE STATE OF CALIFORNIA
v.
DEFENDANT:

Fill in court name and street address:

Superior Court of California, County of

Case Number:

For Court use only:
Date:
Time:
Department:

1 Petitioner's Information

a. Name: _____
Last *First* *Middle*

Date of birth: _____ *(mm/dd/yyyy)*

Address: _____
Street

_____ _____ _____
City *State* *Zip*

Telephone *(optional)*: _____

Email *(optional)*: _____

Local Identifying Number *(if known)*: _____

CDCR No. *(while in fire camp, if known)*: _____

Name of fire camp *(if known)*: _____

Approximate dates in fire camp *(if known)*: _____ to _____
(month/year) *(month/year)*

b. Your attorney, if you have one *(specify name, address, telephone number, and State Bar number below)*:

Name: _____

_____ _____ _____ _____
Street *City* *State* *Zip*

Telephone: _____ Email: _____

State Bar No. _____

2 Eligibility for relief under Penal Code section 1203.4b

a. Petitioner was not convicted of any of the following offenses: murder; kidnapping; rape (as defined in Penal Code section 261(a)(2), (a)(6), or Penal Code section 262(a)(1), (a)(4)); lewd acts on a child under 14 years of age (as defined in Penal Code section 288); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration pursuant to Penal Code section 290; escape from a secure perimeter within the previous 10 years; or arson.

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b. While serving a sentence in this case, petitioner successfully participated as a member of a fire camp incarcerated individual hand crew in (*check one):*
☐ the California Conservation Camp program (operated by the California Department of Corrections and Rehabilitation)
☐ a county incarcerated individual hand crew program *(name of county):* _____

c. Petitioner adequately performed the hand crew duties and did not engage in any conduct that warranted removal from the program.

d. Petitioner has been released from custody and has no pending criminal charges.

e. In this case number: _____, petitioner is currently (*check one*):
☐ on probation ☐ on parole ☐ on supervised release ☐ not on supervision

f. ☐ Petitioner requests early termination of: ☐ probation ☐ parole ☐ supervised release

g. Petitioner requests permission to withdraw the plea of guilty or nolo contendere, or that the verdict or finding of guilt be set aside and a plea of not guilty be entered, and that the court dismiss this action in its discretion and in the interests of justice under Penal Code section 1203.4b.
(Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below or by attaching a letter or other relevant documents. If you need more space for your writing, you can use Attached Declaration *(form MC-031) and attach it to this petition.)*

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I declare that the information provided is true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____

Signature: _____
(Petitioner or attorney)

Printed Name: _____
(Petitioner or attorney)

CR-430-INFO Information on Filing a Petition for Dismissal—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Penal Code § 1203.4b allows eligible former inmates to ask the court to dismiss a conviction and take other actions that can improve your criminal record ("record clearing").

Read this information carefully to learn whether you may be eligible for § 1203.4b relief, and how to complete *Petition for Dismissal—Incarcerated Individual Hand Crew* (form CR-430) to request relief. (Form CR-430 is available at www.courts.ca.gov/forms.)

1 Who is eligible to apply for relief under Penal Code § 1203.4b?

You must meet ALL of these requirements to be eligible to apply (petition) for relief under Penal Code § 1203.4b:

a. You were incarcerated in state prison or county jail.

b. While in state prison or in county jail, you successfully participated as a hand crew member ("grade eligible") in a California Conservation Camp program operated by the California Department of Corrections and Rehabilitation (CDCR);

OR

While in county jail, you successfully participated in an incarcerated individual fire camp hand crew program operated by a county agency (for example, the sheriff's department).

c. You have been released from custody (i.e., you are not in state prison or county jail).

d. You are not currently charged with committing any offense.

NOTE: You are NOT eligible for Penal Code § 1203.4b relief if your conviction was for any of these offenses: murder; kidnapping; rape (as defined in Penal Code §§ 261(a)(2), (6) or 262(a)(1), (4)); a violation of Penal Code § 288 (specified sex offenses); any felony punishable by death or imprisonment in the state prison for life; any sex offense requiring registration under Penal Code § 290; escape from a secure perimeter within the previous 10 years; or arson.

2 I'm still on probation, parole, or supervised release. Can I apply for § 1203.4b relief now?

- **Yes,** you can still petition for a § 1203.4b dismissal even if you are on a term of probation, parole, or supervised release. The law says that you are *not* required to complete your term of supervision before you can ask the court to dismiss your conviction.
- If you are still on a term of supervision and have not violated any terms or conditions of your supervision, and the court grants your petition for a § 1203.4b dismissal, the court will also order early termination of supervision.

3 What information do I need to include on my petition?

Form CR-430 is the form for requesting § 1203.4b relief. It is available at www.courts.ca.gov/forms. You do not have to use form CR-430 for your petition, but it helps organize the information for the court.

You will need to file a separate petition for each case. You will need to list on your petition:

- The case number; and
- Your local identifying number (if any, and if known).

It is helpful to provide details about your participation in a CDCR fire camp program:

- The CDCR number you had while participating in fire camp;
- The name of the fire camp; and
- The approximate dates that you were in fire camp.
  For example: CDCR No. TK12345;
  Eel River Camp, August – November, 2020

You are *not* required by law to provide this information in your petition. It can help speed up the court's decision on your request by making it easier for CDCR to locate and confirm your participation in fire camp and report back to the court.

Tip: If you were a county jail inmate and participated in a fire camp, it is *very likely* the fire camp was operated by CDCR. You would have been given a CDCR number during your time in fire camp.

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You may also explain why granting a dismissal would be in the interests of justice. You can write in the allotted space on the form, or you can use *Attached Declaration* (form MC-031), available at www.courts.ca.gov/forms.

4 Where and how do I file my § 1203.4b petition with the court?

a. **You must file your petition with the court. File in the county where you were sentenced for the conviction you want the court to dismiss.**

First, check with the court clerk or check the court's website to see whether there are any local rules about filing and service of the petition, as well as how to obtain proof of filing.

- In many counties, you must serve the original § 1203.4b petition with the court, have the court file-stamp one copy, and then you must serve the file-stamped copy of the petition on the prosecuting attorney.
- If you "file first," as described in b. and c. below, the court has a chance to add a hearing date to the petition before you serve it.
- Some courts require you to first serve *a copy* of the § 1203.4b petition on the prosecuting attorney and *then* file the original petition with the court, together with a completed and signed proof of service. (See 5 and 6 for information on service and proof of service.)

b. Fill out the petition form, CR-430, *and make at least 2 copies*. You will use one copy to notify the prosecuting attorney. Be sure to keep the other copy for your own records.

c. File the original § 1203.4b petition with the court by:

- taking the original petition and a copy to the court in person and handing it to the court clerk; *or*
- mailing the petition and a copy to the court; *or*
- filing the petition electronically, if the local court rules permit this type of filing.

d. When the court files the original petition, ask the court clerk to file-stamp the copy of the petition and return it to you. *This is an important step because, in many counties, the file-stamped copy must be served on the prosecuting attorney*. If you file the petition by mail, include the copy for the court clerk to file-stamp and then return to you. Include a self-addressed, stamped envelope for the clerk to use to mail the file-stamped copy back to you.

5 How do I "serve" a copy of my § 1203.4b petition on the prosecuting attorney?

a. "Serving" a petition means delivering a copy of the petition to the prosecuting attorney.

b. You must serve a copy of your § 1203.4b petition on the prosecuting attorney in the county where you filed your petition with the court.

c. You can serve the petition by:

- **Personal service:** You *or another person over age 18* go in person to hand-deliver a copy of the petition to the prosecuting attorney's office during business hours by handing it to an employee. Be sure to get the name of the employee for your proof of service.
- **Service by mail:** Mail a copy of the petition to the prosecuting attorney's office. You may mail the petition by first-class mail or by certified mail with a return receipt requested.
- **Electronic service:** Contact the prosecuting attorney's office to see if they accept electronic service. If they do, the court may require proof of their consent to electronic service. You can use *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV), available at www.courts.ca.gov/forms.

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6 How do I prove that I served my § 1203.4b petition on the prosecuting attorney?

a. It is very important that you properly serve your § 1203.4b petition and then file proof with the court. This "proof of service" tells the court that you gave the prosecuting attorney the required notice of your § 1203.4b petition.

b. You will need to confirm that you served the petition by filing a proof of service form that describes who, when, where, and how you served your § 1203.4b petition. You can use *Proof of Service—Criminal Record Clearing* (form CR-106) for this purpose.

c. Fill out form CR-106. (Follow the directions on form CR-106-INFO. Both forms are available at www.courts.ca.gov/forms). Form CR-106 has spaces for you to write how you served the prosecuting attorney with your § 1203.4b petition. If you had someone else help you serve the petition on the prosecuting attorney, that person will have to fill out the proof of service form.

d. After filling out the proof of service (form CR-106), make a copy for you to keep.

e. You must file the original proof of service with the court to prove that you gave the prosecuting attorney the required notice of your § 1203.4b petition. You can file the proof of service form the same way you filed the petition.

7 What happens next?

a. **The court can consider your petition 15 days after you serve the prosecuting attorney with your petition. The prosecuting attorney can object to your petition at any time before the court grants or denies the petition.**

b. If the prosecuting attorney does object, you will receive a copy of the objection in the mail and the court will schedule a hearing. (See 10 for more information about the hearing.)

c. Before the court can grant your § 1203.4b petition, the court must get certification of your participation in fire camp from CDCR or the appropriate county authority.

8 What is "certification" by CDCR or the appropriate county authority?

a. In order for the court to decide whether to grant your § 1203.4b petition, the court must have "certification" from CDCR or the county authority that:

- you successfully participated in fire camp as a hand crew member; AND
- you participated in fire camp during the time you were incarcerated for the conviction you are asking the court to dismiss.

b. After you file your § 1203.4b petition, the court will contact CDCR or the appropriate county authority and ask for a written statement that confirms ("certifies") your successful participation in fire camp.

c. "Successful participation" in fire camp means that you adequately performed your hand crew duties and did not have any violations that could have led to your removal from fire camp.

9 When will the court make a decision?

a. The court will not make a decision until it hears from CDCR or the appropriate county agency certifying participation.

b. The law does not set a time frame, but the court may ask CDCR or the appropriate county authority to respond to a request for certification by a certain date.

c. After CDCR or the appropriate county authority certifies whether your participation in fire camp was successful, the court likely will contact you and the prosecuting attorney. But the law does not require the court to contact you, so you may want to check with the court to confirm that the certification has been received.

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10 Will I have to attend a hearing?

a. The law does not *require* the court to hold a hearing in order to make a decision on your § 1203.4b petition. The court can make a decision on your petition without holding a hearing. But the law allows the court to hold a hearing if it chooses to do so.

b. The law allows the prosecuting attorney to request a hearing and to ask the court to deny your § 1203.4b petition.

c. If the court schedules a hearing, you will be notified of the hearing date and time. You have a right to attend the hearing and to explain why your § 1203.4b petition should be granted and your conviction dismissed.

d. *Note:* Even if the prosecuting attorney does not object to your § 1203.4b petition, the court may ask the prosecuting attorney to tell the court whether there is anything it should consider when deciding whether to grant your petition.

11 How will the court make its decision?

a. If you meet all of the eligibility factors, and the court receives certification of your successful participation in fire camp, the court may grant your § 1203.4b petition *if it is in the interests of justice.*

b. If the court determines that it's not in the interests of justice to grant relief, the court can deny your petition even if you meet all the eligibility requirements. You may resubmit your petition in the future if you think the court's decision was incorrect.

c. Once the court makes a decision on your § 1203.4b petition, it will issue an order (likely on form CR-432) that states whether the court granted or denied your petition. If the court grants your petition, the order will state which convictions have been dismissed and whether supervision has been terminated. The court will also report this change in your record to the Department of Justice so that your statewide criminal history summary can be updated.

12 If the court grants relief, what happens to my conviction?

a. If the court grants relief and dismisses the conviction, you will be released from most of the penalties and restrictions that are connected to the conviction. The law keeps certain penalties in place.

b. A dismissal will NOT:

- Reinstate your right to possess firearms.
- Prevent suspension of your driver's license in some cases.
- Allow you to omit the conviction from applications for the California Commission on Teacher Credentialing, a position as a peace officer, public officer, or for contracting with the California State Lottery Commission.
- Permit you to hold public office if the law prohibits people from holding public office as a result of that conviction.
- Seal or remove the court file from public inspection.
- Prevent the conviction from being used as a "prior" in the future.
- Remove from your record the fact that an arrest occurred.

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CR-431 Court Cover Letter and Agency Certification—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

☐ **Secretary, California Department of Corrections and Rehabilitation**
c/o Camp Liaison Captain
1515 S Street, 330 N-113
Sacramento, California 95811

☐ **Appropriate county authority *(name)*:** _____
Address:
_____
_____
_____

Superior Court of California, County of

Attached is a copy of a petition for relief under Penal Code section 1203.4b filed by:
Name: _____
First *Middle* *Last*

Case Number:

Date of birth: _____ *(mm/dd/yyyy)*
CDCR No. *(while in fire camp, if known)*: _____
Name of fire camp, if known: _____
Approximate dates in fire camp: _____ *(month/year)* to _____ *(month/year)*

Please certify, by *(date)*: _____, whether the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or successfully participated as a member of a county incarcerated individual hand crew, and has been released from custody.

Date: _____

Court Clerk: _____ Court Contact Information *(optional)*: _____

Agency Certification

NOTE TO CERTIFYING AGENCY: Please fill out this certification and mail this form to the court at the address above.

☐ The Secretary of the California Department of Corrections and Rehabilitation or the appropriate county authority certifies that, on case number: _____ *(check one)*:

☐ The petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew, and has been released from custody. Dates of participation: _____ *(month/year)* to _____ *(month/year)*

☐ The petitioner participated but was not successful as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew.

☐ The petitioner did not participate as a hand crew member in the CDCR incarcerated individual conservation camp program, or as a member of a county incarcerated individual hand crew.

Date: _____ _____
Signature of Agency Representative

Agency: _____ Printed Name: _____

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CR-432 Order on Petition—Incarcerated Individual Hand Crew (Pen. Code, § 1203.4b)

Clerk stamps date here when form is filed.

DRAFT
Not approved by the Judicial Council

Superior Court of California, County of

Case Number:

For Court use only:
Date:
Time:
Department:

(1) Name: _____
First *Middle* *Last*

Mailing address: _____
Street

_____ _____ _____
City *State* *Zip*

CDCR No. *(if known):* _____

Name of fire camp *(if known):* _____

(2) **The court finds:**

☐ The Secretary of the California Department of Corrections and Rehabilitation has certified to the court that the petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program.

☐ The appropriate county authority has certified to the court that the petitioner successfully participated as a member of a county incarcerated individual hand crew.

☐ The petitioner has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief under Penal Code section 1203.4b. The court orders early termination of (*check one)*: ☐ probation ☐ parole ☐ supervised release.

☐ It is in the interests of justice to dismiss the accusations or information against the petitioner and release the petitioner from all penalties and disabilities resulting from the offense of which the petitioner has been convicted, except as provided in Vehicle Code Section 13555.

(3) The court **GRANTS** the petition for dismissal regarding the following convictions under Penal Code section 1203.4b *(check one)*:

☐ for all convictions in case number: _____ or ☐ only the following convictions in case number: _____ (*specify charges and date of conviction*): _____

_____

_____

_____

_____

_____

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It is ordered that the petitioner's plea of guilty or nolo contendere be withdrawn and a plea of not guilty be entered, or the verdict of guilt be set aside. The court dismisses the accusations or information against the petitioner.

Petitioner is released from all penalties and disabilities resulting from the convictions in this case for which the court is granting relief, except as follows:

- Suspension of petitioner's driver's license except as provided in Vehicle Code section 13555.
- In any subsequent prosecution, this conviction may have the same effect as if the accusation or information had not been dismissed.
- Petitioner must still disclose the conviction in response to any direct question in any questionnaire or application for licensure by the California Commission on Teacher Credentialing, for a position as a peace officer, for public office, or for contracting with the California State Lottery Commission.
- Petitioner may still be prohibited from owning, possessing, or having in petitioner's custody or control any firearm.
- Petitioner may still be prohibited from holding public office as a result of the dismissed conviction.

4 ☐ The court **DENIES** the petition because petitioner's conviction is for an offense that is ineligible for relief under Penal Code section 1203.4b(a)(1)(A)–(H).

☐ The court **DENIES** the petition without prejudice *(check all that apply):*

a. ☐ Petitioner is in custody.

b. ☐ Petitioner is currently charged with the commission of any other offense.

c. ☐ The Secretary of the Department of Corrections and Rehabilitation did not certify to the court that petitioner successfully participated as a hand crew member in the CDCR incarcerated individual conservation camp program, or the appropriate county authority did not certify to the court that the petitioner successfully participated in the county incarcerated individual hand crew program.

d. ☐ Petitioner was not serving a sentence for this conviction at the time of participation in fire camp.

e. ☐ The court finds that granting relief would not serve the interests of justice because:

f. ☐ Other:

DRAFT

Date: _____

_____
Signature of Judicial Officer

SPR21-07

Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Occupational Licensing Coalition by Zachary Gautier-Klos Staff Attorney, Root & Rebound	NI	This letter is in response to the invitation to comment on court forms within SPR21-07. We greatly appreciate the Council's efforts to make court processes more accessible to unrepresented people through the development of standardized court forms. I am writing on behalf of the California Occupational Licensing Coalition. Our coalition of advocates provide legal information, services, and support to formerly incarcerated and systemimpacted people across California. We have supported tens of thousands of people with record cleaning. From our on-the-ground legal experience in these areas of law, we have worked on comprehensive policy reform related to occupational licensing for people with conviction histories -- to work toward a more just and safe society. We supported the development and passage of AB 2138, a landmark shift in access to state regulated employment for system impacted people. And continue to work to ensure that people are not permanently denied living wage jobs for which they are qualified and can safely work. We have three significant concerns with the draft forms. Our concerns are especially strong in the instances where people may engage with these forms without the support of an attorney or expert advocate. **1. The CR-430 should have a space for a declaration and mention the legal standard, "interest of justice"** First, the draft CR-430 fails to state anywhere that relief requires a discretionary determination by the court and that relief is only granted "in the interest of justice." Pen. Code 1203.4b(c)(1). This is unlike the CR-180, the other court form used for Penal Code 1203.4 et seq; its absence from the CR-430 but presence on the CR-180 might lead a pro per petitioner to believe that the relief under 1203.4b is mandatory. The interest of justice standard, and court	The committee agrees with this suggestion, and has added a space on form CR-430 to allow a petitioner to make an interest of justice argument and/or to include an attached declaration.

DRAFT

	Commenter	Position	Comment	Committee Response
			discretion, is only mentioned in numbered item 11 on the fourth page of the CR-430-INFO sheet, nearly hidden. Burying this vital information deep in the INFO document disadvantages petitioners because it provides them little to no opportunity to realize that they must make an interest of justice argument to the court. Further, there is no apparent opportunity to make such an interest of justice argument on the written record because there is no such space on form CR-430. A court cannot properly consider the petitioner's argument in favor of relief based on the interest of justice standard with the information available in the draft CR-430. We suggest that the Council (1) makes clear in the CR-430 that if someone is eligible for relief, relief is still at the discretion of the court and based on the interest of justice standard, and (2) provide an opportunity to make an interest of justice argument, perhaps through identifying the option to attach an MC-31 declaration or creating a space to explain within the CR-430, similar to the CR-180. **2. The CR-432 should not include an option to dismiss only certain convictions within an eligible case** Second, the draft CR-432 Order, in numbered section three, includes the option for the court to grant the relief for only specific convictions within an eligible case. We believe this is a misinterpretation of Pen. Code 1203.4b(b)(4). The clause, "subject to relief" should not be read as permissive, allowing the court discretion on which specific convictions to apply relief. Rather it should be read to be inclusive of all convictions for which the petitioner is eligible for relief. The purpose of the legislation is to reduce the barriers of convictions based on the work hand crew members did in conservation camps. Allowing a court to provide relief for only some	The committee discussed this suggestion and declines to incorporate it. The committee does not read subdivision (b)(4) of Penal Code section 1203.4b as limiting a court's ability to grant relief in its discretion and in the interests of justice under subdivisions (b)(2) and (c)(1), and accordingly, a court could conceivably exercise its discretion by granting relief for only certain convictions within a case.

DRAFT

	Commenter	Position	Comment	Committee Response
			of the convictions that resulted in incarceration denies any of the benefits of this relief and directly contravenes the legislative intent. Unlike relief under the other sections of Pen. Code 1203.4, section 1203.4b is based on behavior after the conviction and the interest of justice. Eligibility to work in the fire camp is based on the entire case for which the person is sentenced thus relief should be based on the whole case not a portion thereof. Further, relief under this code differs from other relief in that it does not require the completion of supervision or other post incarceration requirements. For these reasons partial relief for eligible convictions would disrupt the purpose of the law. We suggest that the CR-432 reflect a single option; if the court determines that relief is granted under 1203.4b it would be applied to all cases/convictions for which the person is eligible for relief. **3. CR-430 INFO provides an inaccurate description of the court's duty to deny relief for people with violations while on supervision** Third, the draft CR-430-INFO, question number two, tells potential petitioners that "the court will NOT grant your petition for dismissal" if you have a violation of supervision. This does not accurately describe 1203.4b(b)(3). The statute requires that supervision be terminated if discretionary relief is granted and the petitioner has not had any violations. It does not require apetitioner to have no violations in order to be granted relief. In the instance that the court finds someone on supervision eligible for relief it is within the courts discretion to (1) grant relief in the interest of justice, and (2) terminate supervision even if there was a violation while on supervision. We suggest that the answer to that question reflects that termination of supervision is required if relief is granted and there have been no supervision violations. And also that relief may be granted, including termination of supervision, at the court's discretion even if there are	Based on this and other comments received, the committee determined that some of the information in item 2 of form CR-430-INFO was confusing and possibly not in conformity with the early termination of supervision provisions in Penal Code section 1203.4b. The committee also concluded that section 1203.4b does not directly address whether early termination of supervision may be granted when there has been a violation of the terms or conditions of supervision. Taking the above into account, the committee has modified item 2 of form CR-430-INFO to more closely match the statutory language.

DRAFT

SPR21-07
Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			supervision violations.	
2.	Walter Holloway San Diego	A	I believe this proposed modification is completely ideal and prevention alleviates a lot of Disconnect within courts, defendants and the Department of Corrections (CDCR).	The committee appreciates the comment.
3.	Legal Services of Northern California by Wade Askew Managing Attorney Vallejo	AM	Legal Services of Northern California is a legal aid organization serving low-income Californians across 23 counties. We annually assist and represent numerous individuals apply for forms of criminal record relief that reduce barriers to employment and housing, work that furthers our anti-poverty mission. We applaud the Judicial Council for developing forms to make new forms of relief more accessible to Californians who served the state as hand crew members in fire camp programs during their incarceration. Simple and effective forms will help make this significant relief meaningful to those entitled to it. In response to the specific questions posed by the Judicial Council, the proposed forms appropriately address the stated purpose. It is undoubtedly helpful to pro per petitioners and legal aid advocates to create a standard form instead of requiring a full noticed motion. In our experience, a high proportion of clean slate petitioners represent themselves in pro per and struggle to prepare noticed motions from scratch. Accessible forms are vital for these petitioners. In addition, there is a benefit in having the court state reasons that granting relief would not serve interests of justice when denying a petition. In our experience helping pro per petitioners apply for other forms of criminal record relief, petitioners are often left confused, discouraged, frustrated, and lose a degree of faith in the judicial system when no reason is given for a petition's denial. In addition, articulating reasons for denial puts petitioners on notice as to what the court needs to see change in potential future petitions. Our office has the following comments for the specific proposed	

DRAFT

SPR21-07
Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)
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	Commenter	Position	Comment	Committee Response
			forms: CR-430 If a petitioner serves one term of incarceration for convictions in multiple cases, we request that the petitioner be able to list all relevant cases on one form. In our experience, the more paperwork that is necessary for pro per petitioners to complete, the more likely it is that pro per petitioners become overwhelmed. To do this, we ask that the Judicial Council create space to list multiple case numbers on each form. Allowing a petitioner to request 1203.4b relief in multiple cases within the same form would also preserve judicial resources by requiring less filings. When petitioning for 1203.4b relief in multiple convictions for which a petitioner served time concurrently, it is reasonable that a petitioner would submit the same evidence for the multiple cases. Instead of copying that evidence into multiple petitions, streamlining submissions into one petition would allow for a simpler process. Judges could still retain the flexibility to grant 1203.4b relief in some cases instead of others if the CR-432 allows judges to specify that relief is granted in some cases but not others. Similarly, District Attorneys would have the ability to support or oppose relief in certain cases but not others if multiple case numbers may be listed on the CR-431. Also on the CR-430, Item 2(e) should allow for case numbers (plural) for which petitioner is currently on probation/parole/supervision, as a petitioner may serve concurrent supervision sentences. CR 430-INFO Item 1	The committee discussed the suggestion and declines to incorporate it, given that allowing multiple cases on a single form may result in increased administrative confusion—for example, if a petitioner requested relief for convictions originating in different courts.

DRAFT

SPR21-07

Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			The bottom of the left column wrongly cites 1203.4 instead of 1203.4b. It should read, "NOTE: You are NOT eligible for Penal Code section 1203.4b."	The committee appreciates the comment and has corrected the error.
			Item 2 In the second bullet point, add "If you're still on probation, parole, or supervised release, and you have violated…" This would eliminate potential confusion for people who may think a prior violation renders them ineligible, which it does not. While we understand that the bulletpoint is listed under a heading implying this would only apply to violation of an ongoing form of supervision, adding the clause "If you're still on probation…" would help make the form more accessible to all reading levels.	Based on this and other comments received, the committee determined that some of the information in item 2 of form CR-430-INFO was confusing and possibly not in conformity with the early termination of supervision provisions in Penal Code section 1203.4b. The committee has modified item 2 of form CR-430-INFO to more closely match the statutory language.
			Item 4 We encourage the Judicial Council to standardize court processes regarding service. We have found that county courts have widely varying methods of processing clean slate petitions, which causes confusion for both court users and legal aid advocates. This confusion leads to unnecessarily dismissed petitions, rejected filings, and inhibits access to the courts. One standard process would also simplify the INFO form itself such that alternative instructions do not have to be listed. As a best practice, we ask that petitioners never be required to serve file-stamped copies of their CR-430 petitions. Instead, petitioners should be allowed to first serve their petitions to the District Attorney, then file their petitions and proofs of service concurrently. The court would then be responsible to inform the parties of any hearing date, as it does in most types of actions. This is especially appropriate for 1203.4b petitions, where the court may choose to not schedule a hearing in certain cases.	The committee appreciates the comment and acknowledges that local court practices may differ with respect to service. The comment, however, is beyond the scope of the proposal.

DRAFT

	Commenter	Position	Comment	Committee Response
			In other contexts, we have seen low-income petitioners struggle to complete the alternative process of filing a petition, serving a file-stamped copy, then filing a proof of service. Put simply, more steps lead to more confusion. This process often requires multiple trips to the courthouse, something many low-wage workers and parents without daycare cannot afford. Requiring service of file-stamped petitions also creates significant burdens on legal aid organizations. Instead of completing all paperwork (including proof of service) in one appointment, we must schedule two appointments with a client, before and after initial filing. Also, in our experience, nearly all courts across the state do not require service of a file-stamped copy of a CR-180 petition; keeping the CR-180 and CR-430 processes as similar as possible will help eliminate confusion and improve access. Finally, Item 4(d) instructs petitioners as if they always must serve a file-stamped copy of a petition, whereas item 4(a) indicates that some courts will not require this process. This is confusing for court users. In addition, we reiterate our request that petitioners never be required to serve file-stamped copies, but that instead courts maintain a consistent process whereby petitioners may always serve unstamped copies of the CR-430. Item 5 The personal service and service by mail options both specify serving a file-stamped copy. This again conflicts with the information in 4(a) and our request to not require service of a file-stamped copies.	The committee appreciates the comment and has changed the language in item 4 of form CR-430-INFO to specify that not all counties require service of a file-stamped copy. As stated above, the request that petitioners never be required to serve file-stamped copies is beyond the scope of the proposal. The committee has removed the word "file-stamped" from item 5 of form CR-430-INFO. As stated above, the request that petitioners never be required to serve file-stamped copies is beyond the scope of the proposal.

DRAFT

SPR21-07
Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)
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	Commenter	Position	Comment	Committee Response
			Item 7 The language "the court will not grant your petition unless the prosecuting attorney has had at least 15 days…" is unnecessarily negative and may confuse petitioners. We request that the language be changed to simple and positive language, such as, "The court can consider your petition 15 days after you serve the district attorney with your petition."	The committee agrees with this suggestion and has made the suggested change in item 7 of form CR-430-INFO.
			Item 7 also has a bullet point describing what happens if the District Attorney objects. We request that an additional bullet point be added to describe what happens if the District Attorney does not object (clarifying that the court still has discretion to grant or deny).	The committee declines the suggestion as unnecessary in light of the information provided throughout the rest of the information sheet.
			Item 11 Add what happens if the court denies the petition, informing petitioners that they can petition again in the future as long as the case is not categorically ineligible for 1203.4b relief.	The committee agrees with this suggestion and has added language to item 11 of form CR-430-INFO indicating that a petitioner may resubmit their petition in the future if they think the court's decision was incorrect.
			CR 431 and 432 See CR-430 comment – it would be helpful to allow form users to list multiple case numbers on a single form.	The committee declines to incorporate this suggestion for the reasons stated above.
4.	Los Angeles County Public Defender by Thomas Moore Head Deputy Public Defender	AM	Thank you for the opportunity to submit comments regarding the proposal to provide a new set of forms to implement the provisions of Assembly Bill 2147 (Fire Camp Expungements). The Los Angeles County Public Defender supports the addition of these forms to facilitate the process of providing relief to eligible fire camp participants. We commend the Criminal Law Advisory Committee	

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	Commenter	Position	Comment	Committee Response
			for its acknowledgment that self-represented petitioners deserve equitable access to the relief that has been made available by the legislature. **Form CR-430** • **The designation of Local Identifying Number would benefit from clarification.** In our experience, petitioners seeking relief harbor some confusion as to whether this section refers to the petitioner's county jail booking number. Additionally, other identifying numbers are not readily accessible to those seeking relief. An explanation in the information sheet could resolve any misunderstanding.	The committee declines the suggestion as unnecessary, and notes that providing a local identifying number is optional.
			• **Provide the opportunity to include a declaration and supporting documents, as allowed in Form CR-180.** Given the discretionary nature of the court's authority to grant an order for dismissal in the interests of justice, a petitioner, especially one who is self-represented, should be permitted the option to attach and submit additional supporting documents. We suggest the inclusion of language on Form CR-180 which indicates, *You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant documents. If you need more space for your writing, you can use the Attached Declaration (form MC-031) and attach it to this petition.*	The committee agrees with this suggestion, and has added a space on form CR-430 to allow a petitioner to make an interest of justice argument and/or to include an attached declaration.
			• **Authorize the court to simultaneously grant a reduction pursuant to Penal Code sections 17(b) and 17(d)(2)*.** We recommend including language authorizing such reductions in the same manner as Form CR-180. The provisions of AB 2147 could not have intended to deprive petitioners the right seek such reductions available to similarly situated petitioners seeking relief pursuant to section 1203.4. By adding these on Form CR-430, courts will undertake the same analysis in granting reductions in conjunction with the relief.	Because this would be a substantive change to the proposal, public comment would be required before it is considered for adoption. The committee may consider this suggestion during a future rule and form cycle.

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	Commenter	Position	Comment	Committee Response
			* All further statutory references are to the Penal Code unless otherwise specified. **Form CR-430-INFO**	
			• **The term "grade eligible" may not be generally understandable to those who have successfully participated in fire camp.** Unless this term can be clarified, we suggest possible deletion.	The committee declines the suggestion and believes inclusion of the term will be helpful to those who have participated in fire camp.
			• **The reference to 1203.4 under NOTE should instead read, Penal Code § 1203.4b.** We believe this was an inadvertent omission.	The committee appreciates the comment and has corrected the error.
			• **The language that a county jail inmate was very likely given a CDCR number is should be amended.** In our experience, the CDCR number bestowed upon county jail inmates who have participated in a fire camp program is not readily available. The inability to access may present a barrier for eligible petitioners seeking relief. As an alternative, we recommend that the language could be replaced by the words, it is possible.	The committee notes that the form states that it is "very likely the fire camp was operated by CDCR," and that a CDCR number would have been given during the petitioner's time in fire camp. The committee considers the existing text to be appropriate.
			• **Include factors that the court can consider to be in the interests of justice.** The provisions of section 1203.4b confer discretion upon courts to grant or deny relief in the interests of justice. The definition of what the interests of justice may be, in any particular case, are subject to a wide variety of interpretation. However, all parties would benefit from an acknowledgement that certain well-established interests hold weight in the courts' consideration. We recommend that a section be added to the information sheet to explain some of the factors that the court may consider in making its decision. Examples may include *the good faith effort petitioner has made toward rehabilitation and recognized achievements earned while participating in fire camp.*	The committee declines this suggestion, given that Penal Code section 1203.4b does not address what factors a court should consider in determining whether to grant relief in its discretion and in the interests of justice.

DRAFT

SPR21-07
Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)
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	Commenter	Position	Comment	Committee Response
			• **The language which indicates that a dismissal will not automatically reinstate your right to possess firearms should be amended**. The statement, as written, may suggest that something else in the process can be performed to restore gun rights. To avoid this confusion, the language should reflect the plain language of the statute, which clearly stand that any relief pursuant to this section, *will not reinstate your right to possess firearms.* **Form CR-432** • **The check box indicating that the prosecuting attorney has been given 15 days' notice of the petition for relief is unnecessary.** While similar provisions of section 1203.4 require 15 days' notice, no check box is contained in Form CR-181, the order of dismissal. To the extent that the addition of such a specific finding is inconsistent with Form CR-181, we believe the inclusion is unnecessary. We recommend deleting this item. • **An order denying relief should include the court's statement of reasons.** An order containing a statement of reasons for denial of relief would benefit petitioners who may be able to present additional information in a subsequent petition. Further, a denial order that includes a judicial statement of reasons will also provide the opportunity for effective appellate review.	The committee agrees with this suggestion and has removed the word "automatically" from item 12 of form CR-430-INFO. The committee agrees with this suggestion and has removed the checkbox from form CR-432. The committee appreciates the comment.
5.	Neighborhood Legal Services of Los Angeles County by Yvonne Maria Jimenez President & CEO	NI	On behalf of Neighborhood Legal Services of Los Angeles County (NLSLA), we respectfully submit these comments in response to Invitation to Comment SPR21-07 regarding the Judicial Council Criminal Law Advisory Committee Proposed Forms CR-430, CR-430-INFO, CR-431, and CR-432. These forms are proposed in connection with Penal Code section 1203.4b, which authorizes post- conviction	

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SPR21-07

Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	Laura Siegel, Staff Attorney		relief for petitioners who successfully participate as an incarcerated individual hand crew member of a fire camp operated by a county or the California Department of Corrections and Rehabilitation. The mission of NLSLA is to expand access to justice and address the most critical needs of impoverished communities, including those of individuals with prior system-involvement. In the last two years, our office assisted hundreds of clients to remove critical barriers they face as a result of their criminal records, including preparation of expungement petitions, motions for early termination of probation and petitions to reduce convictions to lower level offenses. Conviction history leads to difficulty maintaining or obtaining stable housing, employment, and supportive services for individuals with prior system involvement. These consequences negatively affect not only the individuals themselves but also their families who profoundly suffer from these penalties. In California, low-income people of color are overrepresented at every stage in the criminal legal system. As a result, they are more likely to face the collateral consequences that stem from having a criminal record. Therefore, the ability to access clean slate relief is a vitally important issue. NLSLA has seen numerous examples of people obtain housing, jobs, and professional licenses after availing themselves of post-conviction relief. Unfortunately, we have also seen just as many people who are unable to petition for relief due to a range of barriers related to a lack of clarity about the process for obtaining post-conviction relief, knowledge on how to collect necessary information, and instructions on how to complete, file and serve the required forms. California Penal Code 1203.4b confers several benefits to those that ultimately qualify for the relief it authorizes by 1) authorizing post-conviction relief for more people previously ineligible under this provision, 2) allowing an individual to petition the court earlier than	

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	Commenter	Position	Comment	Committee Response
			previously possible, and 3) creating a pathway to better employment in multiple sectors that require professional licenses We thank and commend the Judicial Council for producing forms that will be an important tool in facilitating access to this valuable form of relief for petitioners, help the courts operate more efficiently by simplifying, standardizing, and clarifying the procedures and conserving court resources. However, in order to better achieve the stated purposes, we recommend the following modifications: **A. Recommended Modifications to Form CR-430** **1. Refer petitioners to CR-430-INFO for further information and assistance.** We recommend noting at the beginning of the CR-430 that petitioners can refer to CR-430-INFO for information to assist completion of CR-430. We recommend adding language such as "For directions on filling out this form, refer to Information on Filing a Petition for Dismissal – Incarcerated Individual Hand Crew (form CR-430-INFO) available at www.courts.ca.gov/forms). The purpose of this recommended modification is to make sure petitioners know of the existence of CR-430-INFO, which is important given the very helpful information contained on the form. **2. Clarify the meaning of "released from custody" on CR-430, section 2.** We recommend adding the phrase "is not in jail or prison" to CR-430, section 2, subsection d. With the proposed revision the sentence would be: "Petitioner has been released from custody (is not in jail or prison) and has no pending criminal charges." We recommend this change as we anticipate that pro per petitioners may be uncertain about the meaning of "custody" in this context. Petitioners may be discouraged from petitioning for relief if they do not	The committee agrees with this suggestion and has added a reference to form CR-430-INFO at the top of form CR-430. The committee appreciates the comment, and prefers to modify item 1 of form CR-430-INFO to include this information.

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	Commenter	Position	Comment	Committee Response
			understand the question. For example, petitioners may not know whether they qualify as "released from custody" if they are on parole. **B. Recommended Modifications to Form CR-430-INFO** **1. Explain that if the court denies relief, the denial is without prejudice.** Penal Code section 1203.4b(a)(2) states that any denial of relief under this section is without prejudice. This is reflected in CR-430 section 2. In order to help petitioners whose petitions are denied understand their options in the future, it would be helpful to explain what this means on the CR-430-INFO. The current draft CR-430-INFO, section 12 says "If the court grants relief, what happens to my conviction?" We recommend adding a section after this entitled: "If the court denies relief, am I able to petition again in the future?" This section would explain that denials are without prejudice, leaving open the option to petition again in the future. This will help facilitate availability of this relief to petitioners. **2. Clarify how petitioners can get information about local rules regarding filing and serving the petition.** CR-430-INFO section 4, subsection 3, includes the information that petitioners may file by, "filing electronically if local court rules permit this type of filing." We anticipate that eligible pro per petitioners will be uncertain about how to learn about local court rules, and therefore will be discouraged from petitioning. We recommend adding to this section the following information: "Contact the court clerk or check the court's website to see if any local rules exist regarding filing and/or service of the petition and ask how you can receive proof of filing." **C. Recommended Modifications Affecting both CR-430 and CR-430-INFO**	The committee appreciates the comment. As noted above, the committee has added language to item 11 of form CR-430-INFO indicating that a petitioner may resubmit their petition in the future if they think the court's decision was incorrect. The committee agrees with this suggestion and has added the suggested language, with minor alterations, to item 4 of form CR-430-INFO.

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SPR21-07

Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)

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	Commenter	Position	Comment	Committee Response
			1. Add information about attaching a declaration and supporting information. Recommended Modifications to the **CR-430**: We recommend that the CR-430 contain a place for petitioners to attach a declaration and other supporting materials with their petition. Penal Code section 1203.4b(c)(1) authorizes the court to grant relief, "in its discretion and in the interest of justice." The proposed forms do not have any place for the petitioner to provide information to help the court determine whether it serves the interest of justice for the relief to be granted, nor any indication of how to do so. For example, in contrast, on the current form CR-180 (Petition for Dismissal), in the sections that deal with discretionary set aside and dismissal relief, there is the following language: "Please note: You may explain why granting a dismissal would be in the interests of justice. You can provide that information by writing in the space below, or by attaching a letter or other relevant document. If you need more space for your writing, you can use the Attached Declaration (form MC- 031) and attach it to this petition." We recommend modifying the **CR-430**, section 2, to add similar language and accompanying blank space to add additional information, and also including MC-031 or similar declaration form with the package of forms for people who wish to petition for relief under Penal Code section 1203.4b.	The committee agrees with this suggestion, and has added a space on form CR-430 to allow a petitioner to make an interest of justice argument and/or to include an attached declaration
			Recommended Modifications to the CR-430-INFO: We recommend adding corresponding language to the CR-430-INFO, section 11, subsection a: "You may explain to the court why granting a dismissal would be in the interests of justice by providing more information on the form, or in an enclosed declaration. You may also attach documents to support your petition."	The committee appreciates the comment, and prefers to modify item 3 of form CR-430-INFO to include this information.

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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

<table>
<tr><th></th><th>Commenter</th><th>Position</th><th>Comment</th><th>Committee Response</th></tr>
<tr><td></td><td></td><td></td><td>These modifications will better equip petitioners to understand and navigate the process and will assist courts handle petitions more efficiently by providing them with information needed to make the necessary determination.

D. Recommended Modifications Affecting both CR-430-INFO and CR-432
1. Clarify that the court may order early termination of probation, parole, or supervised release even when there has been a violation of the terms or conditions or probation, parole, or supervised release.

Recommended modification to the CR-430-INFO Section 2:
We recommend changing the 2nd and 3rd bullet points:
<table><tr><th>Current Language</th><th>Recommended Language</th></tr><tr><td>• If you have violated any term or condition of your supervision beforeor during the time the court is reviewing your petition, then the court will NOT grant your petition for dismissal
• If you have no violations, the court may grant your petition and orderearly termination of probation, parole, or supervised release.</td><td>• If you have not violated any term or condition of your supervision before or during the time the court is reviewing yourpetition, and the court grants your petitionfor dismissal, the court will order early termination of probation, parole, or supervised release.
• If you have any violations, the court may grant your petition and may order earlytermination of probation, parole, or supervised release.</td></tr></table>
Recommended modification to the CR-432: We recommend a corresponding change be made to the CR-432, section 2. Currently, the 4th check box in this section only provides space for the court to order</td><td>Based on this and other comments received, the committee determined that some of the information in item 2 of form CR-430-INFO was confusing and possibly not in conformity with the early termination of supervision provisions in Penal Code section 1203.4b. The committee also concluded that section 1203.4b does not directly address whether early termination of supervision may be granted when there has been a violation of the terms or conditions of supervision. Taking the above into account, the committee decided to modify item 2 of form CR-430-INFO to more closely match the statutory language.

The committee discussed the suggestion, but does not recommend incorporating it at this time because Penal Code section</td></tr>
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	Commenter	Position	Comment	Committee Response
			early termination of supervision if there have been no violations of the terms or conditions of probation, parole, or supervised release. We recommend: 1) adding an additional checkbox under the current 4th checkbox in this section; and 2) adding accompanying text to this checkbox: "The court orders early termination of (check one):" with checkboxes for each of the 3 forms of supervision. These modifications are recommended so the forms reflect the applicable law and allow for discretionary termination of supervision. Penal Code 1203.4b(b)(3) states: To be eligible for relief pursuant to this section, the defendant is not required to complete the term of their probation, parole, or supervised release. Notwithstanding any other law, the court, in providing relief pursuant to this section, shall order early termination of probation, parole, or supervised release if the court determines that the defendant has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief pursuant to this section. The statutory language says that if the court grants relief to a petitioner who is on supervision that the court shall terminate probation early if there have been no violations. There is nothing in the statute that prevents the court from exercising discretion to terminate supervision early if there are violations.	1203.4b does not directly address whether early termination of probation, parole, or supervised release may be granted when there has been a violation of the terms of probation, parole, or supervised release.
			E. General Comment Regarding CR-432: There is benefit in having the court state on CR-432 the reasons for the court's determination that granting relief to the petitioner would not serve the interests of justice. We recommend this information remain on the form. To answer a question posed in the request for comments, it will be very beneficial to have the court state on form CR-432 the reasons for the court's determination that granting relief to the petitioner would not serve the interests of justice, if that is the court's decision. Providing the basis for the court's decision will better position petitioners for future access to this relief. This aspect of the CR- 432 will also help	The committee appreciates the comments.

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	Commenter	Position	Comment	Committee Response
			guide the courts efficiently through the process of considering the petition and communicating the decision to the petitioner. Furthermore, it will avoid courts having to respond to later questions about the reasons for the denial, conserving court resources.	
6.	Orange County Bar Association by Larisa M. Dinsmoor President	AM	Under Penal Code section 1203.4b, individuals who successfully participated in "fire camp" through either state prison or county jail can petition for relief under this section. The Judicial Council created forms to facilitate the petition process. The forms are accurate and will likely be a help to counties which do not currently have forms in place. Some proposals: • (CR-430) Page 6, Part 2: This portion should be clarified to make it clear that individuals who were convicted of these offenses and participated in fire camp are not eligible; however, individuals with these convictions as prior (or future) offenses are not barred from seeking eligibility. • (CR-430 INFO) Page 8, Part 1, subdivision b: The words "grade eligible" in the parentheses should be stricken, as those words appear nowhere in the statute. • (CR-430 INFO) Page 8, Part 2: The 2nd paragraph is an incorrect statement of law. The law imposes no such requirement. Instead, it is up to the court's discretion. This entire paragraph should be stricken.	The committee discussed the suggestion, but declines to incorporate it. The committee determined that, as a matter of statutory interpretation, neither the plain text of the statute nor the legislative history provide a definitive answer as to the legislative intent on this issue. The committee concluded that the language in the circulated form was appropriate. The committee declines the suggestion and believes inclusion of the term will be helpful to those who have participated in fire camp. Based on this and other comments received, the committee determined that some of the information in item 2 of form CR-430-INFO was confusing and possibly not in conformity with the early

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	Commenter	Position	Comment	Committee Response
			Possible issue: • The CR-430 INFO form tells litigants to file their petition in the county where they were sentenced. There are no published cases on this issue, but this may or may not be accurate for individuals who had their probation transferred under Section 1203.9.	termination of supervision provisions in Penal Code section 1203.4b. The committee has modified item 2 of form CR-430-INFO to more closely match the statutory language. The committee appreciates the comment, and notes that the instruction to file in the county of sentencing mirrors Penal Code section 1203.4b(b)(1).
7.	Superior Court of San Orange County by Randy Montejano Courtroom Operations Supervisor	NI	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? Yes, the proposal does address the stated purpose. • Is there benefit in having the court state, on proposed form CR-432, the reasons for the court's determination that granting relief to the petitioner would not serve the interests of justice, or is it unnecessary? If the petition is denied because it "would not serve the interests of justice" and, per code, this denial would be without prejudice, and though the defendant would not really have an opportunity to correct the defect of "interest of justice", it would appear to be helpful in ensuring that the certification is complete and has 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. There are no cost savings identified upfront, as some courts have already created a petition/order and certification for the CDCR as it	The committee appreciates the comments.

DRAFT

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All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			relates to this legislation. There will be a benefit in standardizing these optional forms for the petitioner, and will promote consistency of the process across the state. • 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? In the case of Orange County, two local forms have already been created for this process and it involved the creation / modification several docket codes. Procedurally, the references to the proposed Judicial Council forms would not be extensive. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months provides ample time for implementation, as some courts have already established a process with local forms. • How well would this proposal work in courts of different sizes? Given that some courts have already established a process to handle these petitions and are already processing using their own local forms, and the fact that the optional forms support an existing process while still allowing for those local forms, there would not appear to be an issue with implementation based on court size. **Additional Comments:** Form CR-430 section 2 (e) should remove the word "on" and modify the options for selection as follows "on probation", "on parole" and "on supervised release" in order to be grammatically correct.	The committee has made the suggested correction to item 2e of form CR-430.
8.	Superior Court of San Diego County	A	• Does the proposal appropriately address the stated purpose? Yes.	The committee appreciates the comments.

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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Criminal Forms: Incarcerated Individual Hand Crew Conviction Relief (Approve forms CR-430, CR-430-INFO, CR-431, and CR-432)

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	Commenter	Position	Comment	Committee Response
	by Michael M. Roddy Executive Officer		• Is there benefit in having the court state, on proposed form CR-432, the reasons for the court's determination that granting relief to the petitioner would not serve the interests of justice, or is it unnecessary? No. • 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? To adopt any new form, the court would need to bring the form to the relevant internal court management committees for review, discussion, and instructions to be given to staff. The review process would likely to 1-2 months. The training needed of staff would be minimal. It is not anticipated that the court would need to revise existing process procedures or case management systems. However, a new operational procedure may be needed. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? There should be no disparate impact between courts of different sizes.	
9.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee	A	The JRS notes that the proposal is required to conform to a change of law. The JRS also notes the following impact to court operations: • Results in additional training, which requires the commitment of staff time and court resources.	The committee appreciates the comments.

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	Commenter	Position	Comment	Committee Response
			○ Staff will require training, especially on the part of the process that requires confirmation that the defendant participated as an incarcerated hand crew member. If CDCR does not timely respond, the clerk will need to follow up in order for the court to make its order. • Increases court staff workload. ○ Initial estimates are that this will not create a huge workload, but how many defendants submit requests is unknown.	
10.	Scott Urban San Diego	AM	My son has been an inmate firefighter on a hand crew at the Corcoran State Prison for over 20 months. Only 10 inmates out of 3,000 can qualify for this respected position. As firefighters, they frequently go outside the prison walls to fight structure fires, ground fires, assist with auto collisions and team with the local Corcoran fire station on assisted calls. My son and his teammates have entered burning buildings and risked their lives for the surrounding community. I have spoken with the authors of AB 2147 and confirmed that the bill was written with the purpose of including firefighters who are stationed at prison facilities. Please refer to section 1203.4b(a)(1) of the bill "If a defendant successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, as determined by the Secretary of the Department of Corrections and Rehabilitation, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, and has been released from custody, the defendant is eligible for relief pursuant to this section." This language uses the word "or" and refers to both participants in a conservation camp OR successfully participated as a member of a county incarcerated hand crew of a county. I am asking that you include options on your forms to include those individuals who are working as firefighters of county hand crews. To	The committee notes that, consistent with Penal Code section 1203.4b, the proposed forms provide for two categories of individuals to petition for relief: those who successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, and those who successfully participated as a member of a county incarcerated individual hand crew. To the extent the commenter contends that the forms should apply to inmate firefighters stationed at prison facilities (as distinct from individuals in the two aforementioned categories), the committee declines the suggestion as inconsistent with the statutory language.

DRAFT

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			exclude the county individual hand crews would be counter to how the bill was written and the intent of the authors. These individual county hand crews are not a large population throughout the state but are equally referred to in the language of AB 2147.	

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Item number: 07

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 8/19/2021

Title of proposal: Rules and Forms: Commitment Orders for Sexually Violent Predators

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise form CR-173; revoke form CR 174

Committee or other entity submitting the proposal:
Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Sarah Fleischer-Ihn, 5-7702, sarah.fleischer-ihn@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 3, 2020
Project description from annual agenda: Revise Order for Commitment (Sexually Violent Predator) (form CR-173)

Revise form CR-173 to reflect statutory changes to Welfare and Institutions Code sections 6600 and 6604 and replace gender specific pronouns.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-052
For business meeting on October 1, 2021

Title
Rules and Forms: Commitment Orders for Sexually Violent Predators

Rules, Forms, Standards, or Statutes Affected
Revise form CR-173; revoke form CR 174

Recommended by
Criminal Law Advisory Committee
Brian M. Hoffstadt, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 2, 2021

Contact
Sarah Fleischer-Ihn, 415-865-7702
Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends revising *Order for Commitment* (form CR-173) and revoking *Order for Extended Commitment* (form CR-174) to incorporate changes to the statutes governing sexually violent predator proceedings (Welf. & Inst. Code, § 6600 et seq.), replace gender-specific pronouns, and incorporate revisions for procedural efficiency, accuracy, and clarity.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2022:

1. Revise *Order for Commitment* (form CR-173) to:

    a. Update the findings section to require one or more convictions of a qualifying offense to reflect Welfare and Institutions Code section 6600;

b. Modify the reference to sexually violent predatory criminal behavior to exclude the term "predatory," to reflect the statutory language of Welfare and Institutions Code section 6600;

c. Replace references to the California Department of Mental Health with the California Department of State Hospitals, to reflect the transfer of duties regarding sexually violent predators made by Assembly Bill 1470 (Stats. 2012, ch. 24);

d. Replace references to the two-year custody limit with an indeterminate term, and eliminate references to extended commitment requirements, to reflect statutory changes to custody terms made by Senate Bill 1128 (Stats. 2006, ch. 337) and the Sexual Predator Punishment and Control Act (Proposition 83);

e. Replace gender-specific pronouns;

f. Identify the county of domicile for purposes of discharge under Welfare and Institutions Code section 6608.5, to promote court efficiencies by having the identification occur at an earlier stage of the proceedings;

g. Eliminate references to confinement at a specific state hospital, to reflect that some respondents may be released to community treatment under the custody of the Department of State Hospitals; and

h. Order a specific entity to transport the respondent, to provide clarity about the agency responsible for transportation; and

2. Revoke *Order for Extended Commitment* (form CR-174) to reflect statutory changes to custody terms made by Senate Bill 1128 and Proposition 83.

The revised and revoked forms are attached at pages 5–6.

Relevant Previous Council Action

The Judicial Council approved two optional forms, *Order for Commitment* (form CR-173) and *Order for Extended Commitment* (form CR-174), effective January 1, 2005, to provide increased uniformity of commitment forms for people determined to be sexually violent predators under the Welfare and Institutions Code. The forms were most recently amended, effective September 1, 2018, for renumbering.

Analysis/Rationale

Order for Commitment (form CR-173) has not been substantively revised to incorporate statutory changes to Welfare and Institutions Code section 6600 et seq. by Senate Bill 1128, Prop. 83, and Assembly Bill 1470. This proposal would rectify that matter. The committee also recommends replacing gender-specific pronouns and revising the form for procedural efficiency, accuracy, and clarity.

The proposal would also revoke *Order for Extended Commitment* (form CR-174). A prior version of Welfare and Institutions Code section 6604 stated that if a person was determined by the court or jury to be a sexually violent predator, that person must be committed for two years to the custody of the Department of State Hospitals and could not be kept in actual custody longer than two years unless a subsequent extended commitment was obtained from the court. SB 1128 and Prop. 83 amended section 6604 to change the two-year custody limit to an indeterminate term and deleted the extended commitment requirement, rendering the form unnecessary.

Policy implications

The revisions are recommended so that the forms reflect existing statutory provisions and are accurate and useful. No further policy implications were discussed by the committee.

Comments

The Criminal Law Advisory Committee circulated the forms for public comment from April 15 through May 27, 2021, and received comments from two superior courts and one local bar association. Two commenters agreed with the proposal, and one commenter did not indicate a position but appeared to agree with the proposal.

Alternatives considered

Because the form revision and revocation are largely necessitated by statutory changes, the committee did not consider any alternatives to those revisions. The committee unanimously agreed on the revisions based on procedural efficiency, accuracy, and clarity and thought they were appropriate to recommend at the same time as the revisions based on statutory changes.

Fiscal and Operational Impacts

Two superior courts submitted comments regarding this proposal's operational impacts on courts. Expected costs are limited to training, case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

Attachments and Links

1. Forms CR-173 and CR-174, at pages 5–6
2. Chart of comments, at pages 7–9
3. Link A: Welf. & Inst. Code, § 6600, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6600.&lawCode=WIC*
4. Link B: Welf. & Inst. Code, § 6604, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6604.&lawCode=WIC*
5. Link C: Welf. & Inst. Code, § 6608.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6608.5.&lawCode=WIC*

6. Link D: Sen. Bill 1128 (Stats. 2006, ch. 337), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200520060SB1128*
7. Link E: Assem. Bill 1470 (Stats. 2012, ch. 24), *https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB1470*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* **DRAFT** **Not approved by the Judicial Council**
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
ORDER FOR COMMITMENT **(Sexually Violent Predator)**	CASE NUMBER:

1. After the trial in the above captioned matter on *(date):* the allegations in the petition were found true beyond a reasonable doubt. At the trial, the ☐ court ☐ jury found
   a. that the respondent has suffered one or more convictions for violations of *(specify code sections):*

   and
   b. that the respondent has a diagnosed mental disorder that makes the respondent a danger to the health and safety of others in that it is likely that respondent will engage in sexually violent criminal behavior; and
   c. thus, that the respondent is a "sexually violent predator" as defined in Welfare and Institutions Code section 6600.
2. The court finds that the county of domicile for purposes of discharge under provisions of Welfare and Institutions Code section 6608.5 is the county of: .

THEREFORE, THE COURT ORDERS

3. The respondent is to be committed to the custody of the California Department of State Hospitals for appropriate treatment under the provisions of Welfare and Institutions Code section 6604 for an indeterminate term commencing *(date):*
4. The respondent is to be transported immediately to the custody of the California Department of State Hospitals by *(agency)*:

Date: _____

_____
(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
CR-173 [Rev. January 1, 2022]

Welfare and Institutions Code, §§ 6600, 6604
www.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR COURT USE ONLY* DRAFT Not approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
ORDER FOR EXTENDED COMMITMENT (Sexually Violent Predator)	CASE NUMBER:

1. After a trial in the above captioned matter, the ☐ court ☐ jury found that the respondent, by reason of a diagnosed mental disorder, continues to be a sexually violent predator as defined in section 6600 of the Welfare and Institutions Code and remains a danger in that he or she is likely to engage in acts of sexual violence if released from custody.

THE COURT ORDERS

2. Respondent is recommitted under Welfare and Institutions Code 6604 for a period of two years at *(name):*
State Hospital and will be transported to the facility immediately.

3. Under Welfare and Institutions Code section 6604.1, the time of recommitment begins to run on the date the original commitment terminates, *(date):*

REVOKED

Date: _____

_____
(JUDICIAL OFFICER)

Form Approved for Optional Use
Judicial Council of California
CR-174 [Rev. September 1, 2018]

Welfare and Institutions Code, § 6604
www.courts.ca.gov

SPR21-08

Criminal Procedure: Commitment Orders for Sexually Violent Predators (CR-173 and revoke CR-174)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Superior Court of Orange County by Randy Montejano Courtroom Operations Supervisor	NI	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? Yes, the proposal appropriately addresses the stated purpose. • Would the proposal provide cost savings? If so, please quantify. No cost savings would be realized as a result of these modifications, as the forms were primarily modified to capture recent legislative changes and to clean up the verbiage generally. There are no efficiencies being gained in the process. • 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? For Orange County, it would appear minor docket code modifications to capture the new verbiage regarding respondent transportation to the custody of the California Department of State Hospitals, as	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-08
Criminal Procedure: Commitment Orders for Sexually Violent Predators (CR-173 and revoke CR-174)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			current codes are very specific as to the location. There would be subsequent minor procedure updates to capture this as well. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, this is adequate time as the modifications are not extensive. • How well would this proposal work in courts of different sizes? It would work well, as the changes are not extensive and do not appear to modify any existing processes.	
2.	Superior Court of San Diego County by Michael Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes. • Would the proposal provide cost savings? No. • 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	The committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-08
Criminal Procedure: Commitment Orders for Sexually Violent Predators (CR-173 and revoke CR-174)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			systems, or modifying case management systems? The changes proposed would not require staff training nor would there be changes to existing processes/procedures or the case management system. The San Diego Superior Court uses a local form "Order of Commitment" (CRM-152) and does not have a form it uses for extensions specific to Sexually Violent Predators. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. • How well would this proposal work in courts of different sizes? There should be no disparate impact between courts of different sizes.	
3.	Orange County Bar Association by Larisa M. Dinsmoor President	A	No specific comment.	The committee appreciates the comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Withdrawn

Item number: 09

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Family Law: Reenactment of Family Code section 4007.5

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Revise forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): John Henzl, 415-865-7607, john.henzl@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: November 2, 2020
Project description from annual agenda: AB 2325 (Carrillo) Child support: suspension (Ch. 217, Stats. of 2020): Reestablishes, until January 1, 2023, a program to suspend a parent's obligation to pay child support if the parent is incarcerated or involuntarily institutionalized, unless they have the means to pay or are incarcerated for domestic violence

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:* FL-192, FL-350, FL-490, FL-676, FL-688
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.: ____

For business meeting on October 1, 2021

Title

Family Law: Reenactment of Family Code section 4007.5

Rules, Forms, Standards, or Statutes Affected

Revise forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688

Recommended by

Family and Juvenile Law Advisory Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Date of Report

August 16, 2021

Contact

John Henzl, 415-865-7607

john.henzl@jud.ca.gov

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Executive Summary

The Family and Juvenile Law Advisory Committee proposes revising several forms to provide court users and the public with information regarding relief available to incarcerated or involuntarily institutionalized child support obligors. The proposed revisions are needed to reflect new law under recently reenacted Family Code section 4007.5.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise the following forms, effective January 1, 2022, to provide court users and the public with information regarding relief available to incarcerated or involuntarily institutionalized child support obligors:

- *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192);
- *Stipulation to Establish or Modify Child Support and Order* (form FL-350);
- *Application to Determine Arrears* (form FL-490);

- *Request for Determination of Support Arrears* (form FL-676);
- *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO); and
- *Short Form Order After Hearing* (form FL-688).

The proposed revised forms are attached at pages 7–18.

Relevant Previous Council Action

Effective July 1, 2011, the Judicial Council revised forms FL-530, FL-615, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, and FL-692 in response to Senate Bill 1355 (Wright; Stats. 2010, ch. 495), which enacted Family Code section 4007.5[1] and provided a process for formerly incarcerated or involuntarily institutionalized obligors to petition the court for forgiveness of child support arrears that accrued during their incarceration or involuntary institutionalization. Section 4007.5 contained a sunset date and expired accordingly on June 30, 2015.

Effective January 1, 2017, the Judicial Council revised those same forms, along with forms FL-342, FL-350, FL-490, and FL-688, in response to Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629), which enacted a new version of section 4007.5 that revived and expanded the relief previously available to child support obligors and expired on December 31, 2019.

Effective January 1, 2020, the Judicial Council again revised those same forms to remove references to relief formerly available to child support obligors under section 4007.5, which sunsetted effective January 1, 2020.

Analysis/Rationale

Section 4007.5 (see Link A) provides that, by operation of law, any money judgment or order for child support is automatically suspended when an obligor is incarcerated or involuntarily institutionalized for more than 90 consecutive days for the period of time the obligor is confined. It was reenacted effective January 1, 2021, by Assembly Bill 2325 (Carrillo; Stats. 2020, ch. 217). As stated earlier, this section was originally put into place effective July 1, 2011, but then sunsetted effective June 30, 2015. It was reenacted, effective October 8, 2015, expanding the relief, but was then allowed to sunset a second time, effective January 1, 2020. The relief available in the current version is identical to the relief in the prior statute, but it now contains a sunset date of January 1, 2023.

The legislation also requires the California Department of Child Support Services (DCSS), in consultation with the Judicial Council, to develop forms to implement section 4007.5. This proposal, however, solely addresses Judicial Council forms that are integral to the judicial process and provide notice to the parties regarding the provisions of AB 2325.

[1] All further statutory references are to the Family Code.

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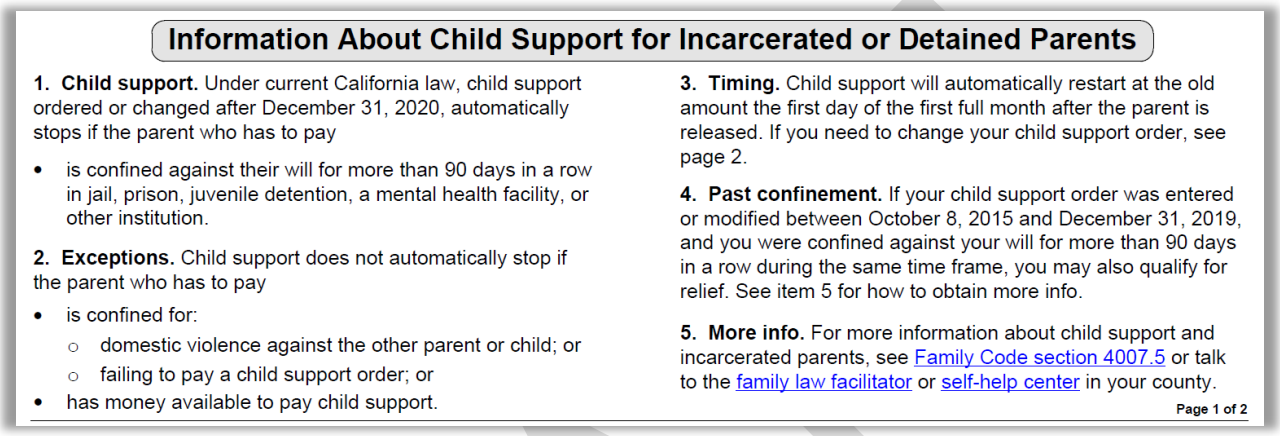
Restoring references to section 4007.5

To comply with recently enacted AB 2325, the committee proposes revising forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688. Specifically, the committee proposes adding the following information regarding the current relief available to child support obligors who become incarcerated or involuntarily institutionalized for longer than 90 days, in plain language, as shown in the screenshot below:



Information About Child Support for Incarcerated or Detained Parents

1. Child support. Under current California law, child support ordered or changed after December 31, 2020, automatically stops if the parent who has to pay

- is confined against their will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution.

2. Exceptions. Child support does not automatically stop if the parent who has to pay

- is confined for:
  - domestic violence against the other parent or child; or
  - failing to pay a child support order; or
- has money available to pay child support.

3. Timing. Child support will automatically restart at the old amount the first day of the first full month after the parent is released. If you need to change your child support order, see page 2.

4. Past confinement. If your child support order was entered or modified between October 8, 2015 and December 31, 2019, and you were confined against your will for more than 90 days in a row during the same time frame, you may also qualify for relief. See item 5 for how to obtain more info.

5. More info. For more information about child support and incarcerated parents, see Family Code section 4007.5 or talk to the family law facilitator or self-help center in your county.

Page 1 of 2

Unlike previous proposals where this language was added to multiple child support order and judgment forms, it would instead be included only on *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192). The information currently on form FL-192 is required to be provided to parties anytime a court makes an order for child support or reimbursement for uninsured medical costs.[2]

However, of the 10 Judicial Council forms related to child support orders or judgments, form FL-192 is required to be attached to 8 of those forms. The only 2 forms that currently do not require form FL-192 to be attached are form FL-350 (*Stipulation to Establish or Modify Child Support and Order*) and form FL-688 (*Short Form Order After Hearing*). Consequently, the committee further proposes that these two forms be revised to include language stating that form FL-192 must also be attached.

Given the costs for courts, legal professionals, self-help centers, and form-generation software developers anytime Judicial Council forms are revised, the committee considers that a more prudent approach would be to include the above language only on one form (form FL-192), making it a mandatory form and requiring that the form be attached to all child support order or judgment forms. Additionally, including language on court orders and judgments can lead case participants to believe that this relief is available as an order of the court instead of just information about the current state of the law.

[2] See Fam. Code, §§ 4010, 4063.

The committee also proposes that the following three forms be revised so parties can easily request the relief available under section 4007.5 from the court:

- *Application to Determine Arrears* (form FL-490);
- *Request for Determination of Support Arrears* (form FL-676); and
- *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO).

Regarding proposed revised form FL-676, the Proof of Service section on page 2 of the current version of the form was deleted. Form FL-676 is designed to be used by the party receiving or paying child support, but not the local child support agency. Including the Proof of Service as part of a motion form can be confusing to self-represented litigants. It may create the impression that parties do not need to serve a copy of a filed motion (with a court date listed) on the other party, because parties may believe they need to complete the Proof of Service section on the form first before filing it with the court.

Other revisions

As detailed below, the committee proposes that the Judicial Council take the opportunity to make other revisions to the forms, such as expanding the use of gender inclusive and plain-language terms, and by making other technical changes to make them easier to understand for self-represented litigants.

FL-192

The committee proposes that form FL-192 be revised to indicate that guideline child support is based on the "net disposable incomes" of both parents to accurately reflect California law, as the form previously stated it was based on just the "net incomes," and that the form include a plain-language definition of this term, which would also added to form FL-350.[3] It also proposes that this form be revised by breaking up page two into two columns to match the layout of page one and including new headers to clearly delineate each section of the form.

FL-350

The current version of form FL-350 uses the gendered nouns "mother" and "father" multiple times throughout the form; the committee proposes to make it gender inclusive to conform with California law and public policy.[4] It also proposes to reorganize the form and incorporate plain-language concepts found on other Judicial Council family law forms, in order to make it more user-friendly for self-represented litigants. For example, an instructions section was added to page one, a new easy-to-complete table was created for child support add-ons on page two, section headers were added throughout to break-up the form, a plain-language definition for the

[3] See Fam. Code, § 4055.

[4] Making forms gender inclusive is consistent with various amendments to the Family Code and other California statutes, as evidenced by Senate Bill 179 (Atkins; Stats. 2018, ch. 853) regarding gender identity, Assembly Concurrent Resolution 260 (Low; Stats. 2018, res. ch. 190) regarding the use of gender-neutral language and pronouns, and Assembly Bill 2684 (Bloom; Stats. 2018, ch. 876), which replaced the word "paternity" with "parentage" and made certain statutes gender neutral where possible.

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term “net disposable income” was included, and links to resources and other useful information were added.

FL-676-INFO

In general, Judicial Council family law forms use the “standard form” layout, however, family law informational forms (e.g., *Information Sheet for Request for Order* (form FL-300-INFO)) are now drafted using the “plain-language form” layout and are written as clearly and as simply as possible. As the current version of form FL-676-INFO is in the standard layout, the committee proposes to update it to the plain-language format. The proposed revisions include: using plain-language definitions and explanations, breaking-up the form into two columns to make it more readable, adding new sections with useful information such as how to request an interpreter or a disability accommodation, and including icons, which user testing has demonstrated helps individuals more quickly and accurately understand the information provided.

Policy implications

This proposal has no major implications to any policies. It aligns with the Judicial Council’s policy to keep forms consistent with related statute.

Comments

This proposal circulated for comment as part of the spring 2021 invitation-to-comment cycle, from April 15 to May 27, 2021, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, and other family law professionals. The proposal also went to DCSS, the Legal Practices committee chair of the Child Support Directors Association of California, the Judicial Council Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee, and child support commissioners.

In total, nine organizations or individuals submitted comments. Commenters made thoughtful suggestions to the forms, primarily regarding reorganizing the forms and simplifying language, where possible. All nine commenters either agreed with the entire proposal or agreed if certain modifications were made.

In addition to the standard request for comments, the invitation to comment also asked for specific comments, as follows:

- *Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants?*

    - Seven commenters responded “yes”; the other two commenters approved the overall proposal. The committee’s proposal therefore follows this approach.

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- *Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts?*

    - Two commenters did not anticipate any unintended consequences, but five others felt the form should remain a mandatory form. The consensus of this group was that if the form were made optional, many self-represented litigants (and even some attorneys) would be inclined to prepare their own stipulation and order and thereby run the risk of not including the mandatory language and findings required anytime a court makes a child support order. Consequently, the committee recommends that this form remain a mandatory form.

- *Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants?*

    - Four commenters did not anticipate any unintended consequences, but two others stated that removing the Proof of Service may lead some filers to think that the form does not need to be served. However, one of these commenters noted that this problem might be mitigated by the fact that proposed form FL-676-INFO includes links to *Proof of Personal Service* (form FL-330) and *Proof of Service by Mail* (form FL-335). Additionally, the requirement to serve the request and file the Proof of Service with the court is now included in a new instructions section on the proposed form. As such, the committee recommends removing the Proof of Service from page 2 of the form.

Including relief for confinement that occurred under prior version of section 4007.5
Finally, DCSS noted that the proposed forms indicated that relief for child support obligors could be requested only if the obligors became incarcerated or involuntarily institutionalized for longer than 90 days for orders entered on or after January 1, 2021. Although this is a correct statement of the current version of section 4007.5, the prior version (which was in effect from October 8, 2015 to December 31, 2019), granted identical relief to obligors. Specifically, both versions state, "[e]very money judgment or order for support of a child shall be suspended, *by operation of law*, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized…" [Emphasis added.][5]

If a child support order was entered or modified and an obligor was confined for longer than 90 days during the time the prior version was in effect, then child support was automatically suspended and set to zero ($0) for the time the obligor was confined. However, if a dispute later arises between the obligor and obligee about whether child support was suspended by operation of law during the period of time the statute was operational and whether child support is still owed for the months the obligor was confined, it would be up to the court to adjudicate this issue. Consequently, child support obligors could still potentially have request to have their arrears adjusted for periods of incarceration or confinement that occurred while the prior version

[5] See Fam. Code § 4005.5(a); See also Assem. Bill 610 (Jones-Sawyer); Stats. 2015, ch. 629.

of the statute was in effect, assuming they met the other requirements of the law, even if this request were made after the law sunsetted. As such, DCSS requested that forms that FL-490 and FL-676 be revised to allow filers to be able to request relief under both the prior and current versions of section 4007.5.

Legal analysis
The committee recommends including information about the potential ability for the parties to request this relief on the forms to allow parties to put the dispute at issue, but in doing so makes no determination as to whether relief which may have been granted by operation of law but not put at issue before the court, can be adjudicated by the court *after* the sunset date of the statute granting the relief.

The Court of Appeal in *County of San Diego Department of Child Support Services v. C.P.* (2019) 34 Cal.App.5th 1 considered a petition for relief under the first version of section 4007.5 for obligations during the timeframe the second version was in effect.[6] In analyzing the language of the first version, the Court of Appeal determined that no vested right was created for a child support obligor who met the requirements of the statute, but failed to petition the court for relief until after that version had sunsetted and the second version was in place. The court found that the first version of the statute required more than just the incarceration of the obligor for arrears to be adjusted to reflect the suspension of support and the obligor was required to petition the court to obtain relief. Since the obligor had not done so prior to the sunset of the statute, in the absence of a saving clause, the right to relief had not vested and could not be granted; the court further found that there was no express or implied saving clause in the second version of the statute. (*Id.* at pp. 9–10.) In doing so, the court noted:

> A statutory right (like that available under former § 4007.5) becomes vested—and, thus, protected in the event the statute is repealed—only if the right is converted into a final judgment before the repeal. [Citations omitted.] Thus, a party in litigation may acquire a vested right only "when the award is final and any appeals have been concluded by a final judgment." [Citations omitted.] (*Id.)*

However, the court remanded the matter to the trial court to address the issue of whether the first statute, in its "'sunset provision', constituted an implied saving clause that affected C.P.'s Request for an adjustment of child support arrears." (*Id*. At pp. 12–13.)

Nevertheless, as a general principle, where, as here with the second version of section 4007.5, a statute creates a right by operation of law (and continues to exist) if the requirements of the statute that created the right are met prior to its repeal, the right is considered to be vested. Accordingly, if the requirements of the statute are met, then a subsequent repeal of the statute

[6] The first version of section 4007.5 was in place from July 1, 2001 to June 30, 2015 and the second version was in place from October 8, 2015 until December 31, 2019; C.P. was incarcerated from September 12, 2013 to August 22, 2017 and requested child support be suspended for the entire period of incarceration.

will not affect the vested right, even without the Legislature also adopting a saving clause. (See *Gastineau v. Meyer* (1933) 131 Cal.App. 611, 615-618.)

In contrast to the first version of section 4007.5, the language of the second and current versions of the statute suspend child support by *operation of law* without requiring that the obligor to petition the court or take any other affirmative action. These versions allow the local child support agency to adjust account balances through an administrative process, but this process is permissive and is not a prerequisite for vesting of the suspension of child support. Rather, it is a way for the agency to easily adjust account balances without having to go to court.[7] While both versions state, "[t]his section does not prohibit the local child support agency or a party from petitioning a court for a determination of child support or arrears amounts," petitioning the court for relief is not required for child support to automatically suspend.[8]

In other words, child support will suspend automatically (if the conditions of section 4007.5 are met) whether or not the obligor, obligee, or local child support agency do anything affirmatively. But there could be situations where an obligor is not given proper credit for this suspension after the fact and must seek redress from the court. The proper vehicle to do so is via an *Application to Determine Arrears* (form FL-490) or a *Request for Determination of Support Arrears* (form FL-676) in Title IV-D cases, both of which are mandatory forms.

While DCSS commented that these forms should allow for relief for the time period the second version of section 4007.5 was in effect to be explicitly stated on the forms, given the lack of clarity regarding this issue, the committee instead recommends that informational forms FL-192 and FL-676-INFO be revised to include the following language, "If your child support order was entered or modified between October 8, 2015 and December 31, 2019, and you were confined against your will for more than 90 days in a row during the same time frame, you may also qualify for relief."

Additionally, the committee recommends that forms FL-490 and FL-676 be revised to include the following language that would still allow a way for obligors to request relief under the second version of section 4007.5, "The child support order entered on *(date):*_____ was stopped (suspended) because [ ] the order says it would stop [ ] by operation of law *(specify the reasons why and attach applicable proof):*_____." This language would also be responsive to the comment from DCSS that relief may potentially be available for a child support obligor based on other language included in a child support judgment or order, because many counties use local forms or attachments that contain standard orders in cases with local child support agency

[7] Under Family Code section 4007.5(c)(1), "A local child support agency…may, upon written notice of the proposed adjustment to the support oblior and obligee along with a blank form provided for the support obligor or obligee to object to the administrative adjustment to the local child support agency, administratively adjust account balances for a money judgment or order for support of a child suspended pursuant to subdivision (a)…"

[8] See Fam. Code § 4007.5(d)

involvement, such as an order stating that child support will automatically be suspended if an obligor starts receiving Supplemental Security Income.

Benefits of including information about relief under the second version of section 4007.5
Including information about potential relief on forms FL-192 and FL-676-INFO for the time-frame the second version of section 4007.5 was in effect (October 8, 2015 to December 31, 2019), while directing obligors to talk to the family law facilitator or self-help center, will increase access to justice, especially for the large number of self-represented litigants with family law and governmental child support cases. Without including any information about this potential relief on the forms, most litigants would be unaware they could potentially ask for it and would not make such a request. As such, were this language not to be included on forms FL-192 and FL-676-INFO, it would effectively serve as an impediment to most litigants ever making such a request.

As with every motion filed with the court, it will be up to the judicial officer reviewing a request to determine arrears to find if the conditions of section 4007.5 have been met and whether child support did indeed suspend by operation of law. To that end, the Judicial Council provides various training and educational opportunities for judicial officers. In addition to the *Child and Spousal Support Bench Handbook* and other online resources, such as the Family Law Toolkit, provided by the Center for Judicial Education and Research, every year the Judicial Council conducts the AB 1058 Child Support Training Conference to provide training, education, and resources for child support commissioners (and family law facilitators).

As stated above, the second and current versions of section 4007.5 required DCSS, in consultation with the Judicial Council, to develop forms to implement this section. As such, effective 2017 the Judicial Council revised all 10 child support order and judgment forms to include the following language:

> When a person who has been ordered to pay child support is in jail or prison or is involuntarily institutionalized for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.[9]

[9] See the Judicial Council Report for the October 2016 meeting, Judicial Council of Cal., Adv. Com. Rep., *Child Support: Statutory Relief for Incarcerated or Involuntarily Institutionalized Obligors* (Oct. 17, 2016), *https://jcc.legistar.com/View.ashx?M=F&ID=4734161&GUID=1AEF030B-D520-4666-B341-368CB7DBD5D2*

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Consequently, litigants with child support orders contained on Judicial Council forms modified or entered after January 2017, were informed as part of their order that child support would automatically suspend if the conditions stated above were met (until this language was removed from the forms when the law sunsetted December 31, 2019).

Lastly, the committee notes that it is DCSS that proposed that this change be made to the forms. Based on this support, it is unlikely that DCSS, the party most interested in and responsible for enforcing support orders, would contest this change to the forms.

For all of these reasons, the committee recommends that forms FL-192 and FL-676-INFO be revised to include information informing litigants that relief may be available for the time-frame the second version of section 4007.5 was in effect and to talk to the family law facilitator (or self-help center) for more information. https://harvardlawreview.org/wp-content/uploads/pdfs/vol126_%20greiner_wolos_pattanayak_hennessy.pdfForms FL-490 and FL-676 would also be revised to allow litigants the ability to make such a request, without explicitly listing the dates the second version was in effect.

Alternatives considered

The committee considered not revising any forms because section 4007.5 will sunset again on January 1, 2023 (if not extended). However, the committee instead proposes revising the forms described above in order to provide information to court users—including self-represented litigants—and the public about the relief available to child support obligors if they become incarcerated or involuntarily institutionalized for longer than 90 days.

Additionally, the committee considered not including any information or the ability for litigants to request their arrears be adjusted for time periods when child support suspended by operation of law under the former version of section 4007.5. However, as discussed above, the committee instead recommends that this information and language be included in order to increase access to justice for court users, especially self-represented litigants.

Fiscal and Operational Impacts

As with any revisions to forms, the committee anticipates that courts would incur some costs to revise forms and add them to their case management systems, train court staff about the revised forms included in this proposal, and possibly revise local court rules and forms so they are consistent with the changes adopted by the Judicial Council.

Attachments and Links

1. Forms FL-192, FL-350, FL-490, FL-676, FL-676-INFO, and FL-688, at pages 11–22
2. Chart of comments, at pages 23–47
3. Link A: Fam. Code, § 4007.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4007.5*

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NOTICE OF RIGHTS AND RESPONSIBILITIES

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Not approved by Judicial Council

Health-Care Costs and Reimbursement Procedures

If you have a child support order that includes a provision for the reimbursement of a portion of the child's or children's health-care costs and those costs are not paid by insurance, the **law says**:

1. Notice. You must give the other parent an itemized statement of the charges that have been billed for any health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 30 days after those costs were given to you.

2. Proof of full payment. If you have already paid all of the uninsured costs, you must (1) give the other parent proof that you paid them and (2) ask for reimbursement for the other parent's court-ordered share of those costs.

3. Proof of partial payment. If you have paid only your share of the uninsured costs, you must (1) give the other parent proof that you paid your share, (2) ask that the other parent pay his or her share of the costs directly to the health-care provider, and (3) give the other parent the information necessary for that parent to be able to pay the bill.

4. Payment by notified parent. If you receive notice from a parent that an uninsured health-care cost has been incurred, you must pay your share of that cost within the time the court orders; or if the court has not specified a period of time, you must make payment (1) within 30 days from the time you were given notice of the amount due, (2) according to any payment schedule set by the health-care provider, (3) according to a schedule agreed to in writing by you and the other parent, or (4) according to a schedule adopted by the court.

5. Going to court. Sometimes parents get into disagreements about health-care costs. If you and the other parent cannot resolve the situation after talking about it, you can request that the court make a decision.

a. Disputed charges. If you dispute a charge made by the other parent, you may file a request for the court to resolve the dispute, but only if you pay that charge before filing your request.

b. Nonpayment. If you claim that the other parent has failed to pay you back for a payment, or they have failed to make a payment to the provider after proper notice, you may file a request for the court to resolve the dispute. The court will presume that if uninsured costs have been paid, those costs were reasonable.

c. Attorney's fees. If the court decides one parent has been unreasonable, it can order that parent to pay the other parent's attorney's fees and costs.

d. Court forms. Use forms FL-300 and FL-490 to get a court date. See form FL-300-INFO for information about completing, filing, and serving your court papers.

6. Court-ordered insurance coverage. If a parent provides health-care insurance as ordered by the court, that insurance must be used at all times to the extent that it is available for health-care costs.

a. Burden to prove. The parent claiming that the coverage is inadequate to meet the child's needs has the burden of proving that to the court.

b. Cost of additional coverage. If a parent purchases health-care insurance in addition to that ordered by the court, that parent must pay all the costs of the additional coverage. In addition, if a parent uses alternative coverage that costs more than the coverage provided by court order, that parent must pay the difference.

7. Preferred health providers. If the court-ordered coverage designates a preferred health-care provider, that provider must be used at all times consistent with the terms of the health insurance policy. When any parent uses a health-care provider other than the preferred provider, any health-care costs that would have been paid by the preferred health provider if that provider had been used must be the sole responsibility of the parent incurring those costs.

Information About Child Support for Incarcerated or Detained Parents

1. Child support. Under current California law, child support ordered or changed after December 31, 2020, automatically stops if the parent who has to pay

- is confined against their will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution.

2. Exceptions. Child support does not automatically stop if the parent who has to pay

- is confined for:
  - domestic violence against the other parent or child; or
  - failing to pay a child support order; or
- has money available to pay child support.

3. Timing. Child support will automatically restart at the old amount the first day of the first full month after the parent is released. If you need to change your child support order, see page 2.

4. Past confinement. If your child support order was entered or modified between October 8, 2015 and December 31, 2019, and you were confined against your will for more than 90 days in a row during the same time frame, you may also qualify for relief. See item 5 for how to obtain more info.

5. More info. For more information about child support and incarcerated parents, see Family Code section 4007.5 or talk to the family law facilitator or self-help center in your county.

NOTICE OF RIGHTS AND RESPONSIBILITIES

Information Sheet on Changing a Child Support Order

General Info
The court has made a child support order in your case. This order will remain the same unless one of the parents requests that the support be changed (modified). An order for child support can be modified by filing a request to change child support and serving the other parent. If both parents agree on a new child support amount, they can complete, sign, and file with the court a *Stipulation to Establish or Modify Child Support and Order* (form FL-350). (**Note:** If the local child support agency is involved in your case, it must be served with any request to change child support and approve any agreement.)

Online Self-Help Guide
For more information about how child support works, visit: *https://selfhelp.courts.ca.gov/child-support*.

When a Child Support Order May Be Changed
The court considers several things when ordering the payment of child support.

- First, the number of children is considered, along with the percentage of time each parent has physical custody of the children.
- Next, the net disposable incomes of both parents are determined (which is how much money is left each month after taxes and certain other items like health insurance, union dues, or other child support ordered and paid are subtracted from a parent's paycheck). The court can also look at earning ability if a parent is not working.
- The court considers both parents' tax filing status and may consider hardships, such as the cost of raising a child of another relationship who lives with a parent.

A parent can request to change an existing order for child support when the net disposable income of one of the parents changes, parenting time changes, or a new child is born.

Examples

- You have been ordered to pay $500 per month in child support. You lose your job. You will continue to owe $500 per month, plus 10 percent interest on any unpaid support, unless you file a motion to modify your child support to a lower amount and the court orders a reduction.
- You are currently receiving $300 per month in child support from the other parent, whose net income has just increased substantially. You will continue to receive $300 per month unless you file a motion to modify your child support to a higher amount and the court orders an increase.
- You are paying child support based upon having physical custody of your children 30 percent of the time. After several months it turns out that you actually have physical custody of the children 50 percent of the time. You may file a motion to modify child support to a lower amount.

How to Change a Child Support Order
To change a child support order, you must file papers with the court. *Remember:* You must follow the order you have now.

What forms do I need?
If you are asking to change a child support order, you must fill out one of these forms:

- Form FL-300, *Request for Order* ***or***
- Form FL-390, *Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal, or Family Support*

You must also fill out one of these forms, and attach proof of income for the past two months (like your paycheck stubs):

- Form FL-150, *Income and Expense Declaration* ***or***
- Form FL-155, *Financial Statement (Simplified)*

What if I am not sure which forms to fill out?
Contact the family law facilitator or self-help center in your county.

After you fill out the forms, file them with the court clerk and ask for a hearing date. Write the hearing date on the form. The clerk may ask you to pay a filing fee. If you cannot afford the fee, fill out these forms, too:

- Form FW-001, *Request to Waive Court Fees* ***and***
- Form FW-003, *Order on Court Fee Waiver (Superior Court)*

You must serve the other parent. If the local child support agency is involved, serve it too.

- This means someone 18 or over—not you—must serve the other parent copies of your filed court forms at least **16 court days** before the hearing. Add **5 calendar days** if you serve by mail within California (see Code of Civil Procedure section 1005 for other situations).
- **Court days** are weekdays when the court is open for business (Monday through Friday except court holidays). **Calendar days** include all days of the month, including weekends and holidays. To find court holidays, go to *www.courts.ca.gov/holidays.htm*.

The server must also serve blank copies both of these forms:

- Form FL-320, *Responsive Declaration to Request for Order*
- Form FL-150, *Income and Expense Declaration*

Then the server fills out and signs a *Proof of Service* (form FL-330 or form FL-335). Take this form, plus one copy, to the clerk and file it at least one week before your hearing.

Go to your hearing and ask the judge to change the support. Bring your tax returns from the last two years and your last two months' pay stubs. The judge will look at your information, listen to both parents, and make an order. After the hearing, fill out:

- Form FL-340, *Findings and Order After Hearing* ***and***
- Form FL-342, *Child Support Information and Order Attachment*

Need help?
Contact the family law facilitator or self-help center in your county, or call your county's bar association and ask for an experienced family lawyer.

PARTY WITHOUT ATTORNEY OR ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
E-MAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER:		
RESPONDENT:		
OTHER PARTY:		
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER		CASE NUMBER:

DRAFT
Not approved by the Judicial Council

INSTRUCTIONS

- Use this form if the parents have an agreement about child support. After this form is completed and signed by both parents, it must be filed and approved by the court. A court case (for example, a divorce case) must already be open before this form can be used.
- If the local child support agency is involved in your case, a lawyer from their office must also approve and sign the agreement.
- If the local child support agency is not involved in your case, each parent must also complete and submit a *Child Support Case Registry Form* (form FL-191) when filing this agreement with the court.
- When you file the agreement with the court, the clerk may ask the parents to pay a filing fee. If you cannot afford the fee, you must fill out these forms: *Request to Waive Court Fees* (form FW-001) and *Order on Court Fee Waiver (Superior Court)* (form FW-003).
- For more information about child support, go to *https://selfhelp.courts.ca.gov/child-support*, and for help completing this form, talk to the family law facilitator or self-help center in your county.

1 The child support orders below are agreed to by:

a. *(name):* , who is the ☐ Petitioner ☐ Respondent ☐ Other party , and

b. *(name):* , who is the ☐ Petitioner ☐ Respondent ☐ Other party .

CHILD SUPPORT

2 We agree that *(name):* must pay to *(name):* child support as listed below, beginning on *(date):* .

a. The children are:

Name of child	Date of birth	Monthly amount
(1)		
(2)		
(3)		
(4)		

(5) ☐ Additional children are listed on an attached page.

Basic child support. *(Add up the monthly amounts for all children listed above.)* Total: $, payable

☐ on the first of the month ☐ other *(specify):* .

b. ☐ The parents agree to pay additional child support as follows:

Instructions: For each item you select in the table on page 2, you must also tell the court how the expense will be paid each month.

- *Percentage:* You can select "50% by each parent" or use a different split (for example, *Name 1:* 70%, *Name 2:* 30%).

-OR-

- *Dollar amount:* You can input a fixed dollar amount (for example, *Name 2* will pay $150/month for child care costs).

(**Note:** if the actual monthly cost for that item later changes, you will then also need to change the court order; this will not happen automatically.)

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

✓	Additional child support	Percentage			Dollar amount	
		50% by each parent	(name):	(name):	(name):	(name):
☐	Reasonable uninsured healthcare costs for child	☐	%	%	$ /month	$ /month
☐	Childcare costs related to job or job training	☐	%	%	$ /month	$ /month
☐	Educational costs for child	☐	%	%	$ /month	$ /month
☐	Costs for other special needs of child	☐	%	%	$ /month	$ /month
☐	Travel expenses for visitation	☐	%	%	$ /month	$ /month
☐	Other *(specify)*:	☐	%	%	$ /month	$ /month

(2) c. **Total monthly child support.** *(Basic child support + additional child support, if dollar amount selected.)*
(name): will pay: $, payable ☐ on the first of the month
☐ other *(specify)*: .

(3) Health insurance for the child will be provided by *(choose one or both parents)* ☐ *(name)*:
☐ and *(name)*: if available at no or reasonable cost from their job or self-employment.
A parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

FINANCIAL INFORMATION

(4) ☐ We have attached a printout of a computer calculation of our financial information. (If you do not attach a printout, fill out items (5) and (6), and (7) if applicable. A free child support calculator is available at www.childsupport.ca.gov/guideline-calculator.)

-OR-

(5) ☐ The net monthly disposable income of *(name)*: is: $, and
the net monthly disposable income of *(name)*: is: $.

(**Note:** Child support is based on the *net disposable income* of each parent, which is how much money is left each month after taxes and certain other items like health insurance, union dues, or other child support paid are subtracted from their pay.)

(6) ☐ Based on our parenting time arrangement, on average the child is with *(name)*: %
of the time and with *(name)*: % of the time each month.

(7) ☐ We agree to allow hardships in calculating child support. A hardship is being experienced by one or both parents as follows:

a. ☐ *(name)*: : $ per month because of *(specify)*:

b. ☐ *(name)*: : $ per month because of *(specify)*:

GUIDELINE SUPPORT AMOUNT

(You must complete item (8), and item (9) or (10), as applicable.)

(8) Guideline child support is $ per month, payable by *(name)*: .

(9) ☐ We agree to guideline child support.

(10) ☐ We do not agree to guideline child support.

a. We agree to child support in the amount of: $ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.

b. ☐ Other reasons why the guideline amount should not be used *(specify)*:

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

OTHER ORDERS

(11) a. ☐ We agree to promptly tell each other our new mailing address if it changes.

b. ☐ We agree to promptly tell each other our new employment information if we change jobs.

(12) ☐ Other agreements related to child support *(specify):*

(13) a. An earnings assignment order is issued. All child support payments must be made through the State Disbursement Unit.

b. ☐ We agree to stay (stop) the service of the earnings assignment because we have made the following alternative arrangements to ensure payment *(specify):*

(14) We agree that we are fully informed of our rights under the California child support guidelines. This agreement is in the best interest of the child. We make this agreement freely without coercion or duress.

(15) In the event that there is a contract between a parent receiving support and a private child support collector, the parent ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount in arrears nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the parent receiving support, jointly.

(16) *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.

(17) Has the right to support been assigned to a county or is an application for public assistance pending? ☐ Yes ☐ No
(*If you checked "Yes" a lawyer from the local child support agency must also approve and sign the agreement.)*

(18) ☐ The local child support agency has reviewed and approves of this agreement.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

NOTICE: Any parent required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent per year. If the parents agree to a child support order less than the guideline amount, the order can be modified without showing a change of circumstances. If the order is above the guideline, a change of circumstances will be required to modify the order. This form must be signed by all parties and the court to be effective.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (ATTORNEY FOR ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

Date:

(TYPE OR PRINT NAME) ▶ (ATTORNEY FOR ☐ PETITIONER ☐ RESPONDENT ☐ OTHER PARTY)

THE COURT ORDERS

(19) a. ☐ The guideline child support amount in item (8) is rebutted by the factors stated in item (10).

b. Items (1) through (3) and items (11) through (13) are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this agreement, all provisions of any previous orders made in this action will remain in effect.

Date:

JUDICIAL OFFICER

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER: **DRAFT** **Not approved by the Judicial Council**

APPLICATION TO DETERMINE ARREARS

Attachment to *Request for Order* (form FL-300)

☐ **Child Support** ☐ **Spousal or partner support** ☐ **Family support** ☐ **Medical support**
☐ **Unreimbursed expenses** ☐ **Unreimbursed medical expenses** ☐ **Other *(specify):***

1. I ask that the amount of past due support payments (arrears) be decided in this case because *(check all that apply):*
   a. ☐ I have already paid ☐ some ☐ all of the support ordered. Proof of payment is attached.
   b. ☐ The children for whom support is to be paid were living with me full time for the period from: to: . I provided all of their support during that period. I am attaching a detailed declaration explaining these facts and supporting documentation, including any proof that the children were living with me.
   c. ☐ I could not pay child support because
      (1) After **December 31, 2020**, my child support order was entered or modified and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof)*.
         (a) Start date: (b) End date:
      (2) I was not confined for
         (a) domestic violence against the other parent or our child; or
         (b) failing to pay a child support order.
      (3) I had no money available to pay child support while I was confined.
   d. ☐ The child support order entered on *(date):* was stopped (suspended) because ☐ the order says it would stop ☐ by operation of law *(specify the reasons why and attach applicable proof):*
   e. ☐ Other *(specify):*
2. ☐ I have previously asked the other parent for payment and provided the other parent with an itemized statement of the unreimbursed ☐ childcare expense ☐ medical expense. *(Attach copies of all bills being claimed and proof of any payments that you have made on these bills.)*
3. ☐ I am asking the other person to pay ☐ attorney fees ☐ costs.
   My *Income and Expense Declaration* (form FL-150) is attached.
4. I have attached *(check all that apply):*
   a. ☐ a *Declaration of Payment History* (form FL-420).
   b. ☐ a *Payment History Attachment* (form FL-421).
   c. ☐ Other *(specify):*
5. Facts in support of the relief requested are *(specify):*

   ☐ contained in the attached declaration.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

☐ Petitioner/plaintiff ☐ Respondent/defendant
☐ Other parent/party ☐ Other *(specify):*

NOTICE: This form must be attached to *Request for Order* (form FL-300).
For help completing this form, talk to the family law facilitator or self-help center in your county.

NOT A COURT ORDER

Form Adopted for Mandatory Use
Judicial Council of California
FL-490 [Rev. January 1, 2022]

Family Code, §§ 4007.5, 4720-4732
www.courts.ca.gov

PARTY WITHOUT ATTORNEY OR ATTORNEY *(name, state bar number, and address)*:	*FOR COURT USE ONLY*
NAME: STATE BAR NO.: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARTY:	
REQUEST FOR DETERMINATION OF SUPPORT ARREARS	CASE NUMBER:

INSTRUCTIONS

- Use this form if you disagree with the local child support agency about how much back support (arrears) is owed.
- Complete items 4–6. For more information about completing this form, see *Information Sheet: Request for Determination of Support Arrears* (form FL-676-INFO).
- After you fill out the request and any attachments, take the originals plus three copies to the court clerk to file.
- After you file, copies of your court papers must be "served" on the local child support agency and the other party in the case, and you must file a proof of service with the court. See form FL-676-INFO for more information about serving the request.
- Make sure you go to the court hearing listed in item 1.
- For help completing this form, talk to the family law facilitator in your county.

NOTICE OF HEARING

1. A hearing on this application will be held as follows:
   a. Date: Time: Dept: Div: Room:
   b. The address of the court is ☐ same as noted above ☐ Other *(specify)*:

2. **WARNING to the person served with this request:** The court may make the requested orders without you if you do not file a *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685) and appear at the hearing. See **form FL-676-INFO** for more information about filing a response.

3. The local child support agency is providing support enforcement services in this case.

4. a. I ☐ did ☐ did not request an administrative review of support received by the local child support agency.
   b. A printout listing support payments received by the local child support agency ☐ is ☐ is not attached.

5. I ask that the amount of past due support payments (arrears) be adjusted in this case *(check all that apply)*.
   a. ☐ I disagree with how much support the local child support agency says was paid. I am attaching my own payment history with a monthly breakdown of how much was ordered and how much was paid.

Form Adopted for Mandatory Use
Judicial Council of California
FL-676 [Rev. January 1, 2022]

Family Code, §§ 4007.5, 17526
www.courts.ca.gov

PETITIONER: RESPONDENT: OTHER PARTY:	CASE NUMBER:

5. b. ☐ I could not pay child support because

(1) After **December 31, 2020**, my child support order was entered or modified and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution *(attach proof)*.

(a) Start date: (b) End date:

(2) I was not confined for

(a) domestic violence against the other parent or our child; or

(b) failing to pay a child support order.

(3) I had no money available to pay child support while I was confined.

c. ☐ The child support order entered on *(date):* was stopped (suspended) because ☐ the order says it would stop ☐ by operation of law *(specify the reasons why and attach applicable proof):*

d. ☐ Other *(specify):*

6. I have attached *(check all that apply)*

a. ☐ a *Declaration of Payment History* (form FL-420).

b. ☐ a *Payment History Attachment* (form FL-421).

c. ☐ a printout listing support payments received by the local child support agency.

d. ☐ Other *(specify):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

This case may be referred to a court commissioner for hearing. By law, court commissioners do not have the authority to issue final orders and judgments in contested cases unless they are acting as temporary judges. The court commissioner in your case will act as a temporary judge unless, *before the hearing*, you or any other party objects to the commissioner's acting as a temporary judge. If you or the other party objects, the court commissioner may still hear your case to make findings and a recommended order to a judge. If you do not like the recommended order, you must object to it within **10 court days** in writing (use *Notice of Objection* (form FL-666)); otherwise, the recommended order will become a final order of the court. If you object to the recommended order, a judge will make a temporary order and set a new hearing.

FL-676-INFO Information Sheet: Request for Determination of Support Arrears

When do I use form FL-676?

Use this form if the local child support agency is involved in your child support case and you:

- Disagree with how much in back support (arrears) they say is owed; or
- They refused to adjust the back support (arrears) for the time you were in jail, prison, juvenile detention, or a mental health facility for longer than 90 days and couldn't pay support.

Do *NOT* use form FL-676 to change the order

If you want to change the support order, you need to file a *Request for Order* (form FL-300) and an *Income and Expense Declaration* (form FL-150). See form FL-300-INFO for more information.

How do I get a court date?

Step 1: Fill out the form (in black or blue ink)

1. Put your name, address, and contact information at the top of the form. Next, enter the court name and address. Then insert the names of the Petitioner, Respondent, and Other Party, and the case number. (You can find this information on your child support order.)

2. Start with item 4 to tell the court why you want the back support (arrears) changed.
   - Item 4(a): Tell the court if you asked for the local child support agency to conduct an administrative review of support payments received.*
   - Item 4(b): Tell the court if you've attached a printout listing payments received by the local child support agency.*

     (***Note:** You can file this request without first asking for an administrative review or attaching a printout from the local child support agency.)
   - Item 5(a): Attach your own support payment history, breaking down how much was owed and how much was paid each month. (You can use forms FL-420 and FL-421 for this purpose.)
   - Item 5(b): Tell the court if after **December 31, 2020,** your child support order was entered or modified and you were also confined.*

     (If your child support order was was entered or modified between **October 8, 2015** and **December 31, 2019** and you were confined* during the same time-frame, you may also qualify for relief. Talk to the family law facilitator in your county for more info.)

     *To qualify, you must be incarcerated or confined for more than 90 days in a row.

     List the start and end dates of your incarceration or confinement and attach proof.
   - Item 5(c): Tell the court if the order gives other reasons for stopping (suspending) child support.
   - Item 5(d): If the other items don't apply, tell the court why the back support should be adjusted.
   - Item 6: Tell the court what paperwork (evidence) you have attached to your request.
3. Enter the date, print your name, and sign the form to tell the court that everything in your paperwork is true and correct.

Step 2: Make copies of your court papers

Make three sets of copies of your request, including any attachments, and keep the signed originals.

Step 3: File your request with the court

1. Take your originals, plus the three sets of copies, and file them with the court clerk. Find your court here: *www.courts.ca.gov/find-my-court.htm*.

2. The court clerk will fill out item 1 with information about your court hearing date and return the three sets of copies to you with a "filed" stamp in the top right corner.

Tip: Check your local court's website to see if you can file your request electronically (e-file).

3. You will not be charged a fee to file this request.

FL-676-INFO Information Sheet: Request for Determination of Support Arrears

Step 4: Have someone "serve" your request

1. Service is the act of giving your court papers to the local child support agency and the other party in the case. Service can be done in person or by U.S. mail.
2. A "server" (someone else 18 years or older) must serve your request. You can not serve your own court papers.
3. Give two sets of copies of your request, plus any attachments, to your server.
4. There are two options for service:

Option 1	Option 2
Your server must hand-deliver or mail both sets of copies to the local child support agency, which will then send one set to the other party. To do this option, your server must deliver the papers at least **30 days** before the court date.	Your server must hand-deliver or mail one set of copies to the local child support agency and one set to the other party. To do this option, your server must deliver the papers at least **16 court days** before the court date. (Add **5 more days** if served by mail.)

5. Your server must then complete, sign, and date a *Proof of Service* form to tell the court where and when your request was delivered.

In person: Have your server fill out form FL-330.	**By mail:** Have your server fill out form FL-335.

6. Double check the *Proof of Service* form to make sure your server correctly completed and signed the form. File the original form, plus one copy, with the court at least one week before your court date.

Go to your court hearing

1. You must appear at your court hearing or else your request can be denied. Check your local court's website to see if the court is conducting hearings in person or remotely (by videoconference). Complete and file form FL-679 if you want to appear by phone.

2. For information about what to expect at the hearing: *www.selfhelp.courts.ca.gov/request-for-order/LCSA/hearing*.

How can I get free help?

Every county has a family law facilitator that can:

- Explain the legal process;
- Give you free legal forms; and
- Help you fill out court papers.

Depending on your county, the facilitator may help you in person, online, or by phone. Talk to the facilitator in your county for more information.

Ask for a *Disability Accommodation Request*

If you have a disability and need an accommodation while you are at court, you can use form MC-410 to make your request. For more information, see form form MC-410-INFO.

Do you need a court interpreter?

If you don't speak or understand English very well, you may need a court interpreter to help you in court. You can use form INT-300 to request an interpreter for your court hearing. Ask the court clerk or family law facilitator in your county for more information.

I got served with a Request for Determination of Support Arrears. Now what?

If you disagree with the requests made by the other party in form FL-676, you need to:

- File and serve your own court papers, at least **9 court days** before the court date; and
- Appear at the court hearing.

To respond to the request, file and serve:

- *Response to Governmental Notice of Motion or Order to Show Cause* (form FL-685); and
- Your own payment history. (You can use forms FL-420 and FL-421 for this purpose.)

See Step 4 for more information about serving court papers and use Option 2.

GOVERNMENTAL AGENCY *(under Family Code, §§ 17400, 17406):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
SHORT FORM ORDER AFTER HEARING	CASE NUMBER:

1. **This matter proceeded as follows:** ☐ Uncontested ☐ By stipulation ☐ Contested
   a. Date: Dept: Judicial Officer:
   b. ☐ Petitioner/plaintiff present ☐ Attorney present *(name):*
   c. ☐ Respondent/defendant present ☐ Attorney present *(name):*
   d. ☐ Other parent/party present ☐ Attorney present *(name):*
   e. Attorney for local child support agency present under Family Code sections 17400 and 17406 by *(name):*
   f. ☐ Other *(specify):*

2. **THE COURT FINDS,** based upon the moving papers:
   a. *(Name):* is the parent ordered to pay support in this proceeding.
   b. ☐ The parent ordered to pay support has no ability to pay support because *(specify):*
   c. ☐ Health insurance coverage at no or reasonable cost is currently not available to the parent ordered to pay support to cover the minor children in this action.

3. **THE COURT ORDERS**
   a. All orders previously made in this action will remain in full force and effect except as specifically modified below.
   b. ☐ This matter is continued to: in Dept.: for the following purposes only:
   c. ☐ The parent ordered to pay support is ordered to appear on the continuance date.
   d. ☐ Current child support is modified to: $ per month beginning *(date):*
   e. ☐ The court retains jurisdiction to order support retroactive to
      (1) ☐ *(specify date):*
      (2) ☐ the date the parent ordered to pay support becomes employed or otherwise has the ability to pay support.
      (3) ☐ the date the parent ordered to pay support abandons or separates from the children at issue in this case.
   f. ☐ Any order to liquidate the support arrearage is suspended until further order of this court.
   g. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
   h. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

3. i. ☐ The parent ordered to pay support is ordered to obtain health insurance coverage for the children in this action if it becomes available at no or reasonable cost. The party ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

j. If this order includes orders for child support or reimbursement of uninsured health care costs, *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.

k. ☐ Other *(specify):*

4. Number of pages attached: _____

Approved as conforming to court order.

Date:

▶ _____

(SIGNATURE OF ATTORNEY FOR THE PARENT ORDERED TO PAY SUPPORT)

Date:

_____

JUDICIAL OFFICER

SPR21-10

Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	The Child Support Directors Association, Judicial Council Forms Committee by Lisa Saporito, Chair	AM	The Committee agrees the proposed form changes appropriately addresses the stated purpose of providing court users and the public with information regarding relief available to incarcerated or involuntarily institutionalized child support obligors.	No response required.
			The Committee recommends form FL-192 Notice of Rights and Responsibilities Health-Care Costs and Reimbursement Procedures be a mandatory form attachment to all support orders, IV-D and non-IV-D cases alike, and on forms such as FL-350 *Stipulation to Establish or Modify Child Support and Order* and FL-688 *Short Form Order After Hearing.*	The committee agrees with the suggestion to make form FL-192 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption.
			The Committee recommends modification of the language on form FL-350 Stipulation to Establish or Modify Child Support and Order as follows (draft attached with suggested changes in yellow highlight): Sections 2.a. and 2.c. both ask for total amount. We think this could be confusing to the parties. We believe the following changes will make the basic child support amount and any additional child support clearer. The suggested changes are as follows:	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			Under item 2, on the second line add "basic" in front of child support. On the line immediately following 2.a.(5) add "Basic" in front of child support. On page 2 change "medical" to "healthcare". Under item 2.c. add "from sections 2.a. and 2.b (does not include additional child support percentage amounts) The Committee is in support of and recommends no changes to FL-490 *Application to Determine Arrears Attachment to Request for Order (form FL-300)*, FL-676 Request for Determination of Support Arrears, and FL-676-INFO *Information Sheet: Request for Determination of Support Arrears.*	No response required.
2.	Department of Child Support Services by Shannon Richards, Attorney III	AM	Does the proposal appropriately address the stated purpose? The department believes the proposal to include notice by way of the FL-192 *Notice of Rights and Responsibilities (Health Care Costs and Reimbursement Procedures)* and making that form mandatory on all child support orders or judgments generally does address the stated purpose.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants?	
			The department is pleased with the efforts JCC has made at revising the specified forms to reflect the new Family Code section 4007.5 intent. By making form FL-192 mandatory additions to all judgments or orders dealing with child support we believe this is adequate to inform case participants of the relief available to them. However, we do believe that there are some revisions that would enhance this notice as set forth below.	No response required.
			Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts?	
			Revising for FL-350 *Stipulation to Establish or Modify Child Support and Order* from a mandatory form to an optional form may create unintended consequences. First, allowing participants to provide a stipulation to set or	The committee agrees with the suggestion to keep form FL-350 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption.

DRAFT

	Commenter	Position	Comment	Committee Response
			modify child support on other than judicial council forms will allow for a lack of consistency and format. The department understands that this form is not one typically utilized by government agencies, however when the department opens a case with a child support order obtained outside of the IV-D system, a mandatory format for orders allows for ease in determining what has been ordered, and what may be left open. The FL-350 is a nice checklist of items that litigants should consider when stipulating to support orders. Leaving the option open for a pleading-type format allows for greater deviation in style and substance. The result is more time for LCSAs to review and determine, or indeed, interpret what they believe was meant by an individual style, and could lead to additional court actions to clarify or add orders for those items inadvertently left off an order not utilizing the standardized format. Next, the ability to stipulate to establish or modify child support in a format that does not require the new version of FL-192 will limit or circumvent the required notice regarding support suspension for incarcerated individuals proposed to be mandated on all other orders or judgments related to child support and defeating the purpose for the proposed revisions of this	

DRAFT

	Commenter	Position	Comment	Committee Response
			Invitation to Comment – to provide notice regarding support suspension on all child support orders and judgments. Will removing the Proof of Services section from page 2 of form FL-676 create any unintended consequences for case participants? Removal of the Proof of Service may create delays in court proceedings as participants do not always read the information/instruction sheets provided. The department believes the information on the FL-676 INFO is adequate information, but there could also be a notice added to page two of the FL-676. See below for suggested language. Department Comments/Suggestions: 1. FL-192: The current title of the form *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information on Changing a Child Support Order* does not provide adequate notice that there is information related to suspension of child support for incarcerated obligors. The Department suggests one of two approaches to address this issue:	No response required.

DRAFT

SPR21-10
Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)
All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			A. Revise the Title to Read "*Notice of Rights and Responsibilities*" and have Sub-headings for the 3 areas you are providing notice: (1) Health Care Costs and Reimbursement Procedures (2) Information on Changing a Child Support Order and (3) Information About Suspension of Support for Incarcerated Parents. The subheading you have proposed for incarcerated parents "Information About Incarcerated Parents for Support Orders Made or Modified After December 31, 2020" seems to indicate that the information is about incarcerated parents, and not about suspension of support for such parents. Therefore, even if the suggested change of title is not adopted, a change to your proposed subheading should be considered. The Department suggests "Information About Suspension of Support for Incarcerated Parents."	The committee does not recommend changing the name of FL-192 at this time. The current name of this form is referenced on several other Judicial Council forms that are not a part of the current proposal, which would also have to be revised if the name of FL-192 were to be changed. However, the committee may consider this suggestion during a future rules cycle. The committee does agree with the suggestion to create sub-headings on the form, with minor alterations.
			B. Assuming the Title/subheadings are revised as suggested, the body of the text may want to include language regarding the availability of support suspension. Under current law, this means suspension for support orders made or modified after December 31, 2020, but relief could also be available for other timeframes.	The committee agrees with this suggestion and has incorporated it, with alterations, into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			(See item 2., below). It is suggested to add a new paragraph stating: "**Date of Order.** The date your order was made may play a role in whether relief may be available. The current law makes relief available for orders made or modified after December 31, 2020, but there are other ways relief may be available. See the **More Info.** section below." In this way the Information is given that there are definite orders that allow relief and other reasons why relief could be granted.	
			C. This form shows that it is an "optional" form, however you propose to make it a mandatory attachment to specified orders and judgments. The department agrees that the form should be mandatory for all orders and judgments related to child support. The form label as an "optional" form could, however, be confusing. Therefore, we propose that this form become "mandatory" for all child support orders and judgments.	The committee agrees with the suggestion to make form FL-192 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption.
			2. Inclusion of December 31, 2020: Both Forms FL-490 *Application to Determine Arrears* and FL 676 *Request for Determination of Support Arrears* have a new section on why the applicant could not pay support and include appropriate information related to the current	The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			version of FC §4007.5. The final section states: ""(4) My child support order was entered or modified after **December 31, 2020.**" (Emphasis in original). While this is a correct statement of the current version of the statute, it is believed that there are circumstances where there could be relief based upon the prior version of the statute (for orders modified on or after October 8, 2015 through December 31, 2020) due to the "by operation of law" clause within that statute. In addition, there are some standard orders attachments that have been made orders of the court that provide relief like that contained within the 4007.5 statute that are not limited with respect to the order date. Presently there is an "Other" box that could be used for this purpose, but the Department suggests that the inclusion of the December 31, 2020 date may confuse and prevent individuals who may have a valid claim for relief from making application. The Department suggests that the text be modified to say: "My child support was entered or modified: ☐on or after December 31, 2020, ☐ between October 8, 2015 and December 31, 2020" and add a new box that says "☐ Relief from support is contained in my child support order entered _____." In this way parties will be	

DRAFT

	Commenter	Position	Comment	Committee Response
			able to select the specific dates upon which relief may be granted and notice is provided to the court and parties regarding the basis upon which the applicant is seeking relief. 3. FL-676: On page two, below the signature, there could be added language such as: "The court must have a proof of service on file to proceed with a hearing in this matter. Please see FL-676-INFO for more information." This option would alert case participants that they must do something to have their case heard and where they can find the appropriate information, without requiring a full proof of service on the document itself. 4. FL-676-INFO: On page one on the top of the second column (under item 5(b)) there is a statement: "(Note: This relief can only be requested to orders made or modified after December 31, 2020)." While this is a correct statement of the law as it applies to the current version of FC §4007.5, it does not allow for consideration of other bases for relief, including relief under the prior version of the same statue (the appellate court has not made any ruling on whether relief is available by operation of law, or whether a savings clause is	The committee does not recommend making this revision as the requirement to serve the motion and file a proof of service is already included in the instructions box on page 1, including a link to form FL-676-INFO. The committee agrees with this suggestion and has incorporated it, into the revisions that it is recommending for adoption.

DRAFT

	Commenter	Position	Comment	Committee Response
			in the prior statute, effective October 8, 2015 through December 31, 2020), or under any court order made prior to December 31, 2020 related to suspension of support due to incarceration. For this reason, the Department suggests removal of the "Note" entirely, or alternately remove the word "only" from the statement in the Note.	
3.	The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Justin M. O'Connell, FLEXCOM Legislation Chair	AM	FLEXCOM agrees with this proposal. As to the specific request for comment regarding the optional versus mandatory nature of Form FL-350, FLEXCOM suggests the form be mandatory. Form FL-350 provides an easily readable format setting forth the mandatory factors in adjudicating child support, which ensures such orders comply with the law. The use of this form is very helpful to self-represented litigants to ensure they have code-compliant and enforceable orders. Also, the trial court is not faced with having to later reconstruct prior factors and circumstances because they are	No response required. The committee agrees with the suggestion to keep form FL-350 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption.

DRAFT

	Commenter	Position	Comment	Committee Response
			plainly laid out in the form. Making the form optional might invite non-compliant, simple stipulated orders that could arguably be unenforceable.	
4.	Orange County Bar Association by Larisa M. Dinsmoor, President	AM	The proposal appropriately addresses the stated purpose. Adding the language to the form FL-192 disseminates the information to case participants, but the document should then be entitled "NOTICE OF RIGHTS AND RESPONSIBLITIES Including Health Care Costs and Reimbursement Procedures" due to the expansion of information now contained in the form. Yes, even seasoned attorneys leave out necessarily language in a Stipulation, so keeping the form Mandatory is recommended. Yes, since most self-represented parties do not know about the Proof of Service form or filing procedure, but the revised form includes the direction to use the appropriate forms FL-330 or FL-335	No response required. The committee does not recommend changing the name of FL-192 at this time. The current name of this form is referenced on several other Judicial Council forms that are not a part of the current proposal, which would also have to be revised if the name of FL-192 were to be changed. However, the committee may consider this suggestion during a future rules cycle. The committee agrees with the suggestion to keep form FL-350 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption. No response required.

DRAFT

SPR21-10

Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
5.	Superior Court of Los Angeles County by Bryan Borys	A	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? Yes Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants? Yes Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts? No, but item 3 on page 2 of the FL350 form should allow inclusion of more than one parent to provide health insurance to be consistent with the language currently included in Form FL 342, item 7 Healthcare Expenses section.	 No response required. No response required. The committee agrees with this suggestion and has incorporated it into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

SPR21-10

Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants? No 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. No 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. There would be costs to updating the existing guided interview form and training of Family Law Facilitator paralegals and attorneys.	No response required. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required.
6.	Superior Court of Orange County by Vivian Tran, Administrative Analyst	AM	Does the proposal appropriately address the stated purpose? Yes. Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants? Yes, requiring the FL-192 to be attached to any order regarding child support will ensure that both parties are aware of Family Code section 4007.5. Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts? FL-350 contains language of the required code sections that must be cited in a child support	 No response required. No response required. The committee agrees with the suggestion to keep form FL-350 as a mandatory form and has

DRAFT

	Commenter	Position	Comment	Committee Response
			order. Changing the form to optional may cause stipulations to be submitted in other formats that do not contain the required language. This could increase the amount of rejected stipulations and cause a delay for the parties in obtaining the order. Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants?	incorporated it into the revisions that it is recommending for adoption.
			No, removing this section will make it far less confusing for SRLs who may have completed the proof of service section prior to obtaining a hearing date. 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.	No response required.
			Yes, the proposal of adding the language to the FL-192 and requiring the form to be attached to all child support orders will save the cost of reprinting all other forms regarding child support.	No response required.

DRAFT

	Commenter	Position	Comment	Committee Response
			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?	
			No, changes to processes or case management system are necessary. A written communication to clerk's office and courtroom clerks will be sufficient to make them aware of the changes.	No response required.
			Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
			Yes.	No response required.
			How well would this proposal work in courts of different sizes?	
			This should work well for a court of any size.	No response required.
7.	Superior Court of Riverside County by Susan D. Ryan, Chief Deputy of Legal Services	AM	Consideration should also be given to addressing suspension in the FL-421 Payment History Attachment. This may be addressed by	Because this suggestion would entail important substantive changes to the proposal, the committee believes public comment should be

DRAFT

	Commenter	Position	Comment	Committee Response
			adding to the instructions on page. 2, end of paragraph 2. "Indicate which month(s) orders were suspended due to the payor being confined against their will for more than 90 days in a row, in jail, prison, juvenile detention, or a mental facility, pursuant to Family Code section 4007.5." Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants?	sought before it is considered for adoption. The committee may consider this suggestion during a future rules cycle.
			Yes, given that Family Code section 4007.5 has a sunset provision referencing the forms is more efficient.	No response required.
			Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts?	
			While making the form optional will allow for litigants to prepare their own stipulations tailored to the needs of the parties, this increases	The committee agrees with the suggestion to keep form FL-350 as a mandatory form and has incorporated it into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			the risk of such parties omitting required language. Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants? No negative consequences are foreseen. Eliminating the Proof of Service will encourage litigants to file before serving and discourage rejection by the clerk's office for an incomplete Proof of Service. Suggested edits: FL-192 NOTICE OF RIGHTS AND RESPONSIBILITIES 1. Child support. Under current California law, child support "ordered or modified after December 31, 2020" automatically stops if the parent who has to pay . . . FL-350 STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER 2. Move or repeat “beginning on (date)” to 2 c and clarify as follows:	No response required. The committee agrees with this suggestion and has incorporated it, into the revisions that it is recommending for adoption. The committee agrees with these suggestions and has incorporated them, with minor alterations, into the revisions that it is recommending for adoption.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			2c. Total monthly child support (from a and b). $ _____, payable _____ on the first of the month, _____ other (specify): beginning on (date): _____ .	
			4. Add a header "Child Support Calculation"	The committee agrees with this suggestion and has incorporated it, with minor alterations, into the revisions that it is recommending for adoption.
			then demote sections 4, 5, 6, 7 as subsections to 4. 8. Restart numbering with 4.	The committee does not recommend making the suggested change due to space limitations on the form.
			11. add "c. We agree to inform each other parent of changes in costs included in additional child support."	The committee does not recommend making the suggested change as this provision may cause confusion if additional child support was agreed to as a percentage or if no additional child support was agreed to by the parties.
			FL-676-INFO Information Sheet: Request for Determination of Support Arrears Step 3 #2 Tip	
			Check your local court's website to see if you can file your request electronically. [Delete (e-file)].	The committee does not recommend making the suggested change as the term “e-file” is a more

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
				commonly understood plain-language explanation of filing pleadings electronically.
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes. Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants? Yes. The proposal to limit changes to the FL-192 will, as the Committee noted, reduce costs as courts will not need to order additional revised forms. Will revising form FL-350 from a mandatory to an optional form create any unintended consequences for case participants or the courts? No. The revisions to FL-350 appear appropriate and beneficial.	 No response required. No response required. No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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SPR21-10

Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Will removing the Proof of Service section from page 2 of form FL-676 create any unintended consequences for case participants?	
			No. As stated in the Invitation, the inclusion of the Proof of Service creates confusion, as litigants are unsure if they need to serve prior to or after filing the request.	No response required.
			Would the proposal provide cost savings? If so, please quantify.	
			Yes, to the extent the FL-192 will be revised in lieu of the 10 child support and judgment forms that would need to be revised if the language was added to those forms.	No response required.
			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?	
			Notification to staff and updating internal procedures.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes. How well would this proposal work in courts of different sizes? There should be no disparate impact between courts of different sizes. No additional Comments.	 No response required. No response required. No response required.
9.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS) (no name provided)	AM	The JRS notes the following impact to court operations: The proposed changes to FL-192 would not be effective for the following reasons: • An excess of detailed information on page 1 of the form. Due to this, people may not read it carefully. • Fl-192 is somewhat misleading. The top of the form indicates that the rest of the information pertains to Health Care Costs and Reimbursement Procedures and does not advise that other rights and responsibilities are also included.	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

DRAFT

	Commenter	Position	Comment	Committee Response
			The JRS suggests reformatting FL-192 by separating out the different sections. The title of the form should remain the same Notice of Rights and Responsibilities, then have a clear separation that outlines the different sections as follows: 1. General Information 2. Health Care and Reimbursement 3. Parents who may be Incarcerated or detained 4. Modification Procedure	The committee agrees with the suggestion to create sub-headings on the form, with minor alterations.
			The changes to FL-350 do not appear user friendly as it is too dense. One option is to break down the form more than it is in its current form. The form could have more bold headings to break the different sections down more clearly.	The committee agrees with the suggestion to create different sections with sub-headings on the form, with minor alterations.
			The form could also separate guideline from non-guideline support into different sections.	The committee does not agree with this suggestion as guideline support must always be calculated, even if the parties agree to a non-guideline order; if separated, parties may think they can agree to a non-guideline order without stating what guideline support would be.

DRAFT

	Commenter	Position	Comment	Committee Response
			Another option is to have separate forms for child support agency cases with that related language in that form only.	The committee does not recommend creating two separate child support stipulation forms as the only part of FL-350 that refers to Title IV-D cases is found in items 17 and 18.
			No comment regarding the proposed changes to FL-490, FL-676, or FL-688.	No response required.
			Request for Specific Comments Does the proposal appropriately address the stated purpose? • If FL-192 is made more user-friendly, then it meets the stated purpose.	No response required.
			Does adding language only to form FL-192, instead of all 10 child support order or judgment forms, regarding the relief available under Family Code section 4007.5 adequately disseminate this information to case participants? • Requiring FL-192 with all orders could make sense	The committee does not recommend requiring all family law orders require FL-192 to be attached, as the current proposal will require the form to be attached to all 10 child support judgment or order forms.
			• Also consider referencing Judicial Council website link for more information about Rights and	The committee does not recommend revising all 10 child support judgment or order forms to

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SPR21-10
Family Law: Reenactment of Family Code section 4007.5 (revise forms FL-342, FL-350, FL-490, FL 530, FL-625, FL-630, FL-665, FL-676, FL-676-INFO, FL-687, FL-688, and FL-692)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Responsibilities somewhere on each order.	include a hyperlink about rights and responsibilities, as only two of the 10 forms are part of the current proposal. However, all 10 forms include a link to www.courts.ca.gov in the footer and FL-192 has been revised to include a link to relevant information.
			• Consider Rule that sentencing court shall provide some form to persons with sentencing longer than 90 actual days about rights related to child support. It could be done along with the Firearm findings.	Because this suggestion would entail important substantive changes to the proposal and require drafting a new rule of court, the committee believes public comment should be sought before it is considered for adoption. The committee may consider this suggestion during a future rules cycle.
			How well would this proposal work in courts of different sizes? • Don't foresee any cost savings or hardship to small courts with proposed changes.	No response required.

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Item number: 10

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: 8/19/2021

Title of proposal: Juvenile Law: Sealing of Records

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rule 5.850; approve forms JV 581, JV 582, and JV 589; revise forms JV 595-INFO, JV 596-INFO, and JV 597

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Tracy Kenny, 916-263-2838, tracy.kenny@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: 11/2/2020
Project description from annual agenda: Project Summary: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration and will take action only where necessary to allow courts to implement the legislation efficiently.
k. AB 2321 (Jones-Sawyer) Juvenile court records: access (Ch. 329, Stats. of 2020)
Authorizes a judge or prosecutor to access specified sealed juvenile records for the limited purpose of certifying victim helpfulness on specified forms required in order to apply for a U- or T-Visa.

l. AB 2425 (Stone) Juvenile police records (Ch. 330, Stats. of 2020)
Limits the ability of a law enforcement agency to release a copy of a juvenile police record, as specified, and to prohibit the release of information by the arresting law enforcement agency when a juvenile has successfully completed a program of diversion or supervision.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-160
For business meeting on: September 30–October 1, 2021

Title
Juvenile Law: Sealing of Records

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 4, 2021

Contact
Tracy Kenny, 916-263-2838
tracy.kenny@jud.ca.gov

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending a rule of court, revising three forms, and approving three new optional forms to implement recent legislative changes concerning the sealing of juvenile records. The legislative changes allow access to sealed records for two additional purposes, and expand sealing of records for youth diverted from the juvenile courts.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2022:

1. Amend California Rules of Court, rule 5.850 concerning the sealing of records for probation diversion cases to conform to recent legislative changes on timing and notice;

2. Approve two new optional forms *Law Enforcement Notice on Sealing of Records* (form JV-581) and *Petition to Seal Juvenile Police Records* (form JV-582), for law enforcement use when sealing the records of youth diverted by those agencies and their partners;

3. Approve one new optional form *Acknowledgment of Juvenile Diversion Record Sealed* (form JV-589) for use in sealing probation diversion records;

4. Revise optional form *Probation Department Notice on Sealing of Records After Diversion Program* (form JV-597) to provide for the sealing of arrest records by law enforcement; and

5. Revise two mandatory information forms *How to Ask the Court to Seal Your Records* (form JV-595-INFO) and *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to incorporate information on recent legislative changes allowing for access to sealed records.

The text of the amended rule and the new and revised forms are attached at pages 6–19.

Relevant Previous Council Action

Effective September 1, 2018, the Judicial Council adopted rule 5.850 and approved two forms, *Probation Department Notice on Sealing of Records After Diversion Program* (form JV-597) and *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598), to implement newly enacted Welfare and Institutions Code section 786.5 requiring probation departments to seal the records of youth who satisfactorily complete pre-petition diversion programs.[1]

Forms JV-595-INFO and JV-596-INFO were both originally approved by the council effective January 1, 2016, to implement statutory requirements and have been revised since then to reflect changes in the law.

Analysis/Rationale

Background

In 2014, the Legislature enacted section 786 to require the sealing and dismissal of specified juvenile petitions when a child has satisfactorily completed probation. In that legislation and numerous subsequent bills, the Legislature has sought to provide access to those records for a variety of purposes. In 2020, Senate Bill 1126 (Jones; Stats. 2020, ch. 338) enacted an additional provision allowing access to the records by the probation department, prosecuting attorney, attorney for the child, or the court when a new petition has been filed and the issue of competency has been raised. In addition, Assembly Bill 2321 (Jones-Sawyer; Stats. 2020, ch. 329) was enacted to allow access to records sealed under section 786 or section 781 (sealing at the request of the subject of the records), by the court or a prosecutor in order to certify victim helpfulness for specified immigration relief purposes. These expansions of access need to be

[1] Hereafter, all statutory references are to the Welfare and Institutions Code unless otherwise specified.

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reflected on existing information forms that explain who can access sealed juvenile court records.

In 2017, the Legislature enacted legislation[2] to provide a mechanism to seal the records for youth who were referred by the prosecutor or the probation department to a pre-petition informal program pursuant to section 654. That legislation provided for the sealing of records relating to the arrest and to the diversion program, after successful completion of the program, by the probation department and any public or private agency that provided diversion or supervision services. The Judicial Council adopted California Rules of Court, rule 5.850 and two optional forms (JV-597 and JV-598) to assist with the implementation of that legislation, in part because the legislation allows a participant whose completion is found not satisfactory to petition the court for a review of that determination.

In 2020, the Legislature enacted Assembly Bill 2425 (Stone; Stats. 2020, ch. 330) to amend section 786.5 to provide that records also be sealed by the arresting law enforcement agency, and requiring that the probation department receive confirmation of the sealing and communicate that to the program participant. In addition, that legislation provides that law enforcement agencies that divert youth in lieu of arrest must also seal records and directs the Judicial Council to develop forms to assist with this responsibility.

New forms to implement law enforcement duties to seal prearrest diversion records

Newly enacted section 827.95 requires law enforcement agencies to seal the records of youth: (1) who have been diverted prior to arrest or referral to probation, and who have satisfactorily completed their diversion program; (2) who have been counseled and released, with no referral to probation made within 60 days; or (3) who are not subject to the jurisdiction of the juvenile court. The statute requires the Judicial Council, in consultation with the California Law Enforcement Association of Records Supervisors, Inc. (CLEARS), to develop forms to implement these requirements. The proposal includes two optional forms, *Law Enforcement Notice on Sealing of Records* (form JV-581) and *Petition to Seal Juvenile Police Records* (form JV-582), to use to notify youth and relevant agencies about the sealing, as well as a petition form to request reconsideration of a denial of sealing by the law enforcement agency. These forms would be used by law enforcement agencies and would not be filed with the court. The forms recommended for approval were shared with CLEARS before they circulated for comment and during the comment period.

Revisions to information forms to reflect new access provisions

The committee recommends revising *How to Ask the Court to Seal Your Records* (form JV-595-INFO) to add a bullet point to the section entitled "Who can see my sealed records?" to explain that records may be accessed to allow a court or prosecutor to certify victim helpfulness for immigration relief purposes. The committee also recommends deleting a redundant bullet point on access by the person whose records have been sealed. The committee further recommends

[2] Assem. Bill 529; Stats. 2017, ch. 685.

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revising the analogous section on *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) to include the victim helpfulness provision, as well as a new provision allowing access to competency-related records when a new petition has been filed and competency is at issue. In addition, minor style changes were made to the forms for clarity and consistency.

Implementation of expanded pre-petition diversion sealing

Rule 5.850 amendments

Because the juvenile court is authorized to review a determination by the probation department that a diversion program has been satisfactorily completed, the council adopted rule 5.850 of the California Rules of Court to implement section 786.5. That rule also specifies the procedures for the probation department to follow when section 654 diversion programs are satisfactorily completed. Because AB 2425 has expanded and revised those requirements, the proposal would amend that rule to reflect the current requirements on timing and who must be notified about the obligation to seal. In addition, the rule would be amended to make it gender neutral, and to use "youth" instead of "child" consistent with the new definition in rule 5.502.

Revisions to existing forms, and new optional form to acknowledge sealing of records

To assist probation departments in carrying out the expanded sealing requirements added to section 786.5, the committee recommends modifications to the existing *Probation Department Notice on Sealing of Records After Diversion Program* (form JV-597) to provide for the sealing of arrest records by law enforcement and has updated *How to Ask the Court to Seal Your Records* (form JV-595-INFO) to clarify that arrest records will be sealed for probation diversion cases. The proposal also includes a new optional *Acknowledgment of Juvenile Diversion Record Sealed* (form JV-589) for those agencies that must seal the diversion records to acknowledge that sealing has been completed so that the probation department can comply with its new duty to confirm that task and notify the subject of the records.

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Policy implications

The primary changes impacting the courts simply update existing mandatory information forms to maintain accuracy. Most of the recommended changes in this proposal will impact agencies other than the courts, including probation departments and law enforcement who must comply with new statutory requirements. Consistent with the statutory directive, the committee sought input from law enforcement with respect to the proposed new forms to ensure that they would assist them in carrying out their new duties.

Comments

This proposal circulated for public comment from April 15 to May 27, 2021, as part of the regular spring comment cycle. The committee received comments from six entities, including the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees, and three superior courts. Five commenters agreed with the proposal, and one agreed with the proposal if modified. The committee made clarifying changes to the forms and significantly reorganized the provisions of rule 5.850 based on the comments. The reorganized rule is not substantively changed but sets forth each responsibility of probation or

the court in a separate subdivision. A chart with the full text of the comments received and the committee's responses is attached at pages 20–26.

Alternatives considered

The committee considered not revising the existing information forms to include the new access provisions but was concerned that not revising them would make them legally inaccurate. The committee considered not proposing a new form for use by probation agencies to receive acknowledgment that diversion records have been sealed but determined that without such an optional form, the existing optional forms would be incomplete.

Fiscal and Operational Impacts

Printing costs may be incurred by courts to provide the revised mandatory information forms. In addition, because the information forms will need to be made available in other languages, there will be costs to translate the revised forms. Courts also noted some minimal costs to train staff regarding the changes to the forms. All of these impacts are a result of legislative changes and are necessary to make the forms legally accurate. As noted above, the approval of the optional forms should make it easier for probation departments and law enforcement agencies to comply with their statutory duties.

Attachments and Links

1. Cal. Rules of Court, rule 5.850, at pages 6–8
2. Forms JV-581, JV-582, JV-589, JV-595-INFO, JV-596-INFO, and JV-597, at pages 9–19
3. Chart of comments, at pages 20–26
4. Link A: Assembly Bill 2321, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2321*
5. Link B: Assembly Bill 2425, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2425*
6. Link C: Senate Bill 1126, *http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1126*

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Rule 5.850 of the California Rules of Court is amended, effective January 1, 2022, to read:

Rule 5.850. Sealing of records by probation in diversion cases (§ 786.5)

(a) Applicability

This rule states the procedures to seal the records of persons who are subject to section 786.5.

(b) Determination of satisfactory completion

Within 60 days of the completion of a program of diversion or supervision under a referral by the probation officer or the prosecutor instead of filing a petition to adjudge the person a ward of the juvenile court, including a program of informal supervision under section 654, the probation department must determine whether the participant satisfactorily completed a program subject to this rule.

(c) Review of unsatisfactory completion of program by the juvenile court

If the probation department determines that the program has not been completed satisfactorily, it must notify the person in writing of the reason or reasons for not sealing the record and provide the person with a copy of the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form to allow the person to seek court review of the probation department's determination within 60 days of making that determination, as well as a copy of *How to Ask the Court to Seal Your Records* (form JV-595-INFO) or other information on how to petition the court directly to seal arrest and other related records. A person who receives notice from the probation department that the program has not been satisfactorily completed and that the records have not been sealed may seek review of that determination by the court by submitting a petition to the probation department on the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form, and the probation department must file that petition with the court for a hearing to review whether the satisfactory completion requirement has been met and the records are eligible for sealing by the probation department. The petition must be provided to the probation department within 60 days of the date the notice from the probation department was sent, and must include a copy of that notice. The probation department must file the petition with the juvenile court in the county that issued the notice within 30 days of receiving it. The clerk of the court must set the matter for hearing and notify the petitioner and the probation department of the date, time, and location of the hearing. The court must appoint counsel to represent the youth before or at the hearing unless the court finds that the youth has made an intelligent waiver of the right to counsel under section 634 or is already represented. If the court finds after the hearing that the petitioner is eligible to have the records sealed under section

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786.5, it must order the probation department to promptly comply with the sealing and notice requirements of this rule.

~~(b)~~(d) Sealing of records

Upon satisfactory completion of a program of diversion or supervision subject to this rule, ~~under a referral by the probation officer or the prosecutor instead of filing a petition to adjudge the person a ward of the juvenile court, including a program of informal supervision under section 654,~~ the probation department must seal the arrest and other records in its custody relating to the arrest or referral and participation in the program. The probation department must notify the arresting law enforcement agency to seal the records relating to the arrest and referral, and the arresting law enforcement agency must seal the records in its custody relating to the arrest, no later than 60 days from the date of the notification. Upon sealing, the law enforcement agency must notify the probation department that the records have been sealed. The probation department must also notify the public or private agency operating the diversion program to which the person has been referred to seal any records in its custody relating to the arrest or referral and participation in the program, and the operator of the program must do so ~~promptly~~ no later than 60 days from the date of the notification by the probation department. Upon sealing, the public or private agency must notify the probation department that the records have been sealed.

~~(e)~~(e) Notice to participant

~~Within 60 days of the satisfactory completion of a program subject to this rule,~~ Within 30 days from receipt of the notification by the arresting law enforcement agency that the records have been sealed, the probation department must notify the person in writing that ~~his or her~~ the records have been sealed. ~~If the probation department determines that the program has not been completed satisfactorily, it must notify the person in writing of the reason or reasons for not sealing the record and provide the person with a copy of the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form to allow the person to seek court review of the probation department's determination within 60 days of making that determination.~~

~~(d) Review of unsatisfactory completion of program by the juvenile court~~

~~A person who receives notice from the probation department that he or she has not satisfactorily completed the program and that his or her records have not been sealed may seek review of that determination by the court by submitting a petition to the probation department on the *Petition to Review Denial of Sealing of Records After Diversion Program* (form JV-598) or similar local form, and the probation~~

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~~department must file that petition with the court for a hearing to review whether he or she has met the satisfactory completion requirement and is eligible for record sealing by the probation department. The petition must be provided to the probation department within 60 days of the date the notice from the probation department was sent, and must include a copy of that notice. The probation department must file the petition with the juvenile court in the county that issued the notice within 30 days of receiving it. The clerk of the court must set the matter for hearing and notify the petitioner and the probation department of the date, time, and location of the hearing. The court must appoint counsel to represent the child before or at the hearing unless the court finds that the child has made an intelligent waiver of the right to counsel under section 634 or is already represented. If the court finds after the hearing that the petitioner is eligible to have the records sealed under section 786.5, it must order the probation department to promptly comply with the sealing and notice requirements of this rule.~~

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LAW ENFORCEMENT NOTICE ON SEALING OF RECORDS (Welf. & Inst. Code, § 827.95)	Law Enforcement Agency: DRAFT Not approved by the Judicial Council JV-581.v5.080121.cz
YOUTH'S NAME:	

1. Name of subject youth: Date of birth:

2. **RECORDS ARE SEALED**

☐ The subject youth has satisfactorily completed a program of diversion from arrest, citation, or referral to probation or the prosecutor.

The law enforcement agency hereby notifies the following public or private agencies operating the diversion program to which the youth was referred that it must promptly seal any records in its custody relating to the youth's arrest or referral or participation in the program, and release them only to the subject youth and the youth's parent or guardian as provided in Welfare and Institutions Code section 827.95(c):

(*Specify agency*):

(*Specify agency report or reference number(s)*):

☐ The subject youth was counseled and released by police officers without an arrest, citation, detention, or referral to probation or the prosecutor, and the department has verified that no referral has been made for this youth within 60 days of the release.

☐ The subject youth does not fall within the jurisdiction of the juvenile delinquency court under current state law.

All police records relating to the arrest or referral and participation in the program related to the following law enforcement agency report or reference number(s): date of report(s):

in the department's custody have been sealed, and the arrest is deemed never to have occurred. Upon request, a copy of the police records must be released to the youth and the youth's parent or guardian if identifying information pertaining to any other juvenile has been removed.

☐ The subject youth is a dependent of the juvenile court and the youth's social worker:
is hereby notified that any records in the social worker's custody pertaining to the law enforcement contact or referral must be sealed.

3. **RECORDS ARE NOT SEALED**

☐ The law enforcement agency has determined that sealing is inappropriate because the diversion program was not satisfactorily completed for the reasons stated below and has not sealed the youth's records.

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☐ The subject youth was referred to probation or the prosecutor on (*date*):
which is less than 60 days from when the youth was released.

A copy of form JV-582, *Petition to Seal Juvenile Police Records,* or comparable local form has been provided to the youth to allow the youth to request reconsideration of this determination.

4. The law enforcement agency must send a copy of this notice to the youth and the agencies and officials listed in item 2 within the time frames set forth in Welfare and Institutions Code section 827.95.

Date:

PRINTED NAME OF LAW ENFORCEMENT OFFICER

SIGNATURE OF LAW ENFORCEMENT OFFICER

Form Approved for Optional Use
Judicial Council of California
JV-581 [New January 1, 2022]

PETITION TO SEAL JUVENILE POLICE RECORDS (Welf. & Inst. Code § 827.95)	Law Enforcement Agency: **DRAFT** **Not approved by** **the Judicial Council** **JV-582.v7.080121.cz**
YOUTH'S NAME:	

INSTRUCTIONS

Use this form if you received a notice from law enforcement saying that your juvenile police records were not sealed because you did not satisfactorily complete your diversion program, or because you were referred to probation or the prosecutor within 60 days of being released from law enforcement custody.

How to fill out the form:

a. Put your name in the box at the top of the form, and your contact information in item 1 below.

b. In item 2, put the reasons why you think that your records should be sealed; these may include reasons why you think you did satisfactorily complete your diversion program or that you were not referred to probation or the prosecutor. You may also attach any documents that you think show that your records should be sealed.

c. Attach a copy of the notice from law enforcement telling you that your juvenile police records were not sealed.

d. Return the completed form to the law enforcement agency listed above. **Do not file with the court.**

For information about juvenile record sealing, go to *www.courts.ca.gov/28120.htm.*

1. **MY INFORMATION**

My name is:

I was born on (*date*):

My address is:

Phone number:

E—mail address:

2. **WHY MY JUVENILE POLICE RECORDS ARE ELIGIBLE TO BE SEALED**

☐ For the reasons stated below, I believe that I satisfactorily complied with the reasonable terms of program participation that were within my capacity to perform.

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☐ For the reasons stated below, I think the determination that I was referred to probation or the prosecutor is not accurate.

YOUTH'S NAME:	Law Enforcement Agency:

3. **ATTACHMENT OF LAW ENFORCEMENT NOTICE**
I have attached a copy of the notice from the law enforcement agency stating that my records were not sealed (form JV-581 or similar local form) to this form.

4. **ATTACHMENT OF OTHER DOCUMENTATION**
☐ I have attached other documentation in support of my petition.

Date:

▶ _____
(SIGNATURE OF PETITIONER)

INSTRUCTIONS—AFTER YOU COMPLETE THIS FORM

Give this form, the attached copy of the notice from law enforcement, and any supporting documentation to the law enforcement agency that gave you the notice.

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ACKNOWLEDGMENT OF JUVENILE DIVERSION RECORD SEALED (Welf. & Inst. Code, § 786.5)	Probation Dept., County of **DRAFT** **Not approved by the Judicial Council** **JV-589.v6.080121.cz**
YOUTH'S NAME:	

INSTRUCTIONS

Under Welfare and Institutions Code section 786.5, agencies must advise the probation department of their compliance with the probation department's sealing notification. Please return this completed *Acknowledgment of Juvenile Diversion Record Sealed* to the probation department upon sealing of the records.

1. TO THE PROBATION DEPARTMENT: I certify that the records required to be sealed pursuant to the notification from the probation department have been sealed, and a copy of this acknowledgment of record sealed has been sent to the probation department advising it of compliance with the probation department notice.

2. Date of Probation Department Notice:

3. Youth's Name: Date of Birth:

4. Agency Name:

Date:

By: _____ _____
(TYPE OR PRINT YOUR NAME) (SIGNATURE)

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Form Approved for Optional Use
Judicial Council of California
JV-589 [New January 1, 2022]

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If the court makes those records private **(sealed)**, it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now three ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal or informal) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at the completion of probation, see *Sealing of Records for Satifsfactory Completion of Probation* (form **JV-596-INFO**).

If you satisfactorily completed a probation diversion program, your records will be sealed by probation.

If you participate in a diversion program or other supervision program instead of going to court, and the probation department determines that you satisfactorily completed that program, the probation department will seal your probation department records and the records for any program you were required to complete, and notify the law enforcement agency to seal its arrest records. If the probation department determines that you did not satisfactorily complete the program, it will not seal those records, but will give you a form to tell you why and a form that you can use to tell the court why you think you did satisfactorily complete the program. If the court agrees with you, it will order your records sealed. Once your records have been sealed probation will send you a notice of the sealing.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer or the juvenile court clerk in the county where you had a case or contact.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if I owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.
The court will not consider outstanding fines and court-ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

Who does not qualify to have their records sealed?

- You do not qualify to have your records sealed if you were convicted as an adult of an offense involving moral turpitude, such as:
  - A sex or serious drug crime;
  - Murder or other violent crime; or
  - Forgery, welfare fraud, or other crime of dishonesty.
- You do not qualify to have your records sealed if, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Division of Juvenile Justice.

If you are unsure if you qualify, ask your attorney.

Who can see my sealed records?

- The Department of Motor Vehicles can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.

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- A prosecuting attorney may see your records that were sealed for an offense listed under Welfare and Institutions Code section 707(b) in a later proceeding for the reasons listed in section 781(d).
- If your sealed record was for a section 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a later felony.
- If a judge or prosecutor needs to determine if a victim of certain offenses was helpful in investigation or prosecution of the offense when the victim is seeking certification in connection with an immigration matter they may access your records to make this determination.
- If a prosecutor thinks something in your record would be helpful to the defense of someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

Can employers see my records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions about what an employer can ask about you.

How do I ask to have my records sealed?

1. You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records,* at *www.courts.ca.gov/forms.htm*, can be used, or your court may have a local form.
2. When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and will attach it to your petition.
3. If you think there are agencies that might have records on you that were never sent to probation, you need to name those agencies, or the court will not know to seal those records.

   If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See *http://oag.ca.gov/fingerprints/security* for more information.
4. Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) *Note*: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at *www.courts.ca.gov/28120.htm*.
5. Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.
6. The court will review your petition. The court may decide right away to seal your juvenile records, or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date, time, and location of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.
7. If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your petition.

   Important! **The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.**
8. If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. If the sealed records are for a section 707(b) offense committed when you were 14 or older, the court will not order those records destroyed.
9. The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

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If my records are sealed, do I have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at *www.courts.ca.gov/28120.htm*.

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In many cases, the court will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision).

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal), or if your case was otherwise dismissed after the petition was filed, in many cases the court will have dismissed the petition(s) and sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (**see *How to Ask* the Court to Seal Your Records (form JV-595-INFO)** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offense such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when you were 14 or older unless it was dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b). Unless you were found to have committed one or more of certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Justice Facilities).

How will the court decide if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or misdemeanor crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing, and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see my sealed records?

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, the child welfare agency can look at your records to determine where you should live and what services you need.
- If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.
- If you are not allowed to have a gun because of your offense, the Department of Justice can look at your records to make sure you do not buy or own a gun.
- If a prosecutor thinks something in your record would be helpful to someone who is charged with a crime in another case, the prosecutor can ask the court to provide that information. If this request is made, the court will let you know. You and your attorney may object.

DRAFT

- If a new petition is filed against you and the issue of your competency to participate in your new case is raised, the probation department, prosecutor, your attorney, and the court can look at your prior competency-related records to assess your current ability to understand and participate in the juvenile court proceedings.
- If a judge or prosecutor needs to determine if a victim of certain offenses was helpful in the investigation or prosecution of the offense when the victim is seeking certification in connection with an immigration matter, they may access your records to make this determination..
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

  NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

Do I have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However,** the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

Can employers see my records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions about what an employer can ask.

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PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS AFTER DIVERSION PROGRAM (Welf. & Inst. Code, § 786.5)	Probation Dept., County of: **DRAFT** **Not approved by the Judicial Council** **JV-597.v4.080221.cz**
YOUTH'S NAME:	

1. Name of subject youth: Date of birth:

2. a. Date of completion of diversion program: or date diversion program was not satisfactorily completed:
   b. ☐ Probation officer *(name):*

3. **RECORDS ARE SEALED**
   ☐ The subject youth has successfully completed a program of diversion or supervision after referral by the probation officer or prosecutor instead of the filing of a petition to adjudge the youth a ward of the juvenile court. All records in the department's custody relating to the arrest or referral and participation in the program for an alleged violation of
   (specify offense(s)): *(date of offense):*
   have been sealed, and the arrest is deemed never to have occurred, except that a probation department responsible for the supervision of a person may access this record for the purpose of complying with Welfare and Institutions Code section 654.3(e).

   The probation department hereby notifies the law enforcement agency that arrested the youth that it must seal any records in its custody relating to the juvenile's arrest no later than 60 days from the date of this notification, and notify the probation department that the records have been sealed:
   (Specify agency):
   (Specify agency report or reference number(s)):
   The probation department hereby notifies the following public or private agencies operating the diversion program to which the youth was referred that it must promptly seal any records in its custody relating to the youth's arrest or referral or participation in the program no later than 60 days from the date of this notification, and notify the probation department that the records have been sealed:
   (*Specify agency*):
   (Specify agency report or reference number(s):

4. **PROGRAM COMPLETION IS UNSATISFACTORY—RECORDS ARE NOT SEALED**
   ☐ The probation department has determined that sealing is inappropriate because the program was not satisfactorily completed for the reasons stated below and has not sealed the youth's records. A copy of form JV-598, *Petition to Review Denial of Sealing of Records After Diversion Program,* has been provided to the youth to allow the youth to seek juvenile court review of this determination.

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YOUTH'S NAME:	Probation Dept., County of:

5. If the records are to be sealed, the probation department must send a copy of this notice to the youth, the youth's attorney, and the agencies and officials listed in item 3 within 60 days of the completion of the program, and a copy of the acknowledgment that the records have been sealed within 30 days of receipt of the acknowledgement.

6. If the records are not sealed, the probation department must send a copy of this notice to the youth and the youth's attorney within 60 days of completion of the program or within 60 days of determining that the program has not been completed.

Date:

▶ _____
(SIGNATURE OF PROBATION OFFICER)

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SPR21-11

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	The JRS notes that the proposal is required to conform to a change of law.	No response required.
2.	Orange County Bar Association by Larisa M. Dinsmoor, President	A	Does the proposal appropriately address the stated purpose? **Yes.** Is the new optional probation from (form JV-589) useful to probation departments? **Yes.** Will the new optional law enforcement forms (forms JV-581 and JV-582) assist law enforcement in implementing section 827.95? **Yes.**	No response required. No response required. No response required.
3.	Sonoma County by Jennifer Moore, Deputy Probation Officer IV	A	No specific comment.	No response required.
4.	Superior Court of California, County of Los Angeles by Bryan Borys Director of Research and Data Management	A	Does the proposal appropriately address the stated purpose? Yes Is the new optional probation form (form JV-589) useful to probation departments: The court does not have enough information to determine the value of the proposed step to the probation department. Will the new optional law enforcement forms (forms JV-581 and JV-582) assist law enforcement in implementing section 827.95?	No response required. No response required.

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SPR21-11

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Yes. This process will reduce the number of arrest-only (WJ) sealings currently filed with the court. Would the proposal provide cost savings? If so, please quantify. No cost savings expected. There will be some costs in incurred in the reproduction of new forms. 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? Clerical staff will need to be trained in the new process and to provide the appropriate information/forms to the public. The sealing procedures currently in place will have to be updated to include this information. It is expected that clerical training will take up to 12 hours to complete. No changes are required for the computer management system. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	The committee appreciates this feedback and has noted it in the report to the council, that these forms may alleviate workload for the courts. The committee has noted the possible costs for printing of forms. The committee has noted this impact in the report to the council, and notes that it is a result of implementing the statutory mandate. No response required.
5.	Superior Court of California, County of Riverside	A	- Does the proposal appropriately address the stated purpose?	

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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-11

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	by Susan Ryan, Managing Attorney		Yes. The purpose of these changes is to implement new duties of law enforcement to seal pre-arrest diversion records, reflect the new access to records provisions dealing with immigration relief and to acknowledge the sealing of records. - Is the new optional probation form (form JV-589) useful to probation departments? Presumably, yes. The JV-589 will provide a simple way for agencies to confirm with probation departments that records have been sealed. - Will the new optional law enforcement forms (forms JV-581 and JV-582) assist law enforcement in implementing section 827.95? Yes, the JV-581 and JV-582 provide a simple way for law enforcement to give notice of the sealing of diversion records or a way for a person to petition to have a decision to not seal be reconsidered. It is recommended that it state clearly on both of these forms that they are not to be filed with the juvenile court. - Would the proposal provide cost savings? If so, please quantify. Most of the revisions are for probation and law enforcement purposes and will not affect the courts. These changes would likely not provide any cost savings to the court.	No response required. No response required The committee has added this instruction to form JV-582, which is completed by the youth, but opted to leave it off the form for law enforcement use as they are expected to understand how to use the forms. No response required.

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	Commenter	Position	Comment	Committee Response
			- 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 practices? There would be minimal implementation requirements for the courts. Staff would need to be made aware of the updates to the mandatory INFO forms and be prepared to provide copies of the updated forms to parties when appropriate. Judicial officers would also need to be made aware of the changes. - Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes - How well would this proposal work in courts of different sizes? Requirements on courts are minimal for this proposal. It is likely that this proposal would work well for courts of any size.	The committee has noted these modest implementation impacts on the courts in its report to the council. No response required. No response required.
6.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	AM	• Does the proposal appropriately address the stated purpose? **Yes.**	No response required.

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	Commenter	Position	Comment	Committee Response
			• Would the proposal provide cost savings? If so, please quantify. **No. It is necessary, however, to comply with the recent updates in the law.** • 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? **There should be minimal impact because this proposal deals primarily with a process that does not involve the court. Judicial officers and court staff would need to be informed of the changes.** • Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Yes.** • How well would this proposal work in courts of different sizes?	No response required. The committee has noted these minimal impacts in the report to the council. No response required.

DRAFT

SPR21-11

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			There should be not disparate impact between courts of different sizes.	No response required.
			General Comments **Rule 5.850:** It might make more sense to address successful completion in subdivision (b), review of unsatisfactory completion in subdivision (c), sealing in subdivision (d), and notice to the participant that the record has been sealed in a new subdivision (e). As written, subdivision (c) may be confusing because it tries to address two entirely different matters.	The committee has revised the proposal to reorganize rule 5.850 as suggested for clarity.
			JV-581: It is recommended that, if possible, this form be consolidated into one page.	The committee has made the form one page as suggested.
			JV-582: It is recommended that the top of this form be formatting like a petition. The instructions say to "Put your name and contact information in the box at the top of the form[,]" but there is no place at the top of the form to put contact information. In addition, items 3 and 4 are missing.	The committee has left the formatting as it was circulated so that the form will not appear to be a court form, but has added spaces for petitioner to provide phone and email contact information to assist the law enforcement agencies who will use the form.
			JV-589: It is recommended that the first paragraph be modified as follows: TO THE PROBATION DEPARTMENT: I certify that the records required to be sealed pursuant to the notification from the probation department have been sealed and a copy of this acknowledgment of record sealed has been sent to the probation department advising the court	The committee has incorporated the changed language into this form as suggested.

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SPR21-11

Juvenile Law: Sealing of Records (Amend Cal. Rules of Court, rule 5.850; approve forms JV-581, JV-582, and JV-589; revise forms JV-595-INFO, JV-596-INFO, and JV-597)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			of compliance with the probation department notice. **JV-595-INFO:** To be consistent with the other bullets, may want to consider making the new bullet a complete sentence. **JV-596-INFO:** To be consistent with the other bullets, may want to consider making the new bullet about immigration a complete sentence.	 The committee has reworded this bullet to be a complete sentence. The committee has reworded this bullet to be a complete sentence.

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Status Pending

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO

Committee or other entity submitting the proposal:
Probate and Mental Health Advisory Committee
Hon. Jayne C. Lee, Chair

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Staff contact (name, phone and e-mail):
Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov
Ann Gilmour, 415-865-4207, ann.gilmour@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: PMHAC: November 2, 2020; Forum: March 11, 2021
Project description from annual agenda: PMHAC: Collaborate with the Tribal Court–State Court Forum to amend rules of court applicable to probate guardianships to implement the requirements of the federal Indian Child Welfare Act (ICWA), as amended, the 2016 federal ICWA regulations and Bureau of Indian Affairs guidance, and California statutes incorporating the amended federal requirements into state law.
Forum: Revisions to the Probate Guardianship ICWA Rules (New or Onetime Project #3, at page 4).

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on: October 1, 2021

Title
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO

Recommended by
Probate and Mental Health Advisory Committee
Hon. Jayne C. Lee, Chair

Tribal Court–State Court Forum
Hon. Abby Abinanti, Cochair
Hon. Suzanne N. Kingsbury, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 11, 2021

Contact
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Executive Summary

The Probate and Mental Health Advisory Committee and the Tribal Court–State Court Forum recommend amending four rules of court and revising two forms to clarify the procedures required in probate guardianship and specified conservatorship proceedings involving Indian children. The proposed amendments and revisions update the rules and forms to conform to the requirements of the 2016 federal Indian Child Welfare Act regulations and guidelines, California statutory changes, and recent amendments to the California Rules of Court governing all proceedings in which a court is asked to order the removal of an Indian child from the custody of the child's parent or Indian custodian and placement of the child in the custody of a nonparent or to the termination of parental rights. Additional proposed form revisions clarify the information to be provided to the court, promote conformity with existing law, and make technical changes.

Recommendation

The Probate and Mental Health Advisory Committee (committee) and the Tribal Court–State Court Forum (forum) recommend that the Judicial Council, effective January 1, 2022:

1. Amend California Rules of Court, rules 7.51, 7.1003, and 7.1013 to clarify and confirm the rights of an Indian child's tribe and Indian custodian, if any, to receive notices of hearings and other activity and obtain access to status reports in a covered proceeding;

2. Amend California Rules of Court, rule 7.1015 to conform to recent changes in the federal Indian Child Welfare Act regulations, California statutory law, and California Rules of Court, rules 5.480–5.488, including legal issues raised by practitioners, related to implementing the Indian Child Welfare Act;

3. Revise *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) to:

   - Conform to the amendments to rule 7.1015 by modifying item 1c and deleting item 8 to reflect that form ICWA-010(A) must henceforth be used to document the Indian child inquiry;

   - Combine item 3, information about the proposed guardian, and item 6, suitability of the proposed guardian, into a single item 3;

   - Add a new item 4 for the petitioner to explain why appointing a guardian would be in the child's best interest;

   - Add new subitems to item 6 for the petitioner to inform the court whether the child's parents or Indian custodian, if any, agree that the court needs to appoint a guardian for the child and that the proposed guardian is suitable;

   - Modify items 1h, 2, and 6 to add references to tribe and Indian custodian in cases involving Indian children; and

   - Make technical changes; and

4. Revise *Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child* (form ICWA-005-INFO) to reflect that form GC-210(CA) may no longer be used for the Indian child inquiry in probate guardianship proceedings, and to make technical changes.

The text of the rules and the forms, as recommended to be amended and revised, are attached at pages 8–22.

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Relevant Previous Council Action

The Judicial Council has acted numerous times by adopting California Rules of Court and Judicial Council forms to implement and improve compliance with the Indian Child Welfare Act (25 U.S.C. §§ 1901–1963) (ICWA), including:

- In 1995, adopted former rule 1439 and amended former rules 1431, 1432, and 1463 to assure proper notice to parents, Indian custodians, and tribes;
- In 1998, amended former rule 1439 and revised forms JV-100 and JV-110 to better identify Indian children; and
- In 2000 and 2005, amended former rule 1439 and revised various juvenile and family law forms to clarify the time and manner of notice under ICWA.

Effective January 1, 2008, following SB 678's incorporation of substantial provisions of ICWA into California statute, the Judicial Council adopted additional rules of court, including rules 5.480–5.487 and 7.1015, and a set of ICWA forms.[1]

Effective January 1, 2020, following the 2016 federal adoption of formal ICWA regulations and issuance of implementation guidelines and the 2018 enactment of AB 3176 to bring California law into conformity, the Judicial Council amended the rules in title 5 applying ICWA to all case types and revised the ICWA forms to bring them up to date with state and federal law.[2]

Analysis/Rationale

ICWA establishes minimum federal standards that apply to all state court proceedings in which the court could order the involuntary placement of an Indian child in the custody of a nonparent or termination of parental rights to an Indian child. In California, the ICWA standards and procedural requirements are incorporated into the Family Code, the Probate Code, and, most extensively, the Welfare and Institutions Code.[3]

As noted above, the federal government adopted regulations implementing ICWA and updated its ICWA guidelines in 2016.[4] In some respects, California law and practice were inconsistent

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[1] Judicial Council of Cal., Advisory Com. Rep., *Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes* (Sept. 12, 2007) (adopted Oct. 26, 2007, effective Jan. 1, 2008) available at *www.courts.ca.gov/documents/102607ItemA27.pdf*. See generally Sen. Bill 678 (Stats. 2006, ch. 838).

[2] Judicial Council of Cal., Advisory Com. Rep., *Indian Child Welfare Act (ICWA): Implementation of AB 3176 for Indian Children* (Sept. 5, 2019) (adopted Sept. 24, 2019, effective Jan. 1, 2020), available at *https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000*.

[3] See, e.g., Fam. Code, § 3041(e); Prob. Code, §§ 1459–1459.5, 1460.2; Welf. & Inst. Code, §§ 224–224.6.

[4] Indian Child Welfare Act, 25 C.F.R. §§ 23.1–23.144; U.S. Department of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), available at *www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf*.

with these regulations and guidelines. Moreover, in 2017 the California ICWA Compliance Task Force delivered a report to the Attorney General identifying a number of legal issues with California's application of ICWA.[5]

Assembly Bill 3176, enacted in 2018, addressed many of the issues discussed above and directed the Judicial Council to adopt any rules or forms necessary to implement its provisions.[6] Although AB 3176 did not amend the Probate Code provisions that expressly incorporate ICWA's requirements, its amendments to the Welfare and Institutions Code imposed inquiry and notice requirements on probate guardianship and certain conservatorship proceedings.[7] These requirements are also mandated by ICWA, as implemented by the 2016 regulations.

To avoid unnecessary rules amendments and forms revisions, the 2020 council action included changes to ICWA rules and forms applicable to all case types governed by ICWA and the federal regulations and guidelines. Nevertheless, some gaps remained.

The rules of court implementing ICWA's requirements in probate guardianship proceedings were last amended in 2012; they do not reflect current state or federal law. Updating the rules and forms to conform to changes in the law is necessary to prevent confusion and provide accurate guidance to the judicial officers, court staff, attorneys, and litigants who use them. The amendments in this proposal would bring the inquiry and notice requirements in the probate rules into conformity with ICWA, the 2016 federal regulations, AB 3176, and the ICWA rules in title 5. The proposal would also specify processes for an Indian custodian child's tribe to gain access to specific reports and documents filed in proceedings subject to ICWA's requirements.

In addition, the 2016 regulations clarified the distinction between a "child-custody proceeding," including "foster care placement," and an "emergency proceeding," as well as the scope of an emergency proceeding[8] The proposed addition of subdivision (d) to rule 7.1015 applies relevant aspects of ICWA's emergency provisions to temporary guardianships and conservatorships. Specifically, it requires the probate court, before establishing or extending a temporary guardianship or conservatorship for a child the court knows or has reason to know is an Indian child, to find that appointment of the temporary guardian or conservator is necessary "to prevent imminent physical damage or harm to the child."[9]

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[5] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), available at *https://caltribalfamilies.org/wp-content/uploads/2020/12/ICWAComplianceTaskForceFinalReport2017.pdf*.

[6] Assem. Bill 3176 (Stats. 2018, ch. 833), available at *http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3176*.

[7] See Welf. & Inst. Code, § 224.1(d)(1)(A) (defining "Indian child custody proceeding" to include a proceeding under the Probate Code that can lead to placement in the home of a guardian or conservator).

[8] 25 C.F.R. § 23.2 (emergency proceeding "means and includes any court action that involves an … emergency placement of an Indian child").

[9] 25 C.F.R. § 23.113; see also 25 U.S.C. § 1922.

In the course of reviewing form GC-210(CA), the Probate and Mental Health Advisory Committee noted several items requiring revision to clarify the application of existing law to probate guardianship proceedings. First, the committee recommends combining existing items 3, information about the proposed guardian, and 6, suitability of the proposed guardian, into a single item 3 to facilitate the thorough and accurate provision of the information. Second, the committee recommends adding a new item 4 for the petitioner to use to explain why a guardianship, as opposed to continued parental custody, is needed.[10] Third, the committee recommends expanding the scope of item 6 to give the court a clearer picture of the parent's position on the establishment of the guardianship and the appointment of the proposed guardian.[11]

Finally, the committee and the forum examined the rules and forms in this proposal to identify and replace gender-specific terms with gender-neutral ones consistent with the spirit of the Gender Recognition Act (Sen. Bill 179; Stats. 2017, ch. 853).

Policy implications

The rules amendments and forms revisions in this proposal apply the requirements of ICWA, the 2016 federal regulations implementing ICWA, and SB 3176, which incorporated the federal laws into California statute, to probate guardianships and select conservatorships in which an Indian child is or may be the subject of the proceedings. To the extent that this proposal has policy implications, they stem from the policies underlying federal law and the California statutes incorporating it. The proposal should benefit the judicial branch, justice partners, attorneys, and litigants by clarifying the application of ICWA to probate guardianship and conservatorship proceedings, thereby reducing confusion and delay.

Comments

The proposal circulated for public comment from April 15 through May 27, 2021, as part of the spring 2021 invitation-to-comment cycle. It was sent to the standard mailing list for family, probate, and juvenile law proposals, which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate (CASA) programs, and other family, probate, and juvenile law professionals. It was also sent to tribal leaders, tribal advocates, and tribal attorneys, and included in the monthly newsletter distributed by the Tribal Court–State Court Forum, and sent to the California Department of Social Services Office of Tribal Affairs listserve to reach those with an interest in the Indian Child Welfare Act and tribal issues.

[10] Prob. Code, § 1514(b); see Fam. Code, §§ 3040–3041.

[11] The court needs this information because Family Code sections 3040 and 3041 set different standards for granting child custody to a nonparent depending on whether a parent objects. Compare Fam. Code § 3040(a)(3) (best interest) with Fam. Code § 3041(a) (parental custody detrimental).

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The proposal received six comments, including comments on behalf of three superior courts, the Orange County Bar Association, and two tribal organizations. One commenter indicated they did not agree with the proposal. Two commenters agreed with the proposal, and three commenters did not indicate whether they agreed.

The superior court comments related primarily to the potential fiscal and operational impacts of the proposed changes and included some minor corrections to the proposal, which have been incorporated. Substantive changes primarily for clarity and consistency with state and federal requirements were suggested by the two tribal commenters, and the majority of those have been incorporated into the proposal as revised.

One commenter suggested that a temporary guardian should not be appointed for an Indian child even if the court had evidence that a temporary guardianship was necessary to "prevent imminent physical damage or harm to the child." The commenter suggested that if there is evidence to support this finding, then the only appropriate course of action under California law is to require that a dependency petition be filed with the juvenile court. The committee and forum considered this comment, reviewed the relevant state and federal laws, and concluded that neither federal nor state law requires that an emergency proceeding under ICWA be heard exclusively by the juvenile court. Federal and state law require only that any court ordering the emergency removal or placement of an Indian child comply with the requirements of 25 C.F.R. § 23.113 and implementing state law. For example, section 1513(b) of the Probate Code addresses the situation in which a guardianship petition is filed for a child who may be abused or neglected and in need of immediate protection by authorizing the probate court to refer the child to the child welfare agency for a determination of whether to initiate a dependency proceeding. Because a child welfare investigation can be lengthy and emergency measures may be needed to protect the child, section 1513(b) also authorizes the court to appoint a temporary guardian for the child pending completion of the investigation rather than dismissing the petition. ICWA does not preclude the probate court from taking these steps to protect an Indian child. It does, however, require the court to comply with its emergency requirements by finding that a temporary guardianship is necessary to protect the child from imminent physical damage or harm.[12] The proposal was revised to clarify the application of those requirements to a temporary guardianship when the court knows or has reason to know the subject of the case is an Indian child.

Alternatives considered

The committee and forum considered whether to defer action on this proposal until passage of cleanup legislation to update the Probate Code to reflect the requirements in the federal regulations and AB 3176. The committee and forum concluded that the current proposal is

[12] Many petitions for temporary probate guardianships are filed in circumstances that began as informal, voluntary placements of children with nonparents. Emergencies requiring caregivers to obtain legal custody over the children arise more frequently in these situations. For example, an informal caregiver may need to authorize medical treatment for a child in the absence of a parent. If the initial removal of the child or placement with the caregiver was improper under ICWA, the parents or Indian custodian could challenge the placement on that basis without precluding the probate court from taking action necessary to protect the child from harm. See 25 C.F.R. § 23.114.

necessary at this time because the ICWA requirements in federal and state law already apply to probate guardianship proceedings, and the existing rules and forms are inconsistent with those requirements.

Fiscal and Operational Impacts

The superior courts that submitted comments indicated that there would be costs associated with training probate investigators and staff, updating docket codes, and other court procedures. Clerks might require additional time to document the additional orders required. The court may need to take additional time to complete the inquiry requirements and potentially hold emergency hearings. The committee and forum note that these costs are created by the changes to the legal requirements under federal and state law, and that the proposed revisions to the rules simply ensure that they are consistent with federal and state requirements.

Attachments and Links

1. Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015, at pages 8–16
2. Forms GC-210(CA) and ICWA-005-INFO, at pages 17–22
3. Chart of comments, at pages 23–39

Attachment A: Indian Child and Family Preservation Program Comment

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Rules 7.51, 7.1003, 7.1013, and 7.1015 of the California Rules of Court are amended, effective January 1, 2022, to read:

Rule 7.51. Service of notice of hearing

(a)–(e) * * *

(f) Notice when Indian Child Welfare Act may apply

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or specified conservatorship proceeding, notice must be given as prescribed in rule 7.1015(e).

Rule 7.1003. Confidential guardianship status report ~~form~~ (Prob. Code, § 1513.2)

(a)–(b) * * *

(c) Access to status report

(1) Except as provided in paragraph 2, the clerk must make a status report submitted under Probate Code section 1513.2 available only to persons served in the guardianship proceedings or their attorneys.

(2) If the ward is an Indian child and the child's tribe has intervened in the proceeding, the clerk must also make the status report available to the representative designated by the child's tribe.

(3) Paragraphs (1) and (2) are not intended to preclude an interested person or an Indian child's tribe that has not intervened from filing a petition for a court order directing the clerk to make the status report available to that person or tribe.

Rule 7.1013. Change of ward's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed below at least 15 days before the date of the proposed change~~,~~ and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

(1)–(2) * * *

(3) The ward's parents and any former Indian custodian;

(4) * * *

(5) A guardian of the ward's estate; ~~and~~

(6) Any person who was nominated as guardian of the ward ~~under Probate Code sections 1500 or 1501~~ but was not appointed guardian in the proceeding; and

(7) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

(b) * * *

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1) * * *

(2) The ward's parents and any former Indian custodian;

(3) * * *

(4) A guardian of the ward's estate; ~~and~~

(5) Any person who was nominated as guardian of the ward ~~under Probate Code sections 1500 or 1501~~ but was not appointed guardian in the proceeding; and

(6) The ward's tribe, if the ward is an Indian child and the ward's tribe has intervened in the proceeding.

(d)–(g) * * *

Rule 7.1015. ~~Indian Child Welfare Act in g~~Guardianship and certain conservatorship proceedings involving Indian children (Prob. Code, §§ 1449,

1459, 1459.5, 1460.2, 1511(b), (i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963; 25 C.F.R. §§ 23.1–23.144)

(a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

(1) "Act" means the federal Indian Child Welfare Act (25 ~~United States Code sections~~ U.S.C. §§ 1901–1963).

(2) "Petitioner" ~~means and~~ refers to:

(A) A petitioner for the appointment of a guardian of the person of a minor child; or

(B) A petitioner for the appointment of a conservator of the person of a formerly married minor child whose marriage has been dissolved.

(b) Applicability of this rule and rules 5.480 through 5.487~~7~~8

(1) This rule applies to the following proceedings under division 4 of the Probate Code ~~when the proposed ward or conservatee is an Indian child, within the meaning of the act~~:

(A) A guardianship of the person or of the person and estate, including a temporary guardianship, in which the proposed guardian of the person is not the proposed ward's ~~natural~~ biological parent or Indian custodian ~~within the meaning of the act~~;

(B) A conservatorship or limited conservatorship of the person or of the person and estate, including a temporary conservatorship, of a formerly married minor whose marriage has been dissolved in which the proposed conservator of the person is not ~~a natural~~ the proposed conservatee's biological parent or Indian custodian ~~of the minor~~ and is seeking physical custody of the proposed conservatee.

(2) Unless the context requires otherwise, ~~requires,~~ rules 5.480 through 5.487~~7~~8 apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.487~~7~~8 to social workers, probation officers, county probation departments, or county social welfare departments are references to the petitioner or petitioners for the appointment of a guardian or conservator of

the person ~~of an Indian child~~ and to ~~an Indian child's~~ the appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a ~~temporary or general~~ guardian or conservator of the person of ~~the~~ a child ~~involved~~ in a proceeding listed in (1), the duties and responsibilities of a petitioner under the Act and this rule ~~are transferred to and~~ become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner ~~has~~ knows or possesses concerning the child to the appointed guardian or conservator.

~~**(c) Notice**~~

~~If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of Probate Code sections 1449 and 1459.5 and Welfare and Institutions Code section 224.3(b), that an Indian child is involved, the petitioner and the court must notify the child's parents or legal guardian and Indian custodian, and the Indian child's tribe, of the pending proceeding and the right of the tribe to intervene, as follows:~~

~~(1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.~~

~~(2) The petitioner and his or her attorney, if any, must complete the *Notice* and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.~~

~~(3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) in the manner described in (1) and sign the declaration of mailing on the *Notice*.~~

~~(4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve~~

~~the *Notice* in the manner described in (1) and sign the certificate of mailing on the *Notice*.~~

~~(5) The original of all *Notices of Child Custody Proceeding for Indian Child* (form ICWA-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.~~

~~(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.~~

~~(7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the *Notice*, the additional tribes or bands may be listed on an *Attachment to Notice of Child Custody Proceeding for Indian Child* (form ICWA-030(A)).~~

~~(8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first hearing unless and until it is determined that the act does not apply to the proceeding.~~

~~(9) If, after a reasonable time following the service of notice under the act – but in no event less than 60 days – no determinative response to the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is received, the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.~~

~~(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer required and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.~~

~~(11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.~~

~~(d)~~(c) ~~Duty of~~ Inquiry

(1) The court, ~~a~~ the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner~~,~~ have an affirmative and continuing duty to inquire whether ~~the~~ each child

~~involved in~~ who is the subject of a ~~matters~~ proceeding identified in (b)(1) is or may be an Indian child.

(2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child ~~involved in~~ who is the subject of the proceeding, if the child is old enough, ~~and~~ the parents, any ~~other legal~~ Indian custodian or previously appointed guardian of the person, and ~~any Indian custodian,~~ available extended family members, as defined in 25 U.S.C. § 1903(2), or other persons having an interest in the child whether the child is or may be an Indian child, ~~and must~~ complete ~~items 1c and 8 of the *Guardianship Petition – Child Information Attachment* (form GC-210(CA))~~ *Indian Child Inquiry Attachment* (form ICWA-010(A)), and attach ~~it~~ that form to ~~his or her~~ the petition.

(3) ~~At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.~~ At the beginning of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, the court must:

(A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child; and

(C) Order the parent, Indian custodian, or existing guardian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the parent, Indian custodian, or guardian ~~does not personally appear at a hearing in~~ is not available at the beginning of a proceeding identified in (b)(1), the court ~~may~~ must order the petitioner to use reasonable diligence to find and ~~ask~~ inform the parent, Indian custodian, or ~~legal~~ guardian that the court has ordered that person to complete and deliver to the petitioner a *Parental Notification of Indian Status* (form ICWA-020).

(5) If the court or county investigator, the petitioner, ~~appointed guardian or conservator~~, or the attorney for ~~a~~ the petitioner ~~or appointed guardian or conservator,~~ knows or has reason to know or believe that an Indian child is

~~involved in~~ the subject of the proceeding~~,~~ but has not conclusively determined that the child is an Indian child, ~~he or she~~ that person must, as soon as practicable, ~~make~~ conduct further inquiry ~~as soon as practicable~~ by:

(A) Interviewing the parents, Indian custodian, and ~~"~~extended family members~~"~~ to gather the information listed in ~~Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)~~ Welfare and Institutions Code section 224.3(a)(5);

(B) Contacting the ~~U.S. Department of the Interior,~~ federal Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; ~~and~~

(C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child's tribal membership ~~status~~ or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C); and

(D) Filing with the court documentation of that further inquiry, including, at a minimum:

(i) The names of all persons contacted and interviewed or attempted to be interviewed under subparagraph (A), the dates of those contacts and interviews, and any information gathered from them; and

(ii) The dates and methods of contact with the agencies listed in subparagraph (B) and the tribes and persons in subparagraph (C) and any information gathered as a result of those contacts.

(6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding~~,~~ but does not have sufficient evidence to determine that the child is an Indian child, and the further inquiry conducted in (5) has not been conducted, the court ~~may direct any~~ must order one or more of the persons named in (5) to conduct the inquiry and submit the documentation described in that paragraph.

(7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is

an Indian child ~~include the following:~~ are those set forth in Welfare and Institutions Code section 224.2(d) and rule 5.481(b).

~~(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);~~

~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or~~

~~(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.~~

(d) Temporary guardianships and conservatorships of an Indian child

In addition to the applicable requirements in Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062, the following requirements apply to temporary guardianship and conservatorship proceedings if the court knows or has reason to know that the proposed ward is an Indian child:

(1) Before appointing a temporary guardian or conservator of the person for an Indian child over the objection of a parent, tribe, or Indian custodian, the court must:

(A) Advise the parent or Indian custodian that if they cannot afford counsel, the court will appoint counsel for them under section 1912(b) of the Indian Child Welfare Act; and

(B) Find, in addition to facts in the petition establishing good cause for the appointment and any other showing the court may require under Probate Code section 2250(b), that the appointment is necessary to prevent imminent physical damage or harm to the child.

(2) At a hearing under Probate Code section 2250(f) or on a petition, including an ex parte petition, to terminate a temporary guardianship or conservatorship of an Indian child, the court must determine whether the temporary guardianship or conservatorship is still necessary to prevent imminent physical damage or harm to the child. If the court determines that the

temporary guardianship or conservatorship is no longer necessary, the court must terminate the temporary guardianship or conservatorship and, if a parent or Indian custodian is available, order the child returned to the physical custody of the parent or Indian custodian.

(3) Before extending a temporary guardianship or conservatorship of an Indian child, under Probate Code section 2257(b), more than 30 days from the date of its establishment, the court must, in addition to finding good cause for the extension, determine that:

(A) Terminating the temporary guardianship or conservatorship would subject the child to imminent physical damage or harm;

(B) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and

(C) It has not been possible to hold a hearing on the petition to appoint a guardian that complies with the substantive requirements of the Act for a foster care placement proceeding.

~~(c)~~**(e) Notice**

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of ~~Probate Code sections 1449 and 1459.5 and~~ Welfare and Institutions Code section ~~224.3(b),~~ 224.2(d) and rule 5.481(b), that an Indian child is ~~involved~~ the subject of the proceeding, the petitioner and the court must ~~notify~~ give notice of the proceeding and the right of the child's tribe to intervene in the manner prescribed by Welfare and Institutions Code section 224.3(a) and rule 5.481(c) to the child's parents, the child's Indian custodian or ~~legal~~ previously appointed guardian of the person, ~~and Indian custodian,~~ if any, and the ~~Indian~~ child's tribe~~, of the pending proceeding and the right of the tribe to intervene, as follows:~~ or, if the child's tribe has not been determined, all tribes of which the child may be a member or eligible for membership.

GC-210(CA) Child Information Attachment to Probate Guardianship Petition

Case Number:

Guardianship of *(all children's names):* _____

This child's name: _____

Fill out a separate copy of this form for **each child** for whom your petition asks the court to appoint a guardian.

This form is attached to the Petition, ☐ **form GC-210, item 2,** or ☐ **form GC-210(P), item 8.**

The petition asks the court to appoint a guardian of this child's *(specify):* ☐ person ☐ estate ☐ person and estate.

1 Tell the court about this child

a. Child's full legal name: _____ Date of birth: _____
First Middle Last *mm/dd/yyyy*

b. Child's current address: _____

c. Indian child inquiry *(Complete only if your petition asks the court to appoint a guardian of this child's person or person and estate. If your petition asks the court to appoint a guardian of this child's estate only, skip this item and go to item 1d.)*

☐ I have asked whether the child is or may be a member of one or more Indian tribes recognized by the federal government, or eligible for membership in such a tribe and the biological child of a tribal member, and whether the child or parents live or are domiciled on a reservation or rancheria or an Alaskan Native village. Form ICWA-010(A), *Indian Child Inquiry Attachment,* is attached to this form.

☐ I have not asked about the child's Indian heritage because the parents are unavailable or deceased.

(For more information about your duties under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) and California law, including making the inquiry and completing form ICWA-010(A) if the child is or may be an Indian child, see Information Sheet on Indian Child Inquiry Attachment and Notice of Child Custody Proceeding for Indian Child *(form ICWA-005-INFO).)*

d. Is this child married? ☐ Yes ☐ No ☐ Never married If you checked "No," was this child married in the past but the marriage was dissolved or ended in divorce? ☐ Yes ☐ No
(The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)

e. Is this child receiving public benefits? ☐ Yes ☐ No ☐ I don't know *(If you checked "Yes," fill in below.)*

Type of Aid	Monthly Benefit	Type of Aid	Monthly Benefit
☐ TANF (Temporary Asst. for Needy Families)	$	☐ Other *(explain):* _____	$
☐ Social Security	$	☐ Other *(explain):* _____	$
☐ Dept. Veterans Affairs Benefits	$		

f. Name and address of the person with *legal* custody of this child: _____

g. ☐ *(Check this box and fill out below if the person the child lives with is* ***not*** *the person in f. with legal custody.)*
Name and address of the person this child lives with (who takes care of the child): _____

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Guardianship of *(all children's names)*: _____ **Case Number:**

This child's name: _____

1 Tell the court about this child (continued)

h. ☐ *(Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child custody, or other similar court case.)* Describe the court case below:

Type of Case	Court District or County and State or Tribe	Case Number (if known)

i. ☐ *(Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of State Hospitals.)* Write the name of the institution here:

2 List the names and addresses of this child's relatives and all other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Mother		
Father		
Grandmother (Mother's mother)		
Grandfather (Mother's father)		
Grandmother (Father's mother)		
Grandfather (Father's father)		
Sibling		
Sibling		
Sibling		
Sibling		
Sibling		
Sibling		
Sibling		

☐ *(Check here if this child has additional relatives, including parents, grandparents, siblings, or half-siblings, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Item 2: Other Relatives" at the top of the paper and attach it to this form.)*

DRAFT

Guardianship of *(all children's names)*: _____ **Case Number:**

This child's name: _____

2 List the names and addresses of this child's relatives and all other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Spouse *(Guardianship of the estate only)*		
Person nominated as guardian of this child *(if someone other than a proposed guardian named in 3)*		
Indian custodian *(if any)*		
Child's tribe *(if any and if known)*		

☐ *(Check here if there is more than one tribe that the child may be eligible for membership in, and list the names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of the child, and "Attachment 2: Child's tribes" at the top of the paper and attach it to this form.)*

3 Information about the proposed guardian:

a. Name *(name all proposed guardians if more than one)*: _____

b. Relationship(s) to the child named in 1 *(check all that apply)*:

☐ Relative *(specify relationship(s) to the child of each proposed relative guardian)*: _____

☐ Not a relative *(explain interest in or connection to this child)*: _____

c. Did the child's parent(s) nominate the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
(If you checked "Yes," attach the written nomination as Attachment 3c.)

d. Does this child currently live with the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
If "Yes," how long has the child lived with the proposed guardian(s)? *(years, months)*: _____

e. If the court approves the guardianship, will this child live with the proposed guardian(s)? ☐ Yes ☐ No

f. Does/do the proposed guardian(s) currently plan to adopt this child? ☐ Yes ☐ No ☐ I don't know

4 *Explain why appointing a guardian for the child named in 1 would be in the child's best interest:*

_____

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4: Guardianship—Best Interest of Child" at the top of the paper and attach it to this form.)*

DRAFT

Guardianship of *(all children's names):* _____ **Case Number:**

This child's name: _____

5 *Explain why appointing the person named in (3) to be this child's guardian would be in the child's best interest:*

_____

_____

_____

_____

_____

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)*

6 a. Does one or do both of this child's parents agree:

(1) That the court needs to appoint a guardian for the child?

Parent *(name):* _____ ☐ Yes ☐ No ☐ I don't know

Parent *(name):* _____ ☐ Yes ☐ No ☐ I don't know

(2) That the person named in (3) should be the child's guardian?

Parent *(name):* _____ ☐ Yes ☐ No ☐ I don't know

Parent *(name):* _____ ☐ Yes ☐ No ☐ I don't know

b. If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree:

(1) That the court needs to appoint a guardian for the child?

Custodian *(name):* _____ ☐ Yes ☐ No ☐ I don't know

(2) That the person named in (3) should be the child's guardian?

Custodian *(name):* _____ ☐ Yes ☐ No ☐ I don't know

7 ☐ **Check this box if you (the petitioner) are not the person named in (3), and fill in below.**

Your relationship to this child:

☐ Relative *(specify relationship):* _____

_____

☐ Not a relative *(explain your interest in or connection to this child):* _____

_____

_____

_____

_____

_____

8 Except as otherwise stated in this form, the statements made in the petition to which this form is attached fully apply to this child.

DRAFT

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment,* and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out whether the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment.* This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment

1. Try to find contact information for the child's parents, the child's Indian custodian (if the child is living with an Indian person other than a parent) or other legal guardian, the child's grandparents and great-grandparents, and other available family members.
2. Contact the child's parents, the child's Indian custodian or any other legal guardians, available extended family members, and any other persons known to have an interest in the child and ask them (and the child, if old enough) these questions:
   a. Is the child a member of a tribe or eligible for tribal membership, and if they think the child might be, then which tribe or tribes?
   b. Are the parents or other members of the extended family members of a tribe, and if they think they might be, which tribe or tribes?
   c. Does the child, or do the child's parents or Indian custodian, if any, live in Indian country, including a reservation, rancheria, Alaska Native village, or other tribal trust land?
   d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?
   e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?
   f. Do they have any other information indicating the child is an Indian child?
3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment,* and attached it to the petition. This requirement does not apply to a petition for appointment of a guardian of the estate only.

After you take the steps described above, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case.

You have reason to believe the child is an Indian child if any of the people you talk to answers "Yes" to any of your questions. Tribes that learn about the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction.

Your contacts with the tribe or tribes should include:

(1) Contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act, which is published in the Federal Register, by telephone, facsimile, or email; and

(2) Sharing with the tribe or tribes any information identified by the tribe as necessary for the tribe to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*

Following your inquiry about the child's Indian status and contacts with the child's tribe or tribes, if you know or have reason to know the child is an Indian child, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*

Some tips to help you figure out if you have a reason to know the child is an Indian child

You have reason to know:

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, a member of the child's extended family or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live on a reservation or rancheria or in an Alaskan Native village;

(continued on next page)

You have reason to know *(continued):*

3. If the child is or has been a ward of the tribal court; or
4. If the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There may also be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

If you know or have reason to know that the child is an Indian child, you must send the *Notice* to the following:

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tips on how to find the address for the child's tribe or tribes

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. § 23.12) a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can access the Federal Register list and other resources related to ICWA on the Bureau of Indian Affairs website at *www.bia.gov/bia/ois/dhs/*.

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the *Notice* to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 20240, and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the *Notice* and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birthdate, and birthplace; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

How do you send the *Notice* and prove to the court that you have done so?

If you have an attorney, the attorney will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the *Notice,* but you must deliver copies of the *Notice* and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then complete step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, completed and signed copies of the following forms:
   a. Your petition;
   b. Form ICWA-010(A), *Indian Child Inquiry Attachment;* and
   c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.* Your proof must consist of the following:
   a. The original signed *Notice* (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A));
   b. All return receipts given to you by the post office and returned from the mailing; and
   c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	California Tribal Families Coalition by Mica Llerandi, Senior Attorney, Legal and Program Services	N/I	The proposed amendments implement Assembly Bill 3176 (2018, Waldron), a bill sponsored by CTFC codifying the 2016 federal ICWA regulations into California law. We appreciate the attention to the issue and the opportunity to provide comments on the important changes to increase ICWA compliance in probate guardianship and conservatorship cases. Request for Specific Comments *Does the proposal adequately address the stated purpose?* Yes, the proposal clearly and adequately addresses the stated purpose. Regarding Proposed Edits to Rules of Court - Rule 7.51 Rule 7.51 concerns service of the notice of hearing. The amended references rule 7.1015, which is also subject to amendment. Under the current version of rule 7.1015(c) addresses notice, but with the amendment this subsection is moved to 7.1015(e). Rule 7.15 should reflect the proposed change for rule 7.1015 to subsection (e). - Rule 7.1003 CTFC supports the changes proposed in rule 7.1003, specifically subsection (c)(2) and (c)(3). Regarding subsection (c)(2), the changes to the rule authorize a tribe's access to the guardianship status reports and for the reports to	No response required No response required. The proposal was revised in response to this comment. No response required.

	Commenter	Position	Comment	Committee Response
			be provided through the Clerk of the court. Often, in probate cases, the petitioners are unrepresented and do not know requirements or responsibilities for sending documents to tribes. As a result, tribes have difficulty accessing the guardianship reports causing delays in the proceeding. Requiring the Clerk of the court to send the investigator's report to the tribe will ensure that the tribe is receiving court documents in a timely manner. CTFC supports subsection (c)(3) because it affirms the right of a tribe to receive the guardianship report, even if the tribe has not intervened in the proceeding. Often, as a lack of resources, tribes are not able to intervene in guardianship cases, and as a result will opt to monitor the guardianship case. However, monitoring cases becomes difficult when a tribe does not receive updates or Requiring that tribes always receive a report allows the tribe to evaluate a prospective guardian and the placement to ensure that guardian will support the Indian child's connection with the tribe. Without reports, a tribe's analysis on the appropriateness of a proposed guardian is limited to the information provided in the guardianship petition. - Rule 7.1015 CTFC recommends including a definition of "Indian child" in the rule. With the rule adding subsection (a)(2) defining "emergency proceeding" for cases involving an "Indian	The proposal does not address service of the investigator's report. Rule 7.1003 governs access to the confidential guardianship status report. The guardian files this report with the court once a year after appointment. The court does not send the report to anyone. Under section 1513.2(c) of the Probate Code, this report is confidential and may be made available only to persons who have been served in the proceedings or their attorney. The amendment to the rule clarifies that an Indian child's tribe is entitled to obtain access to this report. "Indian child" is defined by statute. Generally, the Judicial Council avoids repeating statutory language into the rules of court unless it is required for clarity.

	Commenter	Position	Comment	Committee Response
			child," as a distinct legal term, it is important to define "Indian child" will be important. CTFC recommends updating the title language of rule 7.1015 to "Guardianship and Certain Conservatorship proceedings involving Indian Children." This update would ensure that practitioners and judges see the applicability of the rule to the triggering event of a proceeding involving an Indian child. Regarding Proposed Edits to Judicial Council Form GC-210(CA) CTFC recommends two edits to GC-210(CA). In section 1(c), the petitioner must assert whether the parents were asked about the child's Indian heritage. The petition should offer an additional option, specifically, "I have not asked about the child's Indian heritage because the parents are unavailable or deceased." This additional checkbox would help the judicial officer reviewing the petition to determine if further inquiry is necessary. Section 2, on page 3, of the petition inquires about the child's tribe. Unlike the ICWA-030, the GC-210(CA) allows for the options of only one tribe that the child is affiliated with to be listed. The petition must offer an opportunity for the petitioner to detail whether the child may be connected to more than one tribe. A suggested addition would be to include language under the line for "Child's Tribe" to state, "Check here if there is more than one tribe that the child may be eligible for membership with and list the names and	The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child and "Attachment 2: Child's tribes." This addition will ensure that the judicial officer is ensuring that the ICWA inquiry is conducted and that the child's tribe(s) are properly noticed.	
2.	Indian Child and Family Preservation Program by Joanne Willis Newton, Attorney	NI	*[1]As a general comment, the citation to authorities incorporated in the rules should include references to the applicable provisions of 25 CFR Part 23. Rule 7.51(f) should be revised as follows: If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or conservatorship proceeding, notice consistent with section 224.3(a) of the Welfare and Institutions Code and corresponding federal regulations to the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe must be given as prescribed in rule 7.1015(d). Recognizing that if there is an Indian custodian involved they have nearly identical rights as the parent, Rule 7.1013(a)(7) should be revised as follows: (7) If the ward is an Indian child, the child's former Indian custodian(s) if any, and, if the child's tribe has intervened, the child's tribe.	The advisory bodies considered this comment but did not agree that citation to the regulations was necessary, as the existing statutory references are sufficient to establish the authority for the rule provisions. The proposal was revised in response to this comment to remove the reference to the child's tribe from rule 7.51(f) and replace it with a general cross reference to rule 7.1015(e), which prescribes the persons, including the child's tribe, who must be given notice and the manner of that notice. A reference to section 224.3 of the Welfare and Institutions Code was added to rule 7.1015(e) to clarify the source of the requirements. The proposal was revised in response to this comment to add a reference to Indian custodian in rule 7.1013(a)(3) along with parents of the ward. The proposal was revised in response to this comment to add a reference to Indian custodian in rule 7.1013(c)(2) along with parents of the ward.

[1] This comment was submitted in track changes and the substance has been converted to fit into the comment chart. The entire comment is attached.

	Commenter	Position	Comment	Committee Response
			Rule 7.1013(c)(6) should be revised as follows: (6) If the ward is an Indian child, the child's former Indian custodian(s), if any, and, if the child's tribe has intervened, the child's tribe.	The proposal was revised in response to this comment as discussed below.
			Rule 7.1015(a) Definitions: Definition of "emergency proceeding" should be removed. The authority for a child welfare agency to execute a temporary emergency removal of an Indian child is supported by provisions in the WIC, and circumscribed by the necessity to hold the detention hearing on an expedited basis. There is no equivalent authority for a private person to execute a temporary removal of an Indian child to effect a temporary guardianship. If the petitioner believes the standard for emergency removal exists (imminent physical damage or harm), the appropriate step is to initiate a referral to a child welfare agency or file a JV-210 with the agency to request filing of a 300 petition.	The advisory bodies have removed the definition of "emergency proceeding" from the rule to avoid confusion. The advisory bodies have nevertheless determined that neither federal nor state law preclude the probate court from appointing a temporary guardian or conservator for an Indian child in most circumstances if the court complies with the requirements for "emergency proceedings," as discussed in more detail in response to the comment on rule 7.1015(d).
			Rule 7.1015(c)(2) should be revised as follows: (2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child involved in the proceeding, if the child is old enough, ~~and~~ the parents, any ~~other legal~~ previously appointed guardian of the person, and any Indian custodian, and consistent with section 224.2(b) of the Welfare and Institutions Code and corresponding federal regulations, extended family members, and others having an	The proposal was revised in response to this comment to include references to extended family members and others having an interest in the child.

	Commenter	Position	Comment	Committee Response
			interest in the child, whether the child is or may be an Indian child, ~~and must~~ complete ~~items 1c and 8 of the *Guardianship Petition – Child Information Attachment* (form GC-210(CA))~~ *Indian Child Inquiry Attachment* (form ICWA-010(A)), and attach ~~it~~ that form to ~~his or her~~ the petition.	
			Rule 7.1015(c)(3)(C) should be revised to add reference to Indian custodian.	Rule 7.1015(c)(3)(C) included a reference to Indian custodian as circulated for public comment.
			Consistent with section 224.2(e) of the Welfare and Institutions Code, rule 7.1015(c)(5) and (6) should be revised as follows: (5) If the court or county investigator, the petitioner, ~~appointed guardian or conservator~~, or the attorney for ~~a~~ the petitioner ~~or appointed guardian or conservator,~~ knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have confirmation from a party or a tribe that the child is an Indian child ~~he or she~~ that person must make further inquiry as soon as practicable by:	The proposal was revised in response to this comment.
			(6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have confirmation from a party or a tribe that the child is an Indian child the court ~~may direct any~~ must direct one or more of the persons named in (5) to conduct the inquiry described in that paragraph.	The proposal was revised in response to this comment.

	Commenter	Position	Comment	Committee Response
			Rule 7.1015(d) - See comment above removing "emergency proceeding" definition. It is important the family court and probate court not be used for emergency removals for the reasons stated above and because ICWA does not apply to such proceedings (25 CFR 23.103(a)(2)). Proposed subdivision (d) should be replaced with the following: (1) Emergency proceedings for the removal of Indian children are only authorized under Welfare and Institutions Code section 319. A petition for appointment of a temporary guardian or conservator of the person of an Indian child is not an emergency removal within the meaning of 25 U.S.C. section 1922 and cannot be used to circumvent the requirements of the Act. (2) When a petitioner has a good faith belief that removal of an Indian child from a parent, guardian or Indian custodian is necessary to prevent imminent physical damage or harm to the child, the petitioner may apply to a social worker to commence dependency proceedings in the juvenile court pursuant to and in accordance with Welfare and Institutions Code section 329, using the *Application to Commence Proceedings by Affidavit and Decision by Social Worker* (JV-215)	After careful consideration of this comment, the advisory bodies have determined that probate guardianships fall within ICWA's definition of a "child-custody proceeding" that can culminate in a "foster-care placement" in the home of a guardian or conservator (see 25 C.F.R. § 23.2); that neither federal nor state law require an "emergency proceeding" be conducted by a specific state court as long as the legal requirements are complied with; and that the application of ICWA's emergency placement protections to Indian children subject to temporary guardianship proceedings implements the Act rather than circumventing it. The commenter cites 25 C.F.R. § 23.103(a)(2) for the proposition that an emergency proceeding under the Indian Child Welfare Act cannot take place in family or probate court, but that regulation states only that "ICWA includes requirements that apply whenever an Indian child is the subject of:… (2) An emergency proceeding." 25 C.F.R. § 23.103(a)(3) does appear to exclude family law custody proceedings from ICWA's application when they result in the award of custody of an Indian child to one parent, but probate guardianships award legal and physical custody to a nonparent. With respect to California law, Welfare and Institutions Code section 224.1(d)(1) clearly contemplates that an Indian Child Welfare Act proceeding can take place within the probate court. Subsection 224.1(*l*) defines "'emergency proceeding' ***for the purposes of juvenile dependency proceedings*** [as] the initial petition hearing held pursuant to Section 319" (emphasis

SPR21-13
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				added). It does not restrict the application of the emergency proceeding requirements in other proceedings. Section 1513(b) provides for the emergency protection of all children, including Indian children, by the probate court when they may come under the jurisdiction of the juvenile dependency court by authorizing the court to refer the child to the child welfare agency and take whatever steps are necessary to protect the child, including appointing a temporary guardian.
			Form GC-210(CA) The following question should be added to item 1: Does the child live on an Indian reservation? Yes ____ No _____ If you checked "Yes", what reservation? _____	The form was revised in response to this comment.
			Item 1(h) should be revised to add "or Tribe" behind Court District or County and State in middle column.	The form was revised in response to this comment.
			The addition of "Indian custodian" and "Tribe" are very important in item 2.	No response required.
			Add a question to item five: "If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree that the court needs to appoint a guardian for the child?"	Proposed subitem c. was added to item 6 in response to this comment.
			ICWA-005-INFO Revise the "Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment" as follows:	The form was revised in response to this comment.

SPR21-13
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

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	Commenter	Position	Comment	Committee Response
			Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment 1. Try to find contact information for the child's parents ~~or other legal guardian~~, the child's Indian custodian (if the child is living with an Indian person other than a parent) or other legal guardian, the child's grandparents and great-grandparents, and other available family members. 2. Contact the child's parents, ~~any other legal guardian, and~~ the child's Indian custodian or any other legal guardians, ~~and other~~ available extended family members, and any other persons known to have an interest in the child and ask them (and the child, if he or she is old enough) these questions: a. Is the child a member of a tribe or eligible for tribal membership, and if they think he or she might be, then which tribe or tribes? b. Are the parents or other members of the extended family ~~they~~ members of a tribe, and if they think they might be, which tribe or tribes? c. Does the child, or do the child's parents or Indian custodian, if any, live in Indian country, including a reservation, rancheria, Alaska Native village, or othertribal trust land? d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe? e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government? ~~e.~~f. Do they have any other information indicating the child is an Indian child? 3. If you are in touch with any of the child's relatives, ask them the same questions. The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment*, and attached it to the petition. This requirement does not apply to a petition for appointment ~~of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 602~~. The duty of inquiry applies for 600 cases as well. (WIC 224.2(a)). Revise the "Some tips to help you figure out if you have reason to know the child is an Indian child" as follows: *Some tips to help you figure out if you have a reason to know the child is an Indian child.* You have reason to know: 1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, ~~or~~ a member of the child's extended family or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting that the child is an Indian child; 2. If the child, the child's parents, or an Indian custodian live in ~~a predominately Indian community~~on a reservation or in an Alaskan Native village; or 3. If the child ~~or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service~~is or has been a ward of the tribal court. ~~3.~~4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.	The form was revised in response to this comment.
3.	Orange County Bar Association by Larisa M. Dinsmoor, President	A	**Specific Comment:** Does the proposal appropriately address the stated purpose? **Yes.**	No response required.
4.	Superior Court of California, County of Los Angeles by Bryan Borys	A	Does the proposal appropriately address the stated purpose? Yes. 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. No	No response required. No response required.

SPR21-13
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

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	Commenter	Position	Comment	Committee Response
			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. Training will be required for Probate investigators and staff regarding inquiry, advisements, notice, and access to reports to the authorized tribe. Additionally, training may be required for Probate attorneys and examiners regarding notice requirements for identifying any service defects in the probate notes or reports that are prepared. The court will be required to provide notice to service providers providing information, and update instructions regarding guardian's responsibilities to give notice to the tribe at self-help clinics. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	No response required. The changes and any associated training are required by the changes to federal and state law rather than this proposal. In addition, training on ICWA-related requirements is available through the Judicial Council's Tribal/State Programs Unit. No response required.
5.	Superior Court of California, County of Orange Family Law and Juvenile Division by Vivian Tran, Administrative Analyst	NI	**Comments** ▪ **Rule 7.51. Service of notice of hearing** ▪ There may be a typo on page 6, as the rule indicates to reference rule 7.1015(d) for noticing the child's tribe, however the correct subsection is (e). ▪ No impact to Juvenile. ▪ **Rule 7.1003. Confidential guardianship**	The proposal has been revised to correct this error.

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			status report form ▪ No impact to Juvenile.	No response required.
			▪ **Rule 7.1013. Change of ward's residence** ▪ No impact to Juvenile.	No response required.
			▪ **Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1459.5, 1460.2)** ▪ There is a sentence on page 8 (numbers 9 and 10 in the margin) that reads "when it is known or there is reason to know that the minor is or may be an Indian child". Unsure of where this sentence will land in the actual code. ▪ No impact to Juvenile.	No response required.
			▪ **Guardianship Petition – *Child Information Attachment* (GC-210(CA))** ▪ The form directs the applicant to complete *Indian Child Inquiry Attachment* (ICWA-010(A)) and indicates the form is attached to the this form (GC-210(CA)). ▪ No impact to Juvenile.	No response required. No response required.
			▪ ***Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child* (ICWA-005-INFO)** ▪ Contacted Judicial Council as the form is currently unavailable on their website. ▪ Form now includes instructions for the Petitioner to fill out the *Indian Child Inquiry*	No response required.

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Attachment (ICWA-010(A)) and attach it to the petition (does not apply to a petition submitted for guardianship of the estate only or a 602 or 601 petition). ▪ No direct impact to Juvenile. ▪ Form may need to be updated in the clerk's office/courtrooms if it is a form that is available to the public/attorneys, although changes to the form have no impact as to Juvenile. **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?* ▪ Yes, everything that the proposal is suggesting is addressed. **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.* ▪ I am unsure if the proposal would provide cost savings. ▪ *What would the implementation requirements be for courts – for example, training staff (please identify position and expected hours of training), revising*	No response required. No response required.

	Commenter	Position	Comment	Committee Response
			processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? ▪ Implementation would affect Probate only and *may* include: ▪ Training: ▪ The clerk will now make the status report accessible to the child's tribe if they have intervened in the proceedings or if a court order was granted requesting access to the status report. ▪ The petitioner must now complete the *Indian Child Inquiry Attachment* (ICWA-010(A)) and attach to the petition. Unsure which area/department needs to be aware (Case Processing or Courtroom), but they may need to be aware of this change. ▪ Clerks and Case Processing may need to be aware of the updated changes on the Child Information Attachment (GC-210(CA)) form. ▪ Procedures: ▪ The rule adds an emergency proceeding section, so there may be a procedure update (unsure if it would be an existing procedure or if a new procedure would need to be created). ▪ The petitioner must now complete the *Indian Child Inquiry Attachment* (ICWA-010(A)) and attach to the petition. The procedures may need to be updated to reflect this change. ▪ If at any point in the proceeding a guardian	No response required. No response required. Note, however, that completion and documentation of the ICWA inquiry is required by existing law. This proposal simply changes the form that must be used to document the ICWA inquiry. No response required. The proposal has been revised to clarify that the findings required in the rule are required in the context of judicial determinations already required under the Probate Code. See response above. See response above.

	Commenter	Position	Comment	Committee Response

			or conservator may be appointed that is not the biological parent of the proposed ward/conservatee, the Court must inquire of each participant if they know or has reason to know that the child is an Indian child, instruct the parties to notify the Court if they receive information that provides reason to know that the child is an Indian child, and order the parent, existing guardian, or Indian custodian to complete the Parental Notification of Indian Status (ICWA-020). A procedure may need to be updated to reflect this information.
			▪ Docket Codes:
			▪ A docket code may need to be created for the following items:
			  ▪ Emergency hearing (for tracking/stats?)
			  ▪ ICWA-010 form
			  ▪ ICWA-020 form
			▪ Hearings:
			▪ A new hearing may need to be created for emergency hearings
			▪ Forms update:
			▪ Child Information Attachment (GC-210(CA)) has been updated and copies of the new form may need to be available at the clerk's office.
			▪ Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child (ICWA-005-INFO) has been updated and copies of the new form may need to be available at the clerk's office.
				No response required.
				
				The advisory bodies believe that, in most cases, the determinations required by ICWA can be made at the hearings held under Probate Code sections 2250(b), 2250(f), and 2257. To the extent that a separate hearing is necessary to comply with ICWA and the federal regulations at 25 C.F.R. § 23.113(b)(2), the requirement is not waivable, as ICWA sets minimum standards to which state court proceedings are required to conform.

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			▪ Case Management system changes: ▪ Unsure if the case management system would be impacted. ▪ *Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?* ▪ Unsure if 3 months would be enough time for these changes to be implemented due to the potential procedure changes, docket code and hearing type updates, and potential training.	No response required. No response required.
6.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	N	Does the proposal appropriately address the stated purpose? Yes. Would the proposal provide costs savings? If so, please quantify. No. 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. **Business Office** – Minimal impact. Staff will need to be informed of the form revisions. In addition, the court's Guardianship of the Person Packet will have to be updated with the newest version of Judicial Council Form #GC-210(CA).	No response required. No response required. No response required.

SPR21-13
Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Courtroom Clerks – Courtroom clerks will be required to memorialize the orders that are being proposed for California Rules of Court, rule 7.1015(c)(3) & (4). This could add 1-2 hours/week to the processing time, when completing minutes.	The requirements that the court ask each participant about the child's Indian status and that the responses be made on the record were established by federal regulation, at 25 C.F.R. § 23.107, included in Welfare and Institutions Code section 224.2(a), (c), and applied to probate guardianships by Welfare and Institutions Code section 224.1(d)(1)(A) and rules 5.480–5.481 of the California Rules of Court.
			Probate Examiners – Examining staff will require training in regards to looking for ICWA notice on temporary petitions. They will also need to be notified of the form changes and the need for ICWA-010(A). Additional changes may need to be made to probate note templates to encompass the required orders that need to be made in compliance with California Rules of Court, rule 7.1015(c)(3) & (4). There would need to be additional training to prepare for the changes in California Rules of Court, rule 7.1013, which would entail training the examiners to require notice to the Indian child's tribe when a change of residence is requested. Time estimate for training = 1 hour.	Note that these changes are required as a result of changes to federal and state law. Training and technical assistance on ICWA-related matters is available upon request from the Judicial Council's Tribal/State Programs Unit.
			Court Investigators – Investigators will need to be informed of the new requirements. No training would be needed.	No response required.
			Judicial Officers - California Rules of Court, rule 7.1015(c)(3) & (4) will require judicial officers to make an inquiry at each appointment hearing (temporary and general) and make	The requirements that the court ask each participant about the child's Indian status and that the responses be made on the record were established by federal regulation, at 25 C.F.R.

SPR21-13

Indian Child Welfare Act (ICWA): Implementation of AB 3176 in Probate Guardianships and Conservatorships (Amend Cal. Rules of Court, rules 7.51, 7.1003, 7.1013, and 7.1015; revise forms GC-210(CA) and ICWA-005-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			additional orders, as necessary. This may take an excessive amount of time and appears duplicative since many of the inquiries are already made in the forms and the Probate Examiner can note the deficiency of not filing a ICWA-010(A).	§ 23.107, included in Welfare and Institutions Code section 224.2(a), (c), and applied to probate guardianships by Welfare and Institutions Code section 224.1(d)(1)(A) and rules 5.480–5.481 of the California Rules of Court.
			Other comments: If the court will be required to send ICWA notice for temporary petitions, pursuant to California Rules of Court, rule 7.1015(b)(2), this will 1) be labor intensive and 2) may not be feasible as the matters are usually set 5-10 days out. This would rarely give the tribe or parties time to respond.	The ICWA notice requirements were established by federal regulation, at 25 C.F.R. §§ 23.111, and are not waivable by state law. To the extent that appointment of a temporary guardian or conservator is necessary to prevent imminent physical damage or harm to the child, both 25 C.F.R. § 23.113 and California Rules of Court, rules 7.1012 and 7.1062 appear to authorize an exception to federal and state notice requirements in exigent circumstances.
			Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	
			Yes, provided the final versions of the forms are provided at least 30 calendar days before the effective date to ensure that there is sufficient time to update procedures, order printed stock, and notify staff.	No response required.

LAW OFFICES OF JOANNE WILLIS NEWTON
A PROFESSIONAL CORPORATION

May 27, 2021

Ann Gilmour and Corby Sturges
Judicial Council of California
455 Golden Gate Ave.
San Francisco, CA

Sent via email to: corby.sturges@jud.ca.gov and ann.gilmour@jud.ca.gov

RE: SPR21-12, Juvenile Law - Short-Term Therapeutic Treatment Programs

Dear Mr. Sturges and Ms. Gilmour:

I am writing on behalf of my client, the Indian Child and Family Preservation Program (ICFPP), at the instruction of ICFPP's Executive Director, Liz Elgin DeRouen. ICFPP is a Tribal consortium that provides child welfare services to the following federally recognized Tribes:

1. Cloverdale Rancheria Band of Pomo Indians;
2. Coyote Valley Rancheria Band of Pomo Indians;
3. Dry Creek Rancheria Band of Pomo Indians;
4. Kashia Band of Pomo Indians of Stewarts Point Rancheria;
5. Lytton Rancheria Band of Pomo Indians; and
6. Manchester-Point Arena Band of Pomo Indians.

Specifically, this letter concerns JCC's consultation on SPR21-12. ICFPP appreciates JCC's efforts to solicit input from California Tribes and takes this opportunity to submit the comments imbedded in the attached Word document and requested edits indicated in red and blue font.

Should you have any questions concerning the comments, please feel free to contact me.

Respectfully,

Joanne Willis Newton

cc: Elizabeth Elgin DeRouen, ICFPP Executive Director
ICFPP Board of Directors;

Rules 7.51, 7.1003, 7.1013, and 7.1015 of the California Rules of Court would be amended, effective January 1, 2022, to read:

Commented [JWN1]: As a general comment, the citation to authorities incorporated in the rules should include references to the applicable provisions of 25 CFR Part 23.

Rule 7.51. Service of notice of hearing

(a)–(e) * * *

(f) Notice when Indian Child Welfare Act may apply

If the court or the petitioner knows or has reason to know, as described in section 224.2(d) of the Welfare and Institutions Code, that an Indian child is the subject of a guardianship or conservatorship proceeding, notice to the the minor's parents or legal guardian, Indian custodian, if any, and the child's tribe must be given as prescribed in rule 7.1015(d).

Commented [JWN2]: Consistent with WIC 224.3(a) and corresponding federal regulations

Rule 7.1013. Change of ward's residence

(a) Pre-move notice of change of personal residence required

Unless an emergency requires a shorter period of notice, the guardian of the person must mail copies of a notice of an intended change of the ward's personal residence to the persons listed below at least 15 days before the date of the proposed change, and file the original notice with proof of mailing with the court. Copies of the notice must be mailed to:

(5) A guardian of the ward's estate; ~~and~~

(6) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(7) If the ward is an Indian child, the child's former Indian custodian(s) if any, and, if the child's tribe has intervened, the child's tribe.

(b) * * *

(c) Post-move notice of a change of residence required

The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of any change. Unless waived by the court for good cause to prevent harm to the ward, the guardian, the guardian's attorney, or an employee of the guardian's attorney must also mail a copy of the notice to the persons listed below and file a proof of mailing with the original notice. Unless waived, copies of the notice must be mailed to:

(1)–(3) * * *

(4) A guardian of the ward's estate; ~~and~~

(5) Any person who was nominated as guardian of the ward under Probate Code sections 1500 or 1501 but was not appointed guardian in the proceeding; and

(6) If the ward is an Indian child, the child's former Indian custodian(s), if any, and, if the child's tribe has intervened, the child's tribe.

(d)–(g) * * *

Rule 7.1015. Indian Child Welfare Act in guardianship and certain conservatorship proceedings (Prob. Code, §§ 1449, 1459, 1459.5, 1460.2, 1511(i); Welf. & Inst. Code, §§ 224–224.6; 25 U.S.C. §§ 1901–1963)

(a) Definitions

As used in this rule, unless the context or subject matter otherwise requires:

(1) "Act" means the federal Indian Child Welfare Act (25 ~~United States Code sections~~ U.S.C. §§ 1901–1963).

Commented [JWN3]: Recognizing that if there is an Indian custodian involved they have nearly identical rights as the parent.

Commented [JWN4]: Definition of "emergency proceeding" should be removed. The authority for a child welfare agency to execute a temporary emergency removal of an Indian child is supported by provisions in the WIC, and circumscribed by the necessity to hold the detention hearing on an expedited basis. There is no equivalent authority for a private person to execute a temporary removal of an Indian child to effect a temporary guardianship. If the petitioner believes the standard for emergency removal exists (imminent physical damage or harm), the appropriate step is to initiate a referral to a child welfare agency or file a JV-210 with the agency to request filing of a 300 petition.

~~(2) "Emergency proceeding" refers to:~~

~~(A) a temporary guardianship of the person of a minor; or~~

~~(B) a temporary conservatorship of the person of a minor whose marriage has been dissolved~~

~~when it is known or there is reason to know that the minor is or may be an Indian child.~~

(~~3~~2) "Petitioner" ~~means and~~ refers to:

(A) A petitioner for the appointment of a guardian of the person of a minor child; or

(B) A petitioner for the appointment of a conservator of the person of a ~~formerly married~~ minor child whose marriage has been dissolved.

(b) Applicability of this rule and rules 5.480 through 5.487~~8~~

(1) This rule applies to the following proceedings under division 4 of the Probate Code ~~when the proposed ward or conservatee is an Indian child, within the meaning of the act:~~

(A) A guardianship or temporary guardianship of the person or of the person and estate in which the proposed guardian of the person is not the proposed ward's ~~natural~~ biological parent or Indian custodian ~~within the meaning of the act~~;

(B) A conservatorship, limited conservatorship, or temporary conservatorship of the person or of the person and estate of a ~~formerly married~~ minor whose marriage has been dissolved in which the proposed conservator of the person is not ~~a natural~~ the proposed conservatee's biological parent or Indian custodian ~~of the minor~~ and is seeking physical custody of the proposed conservatee.

(2) Unless the context requires otherwise, ~~requires,~~ rules 5.480 through 5.487~~8~~ apply to the proceedings listed in (1).

(3) When applied to the proceedings listed in (1), references in rules 5.480 through 5.487~~8~~ to social workers, probation officers, county probation departments, or county social welfare departments are references to the

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petitioner or petitioners for the appointment of a guardian or conservator of the person ~~of an Indian child~~ and to ~~an Indian child's~~ the appointed temporary or general guardian or conservator of the person.

(4) If the court appoints a temporary or general guardian or conservator of the person of the child involved in a proceeding listed in (1), the duties and responsibilities of a petitioner under the Act and this rule ~~are transferred to and~~ become the duties and responsibilities of the appointed guardian or conservator. The petitioner must cooperate with and provide any information the petitioner ~~has~~ knows or possesses concerning the child to the appointed guardian or conservator.

(c) Inquiry

(1) The court, ~~a~~ the court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, and each petitioner~~,~~ have an affirmative and continuing duty to inquire whether ~~the~~ each child involved in ~~the~~ a matters identified in (b)(1) is or may be an Indian child.

(2) Before filing ~~his or her~~ a petition for appointment of a guardian or conservator of the person, the petitioner must ask the child involved in the proceeding, if the child is old enough, ~~and~~ the parents, any ~~other legal~~ previously appointed guardian of the person, ~~and~~ any Indian custodian, extended family members, and others having an interest in the child, whether the child is or may be an Indian child, ~~and must~~ complete ~~items 1c and 8 of the *Guardianship Petition – Child Information Attachment* (form GC-210(CA))~~ *Indian Child Inquiry Attachment* (form ICWA-010(A)), and attach ~~it~~ that form to ~~his or her~~ the petition.

Commented [JWN5]: Consistent with WIC 224.2(b) and corresponding federal regulations

(3) ~~At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.~~ At the initiation of any proceeding identified in (b)(1) and at any hearing in such a proceeding that may result in the appointment of a guardian or conservator, the court must:

(A) Ask each participant present whether the participant knows or has reason to know that the child is an Indian child;

(B) Instruct the parties to inform the court if they subsequently receive information that provides reason to know that the child is an Indian child; and

(C) Order the parent, existing guardian, ~~or~~ and Indian custodian, if available, to complete *Parental Notification of Indian Status* (form ICWA-020).

(4) If the parent, Indian custodian, or guardian ~~does not personally appear at a hearing in~~ is not available at the initiation of a proceeding identified in (b)(1), the court ~~may~~ must order the petitioner to use reasonable diligence to find and ~~ask~~ inform the parent, Indian custodian, or ~~legal~~ guardian that the court has ordered that person to complete and deliver to petitioner a *Parental Notification of Indian Status* (form ICWA-020).

(5) If the court or county investigator, the petitioner, ~~appointed guardian or conservator~~, or the attorney for a the petitioner ~~or appointed guardian or conservator,~~ knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have confirmation from a party or a tribe that the child is an Indian child, ~~he or she~~ that person must make further inquiry as soon as practicable by:

Commented [JWN6]: Consistent with WIC 224.2(e)

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in ~~Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030)~~ Welfare and Institutions Code section 224.3(a)(5);

(B) Contacting the ~~U.S. Department of the Interior,~~ federal Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other persons who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership. These contacts must at a minimum use the methods and share the information listed in Welfare and Institutions Code section 224.2(e)(2)(C).

(6) If the court knows or has reason to know or believe that an Indian child is involved in the proceeding, but does not have confirmation from a party or a tribe that the child is an Indian child, the court ~~may direct any~~ must direct one or more of the persons named in (5) to conduct the inquiry described in that paragraph.

Commented [JWN7]: Consistent with WIC 224.2(e)

(7) The circumstances that may provide reason to believe the child may be an Indian child are those set forth in Welfare and Institutions Code section 224.2(e)(1). The circumstances that may provide reason to know the child is

an Indian child ~~include the following:~~ are those set forth in Welfare and Institutions Code section 224.2(d) and rule 5.481(b).

~~(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);~~

~~(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or~~

~~(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.~~

~~19~~ **(d) Emergency proceedings**

(1) Emergency proceedings for the removal of Indian children are only authorized under Welfare and Institutions Code section 319. A petition for appointment of a temporary guardian or conservator of the person of an Indian child is not an emergency removal within the meaning of 25 U.S.C. section 1922 and cannot be used to circumvent the requirements of the Act.

(2) When a petitioner has a good faith belief that removal of an Indian child from a parent, guardian or Indian custodian is necessary to prevent imminent physical damage or harm to the child, the petitioner may apply to a social worker to commence dependency proceedings in the juvenile court pursuant to and in accordance with Welfare and Institutions Code section 329, using the *Application to Commence Proceedings by Affidavit and Decision by Social Worker* (JV-215).

~~In an emergency proceeding as defined in (a)(2), the following requirements apply to the proceeding in addition to the applicable requirements of Probate Code sections 2250–2257 and California Rules of Court, rules 7.1012 and 7.1062.~~

~~(1) If a petition for appointment of a temporary guardian or conservator of the person of the child is filed, the petition must meet the requirements in rule 5.484(a) of these rules for a petition requesting emergency placement.~~

~~(2) If a petition for termination of a temporary guardianship or conservatorship of the person of the child is filed, the requirements of rule 5.484(b) apply.~~

Commented [JWN8]: See comment above removing "emergency proceeding" definition. It is important the family court and probate court not be used for emergency removals for the reasons stated above and because ICWA does not apply to such proceedings (25 CFR 23.103 (a)(2)).

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~~(3) If the court considers extending the time for the termination of the powers of a temporary guardian or conservator of the person of the child, it must first make the determinations required by rule 5.484(c).~~

(e~~e~~) Notice

If, at any time after the filing of a petition for appointment of a guardian or conservator for a minor child, the court or petitioner knows or has reason to know, within the meaning of ~~Probate Code sections 1449 and 1459.5 and~~ Welfare and Institutions Code section ~~224.3(b),~~ 224.2(d) and rule 5.481(b) of these rules, that an Indian child is involved, the petitioner and the court must notify the child's parents or ~~legal~~ previously appointed guardian of the person, ~~and~~ Indian custodian, if any,

and the ~~Indian~~ child's tribe, of the pending proceeding and the right of the tribe to intervene, as provided in rule 5.481(c). ~~follows:~~

~~(1) Notice to the Indian child's parents, Indian custodian, and Indian tribe of the commencement of a guardianship or conservatorship must be given by serving copies of the completed *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), the petition for appointment of a guardian or conservator, and all attachments, by certified or registered mail, fully prepaid with return receipt requested.~~

~~(2) The petitioner and his or her attorney, if any, must complete the *Notice* and the petitioner must date and sign the declaration. If there is more than one petitioner, the statements about the child's ancestors and background provided in the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) must be based on all information known to each petitioner, and all petitioners must sign the declaration.~~

~~(3) When the petitioner is represented by an attorney in the proceeding, the attorney must serve copies of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) in the manner described in (1) and sign the declaration of mailing on the *Notice*.~~

~~(4) When the guardianship or conservatorship petitioner or petitioners are not represented by an attorney in the proceeding, the clerk of the court must serve the *Notice* in the manner described in (1) and sign the certificate of mailing on the *Notice*.~~

~~(5) The original of all *Notices of Child Custody Proceeding for Indian Child* (form ICWA-030) served under the act, and all return receipts and responses received, must be filed with the court before the hearing.~~

~~(6) Notice to an Indian child's tribe must be sent to the tribal chairperson unless the tribe has designated another agent for service.~~

~~(7) Notice must be served on all tribes of which the child may be a member or eligible for membership. If there are more tribes or bands to be served than can be listed on the last page of the *Notice*, the additional tribes or bands may be listed on an *Attachment to Notice of Child Custody Proceeding for Indian Child* (form ICWA-030(A)).~~

~~(8) Notice under the act must be served whenever there is any reason to know that the child is or may be an Indian child and for every hearing after the first~~

~~hearing unless and until it is determined that the act does not apply to the proceeding.~~

~~(9) If, after a reasonable time following the service of notice under the act—but in no event less than 60 days—no determinative response to the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is received, the court may determine that the act does not apply to the proceeding unless further evidence of its applicability is later received.~~

~~(10) If an Indian child's tribe intervenes in the proceeding, service of the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030) is no longer required, and subsequent notices to the tribe may be sent to all parties in the form and in the manner required under the Probate Code and these rules. All other provisions of the act, this rule, and rules 5.480 through 5.487 continue to apply.~~

~~(11) Notice under the act must be served in addition to all notices otherwise required for the particular proceeding under the provisions of the Probate Code.~~

~~(d) Duty of inquiry~~

~~(1) The court, a court investigator or county officer appointed to conduct an investigation under Probate Code section 1513 or 1826, a petitioner, and any appointed temporary or general guardian or conservator of the person of a minor child each have an affirmative and continuing duty to inquire whether the child involved in the matters identified in (b)(1) is or may be an Indian child.~~

~~(2) Before filing his or her petition, the petitioner must ask the child involved in the proceeding, if the child is old enough, and the parents, any other legal guardian, and any Indian custodian, whether the child is or may be an Indian child, and must complete items 1c and 8 of the *Guardianship Petition—Child Information Attachment* (form GC-210(CA)) and attach it to his or her petition.~~

~~(3) At the first personal appearance by a parent or previously appointed legal guardian at a hearing in a guardianship or conservatorship, the court must if requested by petitioner, or may on its own motion, order the parent or legal guardian to complete a *Parental Notification of Indian Status* (form ICWA-020) and deliver the completed form to the petitioner.~~

(4) If the parent, Indian custodian, or guardian does not personally appear at a hearing in a proceeding identified in (b)(1), the court may order the petitioner to use reasonable diligence to find and ask the parent, Indian custodian, or legal guardian to complete and deliver to petitioner a *Parental Notification of Indian Status* (form ICWA-020).

(5) If the court or county investigator, petitioner, appointed guardian or conservator, or the attorney for a petitioner or appointed guardian or conservator, knows or has reason to know that an Indian child is involved in the proceeding, he or she must make further inquiry as soon as practicable by:

(A) Interviewing the parents, Indian custodian, and "extended family members" as defined in 25 United States Code section 1903(2), to gather the information listed in Probate Code section 1460.2(b)(5) that is required to complete the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030);

(B) Contacting the U.S. Department of the Interior, Bureau of Indian Affairs and the California Department of Social Services for assistance in identifying the names and contact information of the tribes of which the child may be a member or eligible for membership; and

(C) Contacting the tribes and any other person who reasonably can be expected to have information regarding the child's tribal membership status or eligibility for membership.

(6) If the court knows or has reason to know that an Indian child is involved in the proceeding, the court may direct any of the persons named in (5) to conduct the inquiry described in that paragraph.

(7) The circumstances that may provide reason to know the child is an Indian child include the following:

(A) The child or person having an interest in the child, including an Indian tribe, an Indian organization, an officer of the court, a public or private agency, or a member of the child's extended family, informs or otherwise provides information suggesting that the child is an Indian child to the court or to any person listed in (5);

(B) The residence or domicile of the child, the child's parents, or an Indian custodian is in a predominantly Indian community; or

~~(C) The child or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the U.S. Department of Health and Human Services, Indian Health Service, or Tribal Temporary Assistance to Needy Families benefits.~~

GC-210(CA) Child Information Attachment to Probate Guardianship Petition

Case Number:

Guardianship of *(all children's names):* _____

This child's name: _____

Fill out a separate copy of this form for **each** child for whom your petition asks the court to appoint a guardian.

This form is attached to the Petition, ☐ form GC-210, item 2, or ☐ **form GC-210(P), item 8.**

The petition asks the court to appoint a guardian of this child's *(specify):* ☐ person ☐ estate ☐ person and estate

1 Tell the court about this child

Commented [JWN9]: Add new question: Does the child live on an Indian reservation? Yes__ No___ If you checked "Yes" what reservation?"

a. Child's full legal name: _____ Date of birth: _____
First Middle Last *mm/dd/yyyy*

b. Child's current address: _____

c. Indian child inquiry *(Complete only if your petition asks the court to appoint a guardian of this child's person or person and estate. If your petition asks the court to appoint a guardian of this child's estate only, skip this item and go to item 1d.)*

☐ I have asked whether the child is or may be a member of one or more Indian tribes recognized by the federal government, or eligible for membership in such a tribe and the biological child of a tribal member. Form ICWA-010(A), *Indian Child Inquiry Attachment,* is attached to this form.

(For more information about your duties under the federal Indian Child Welfare Act (ICWA) (25 U.S.C. §§ 1901–1963) and California law, including making the inquiry and completing form ICWA-010(A), if the child is or may be an Indian child, see Information Sheet on Indian Child InquiryAttachment and Notice of Child Custody Proceeding for Indian Child *(form ICWA-005-*

d. Is this child married? ☐ Yes ☐ No ☐ Never married If you checked "No," was this child married in the past but the marriage was dissolved or ended in divorce? ☐ Yes ☐ No
The court cannot appoint a guardian of the person for a minor child who is married or whose marriage was dissolved or ended in divorce.)

e. Is this child receiving public benefits? ☐ Yes ☐ No ☐ I don't know *(If you checked "Yes," fill in below.)*

☐ Type of Aid	Monthly Benefit	☐ Type of Aid	Monthly Benefit
TANF (Temporary Asst. for Needy Families)	$	Other *(explain):*	$
☐ Social Security	$	☐ Other *(explain):*	$
☐ Dept. Veterans Affairs Benefits	$		

f. Name and address of the person with *legal* custody of this child: _____

g. ☐ *(Check this box and fill out below if the person the child lives with is not the person in f. with legal custody.)*
Name and address of the person this child lives with (who takes care of the child): _____

Judicial Council of California
www.courts.ca.gov
Rev. January 1, 2022, Mandatory Form
Probate Code, §§ 1449, 1459.5, 1510;
Cal. Rules of Court, rule 7.1015

Child Information Attachment to Probate Guardianship Petition

→

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Guardianship of *(all children's names):* _____ **Case Number:**

This child's name: _____

1 Tell the court about this child (continued)

h. ☐ *(Check this box if this child has been involved in an adoption, juvenile court, marriage dissolution (divorce), domestic relations, child custody, or other similar court case.)* Describe the court case below:

Type of Case	Court District or County and State or Tribe	Case Number (if known)

Commented [JWN10]: Include Tribal Court here

i. ☐ *(Check this box if this child is in or on leave from an institution supervised by the California Department of Developmental Services or the California Department of State Hospitals.)* Write the name of the institution here:

2 List the names and addresses of this child's relatives and all other persons shown below:

Relationship	Name	Home Address (Street, City, State, Zip)
Father		
Mother		
Grandfather (Father's father)		
Grandmother (Father's mother)		
Grandfather (Mother's father)		
Grandmother (Mother's mother)		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		
Brother/Sister		

☐ *(Check here if this child has additional brothers or sisters, including half-brothers and half-sisters, and list their names and addresses on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child,*

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and "Item 2: Other Siblings" at the top of the paper and attach it to this form.)

Guardianship of *(all children's names)*: _____ **Case Number:**

This child's name: _____

2 **List the names and addresses of this child's relatives and all other persons shown below:**

Relationship	**Name**	**Home Address (Street, City, State, Zip)**
Spouse *(Guardianship of the estate only)*		
Person nominated as guardian of this child *(if someone other than a proposed guardian named in 3)*		
Indian custodian *(if any)*		
Child's tribe *(if any and if known)*		

3 **Information about the proposed guardian:**

a. Name *(name all proposed guardians if more than one)*: _____

b. Relationship(s) to the child named in 1 *(check all that apply)*:

☐ Relative *(specify relationship(s) to the child of each proposed relative guardian)*: _____

☐ Not a relative *(explain interest in or connection to this child)*: _____

c. Did the child's parent(s) nominate the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
(If you checked "Yes," attach the written nomination as Attachment 3c.)

d. Does this child currently live with the proposed guardian(s)? ☐ Yes ☐ No ☐ I don't know
If "Yes," how long has the child lived with the proposed guardian(s)? *(years, months)*: _____

e. If the court approves the guardianship, will this child live with the proposed guardian(s)? ☐ Yes ☐ No

f. Does/do the proposed guardian(s) currently plan to adopt this child? ☐ Yes ☐ No ☐ I don't know

4 *Explain why appointing a guardian for the child named in 1 would be in the child's best interest:*

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 4: Guardianship—Best Interest of Child" at the top of the paper and attach it to this form.)*

Commented [JWN11]: The addition of "Indian custodian" and "Child's tribe" here are really important.

DRAFT

Guardianship of *(all children's names)*: _____ **Case Number:**

This child's name: _____

5 *Explain why appointing the person named in 3 to be this child's guardian would be in the child's best interest:*

_____

_____

_____

_____

_____

☐ *(Check here if you need more space. Continue your explanation on a separate sheet of paper. Write "Form GC-210(CA)," the name of this child, and "Attachment 5: Proposed Guardian—Best Interest of Child" at the top of the paper and attach it to this form.)*

6 a. Does one or do both of this child's parents agree that the court needs to appoint a guardian for the child?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

b. Does one or do both of this child's parents agree that the person named in 3 should be the child's guardian?

(1) Father: ☐ Yes ☐ No ☐ I don't know

(2) Mother: ☐ Yes ☐ No ☐ I don't know

7 ☐ **Check this box if you (the petitioner) are not the person named in 3, and fill in below.**

Your relationship to this child:

☐ Relative *(specify relationship)*: _____

_____

☐ Not a relative *(explain your interest in or connection to this child)*: _____

_____

_____

_____

_____

_____

8 Except as otherwise stated in this form, the statements made in the petition to which this form is attached fully apply to this child.

Commented [JWN12]: Add question: "If the child is an Indian child and in the care and custody of an Indian custodian, does the Indian custodian agree that the court needs to appoint a guardian for the child?

DRAFT

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

This is an information sheet to help you fill out form ICWA-010(A), *Indian Child Inquiry Attachment,* and form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*

Form ICWA-010(A), *Indian Child Inquiry Attachment*

You are responsible for helping to find out if the child is or may be an Indian child and filling out the information requested on ICWA-010(A), *Indian Child Inquiry Attachment.* This is important because if the child is an Indian child, specific steps must be taken to prevent the breakup of the child's Indian family and to obtain for the child resources and services that are culturally specific to the child's family. The court will check to make sure that the child receives these resources and services.

Tips on how to fill out form ICWA-010(A), Indian Child Inquiry Attachment

1. Try to find contact information for the child's parents ~~or other legal guardian~~, the child's Indian custodian (if the child is living with an Indian person other than a parent) or other legal guardian, the child's grandparents and great-grandparents, and other available family members.

2. Contact the child's parents, ~~any other legal guardian, and~~ the child's Indian custodian or any other legal guardians, ~~and other~~ available extended family members, and any other persons known to have an interest in the child and ask them (and the child, if he or she is old enough) these questions:

   a. Is the child a member of a tribe or eligible for tribal membership, and if they think he or she might be, then which tribe or tribes?

   b. Are the parents or other members of the extended family ~~they~~ members of a tribe, and if they think they might be, which tribe or tribes?

   c. Does the child, or do the child's parents or Indian custodian, if any, live in Indian country, including a reservation, rancheria, Alaska Native village, or othertribal trust land?

   d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?

   e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?

   ~~e.~~f. Do they have any other information indicating the child is an Indian chlld?

3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment,* and attached it to the petition. This requirement does not apply to a petition for appointment ~~of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 60~~z2.

Commented [JWN13]: Duty of inquiry exists for 600 cases as well. See WIC 224.2(a).

After taking the steps listed above to find out whether the child is an Indian child, if you have reason to believe that the child is an Indian child, you must contact the tribe or tribes that may have a connection with the child about your court case. You have reason to believe the child is an Indian child if any of the people you question answers yes to any of your questions. Tribes that learn of the case can investigate and advise you and the court whether the child is a tribal member or eligible to become a tribal member, and can then decide whether to get involved in the case or assume tribal jurisdiction.

Your contacts with the tribe or tribes should include:

(1) Contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act, which is published in the Federal Register, by telephone, facsimile, or email; and

(2) Sharing with the tribe or tribes any information identified by the tribe as necessary for the tribe to make a determination about the child's tribal membership or eligibility for membership, as well as information on the current status of the child and the case.

Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*

Following your inquiry about the child's Indian status and contacts with the child's tribe or tribes, if necessary, you must provide formal notice on form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* if you know or have reason to know the child is an Indian child.

(continued on next page)

Form Approved for Optional Use
Judicial Council of California

ICWA-005-INFO [Rev. January 1, 2022]

INFORMATION SHEET ON INDIAN CHILD INQUIRY ATTACHMENT AND

NOTICE OF CHILD CUSTODY PROCEEDING FOR INDIAN CHILD

www.courts.ca.gov

DRAFT

Some tips to help you figure out if you have a reason to know the child is an Indian child.

You have reason to know:

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, ~~or~~ a member of the child's extended family or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in ~~a predominately Indian community~~on a reservation or in an Alaskan Native village; or
3. If the child ~~or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service~~is or has been a ward of the tribal court.
3.4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.

These are just a few of the facts that would give you reason to know that a child is an Indian child. There also may be other information that would give you reason to know that the child is an Indian child.

Who do you need to notify?

If you know or have reason to know that the child is an Indian child, you must send the Notice to the following:

1. Child's parents or other legal guardian, including adoptive parents;
2. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom, under state law, or if the parent asked that person to take care of the child);
3. Child's tribe or tribes; and
4. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825 (if the parents, Indian custodian, or tribe cannot be determined or located).

Tips on how to find the address for the child's tribe or tribes

The Secretary of the Interior periodically updates and publishes in the Federal Register (see 25 C.F.R. § 23.12) a list of tribe names and addresses. The Bureau of Indian Affairs also keeps a list. You can access the Federal Register list and other resources related to ICWA on the Bureau of Indian Affairs website at www.bia.gov/bia/ois/dhs/.

Copy to the Secretary of the Interior and the Area Director of the Bureau of Indian Affairs

If you know the identity and location of the parent, Indian custodian, and the tribe or tribes, when you send the Notice to the parent, Indian custodian, and the tribe or tribes, you must also send a copy to the Secretary of the Interior, at 1849 C Street, NW, Washington, DC 20240, and a copy to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birth date, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

How do you send the Notice and prove to the court that you have done so?

If you have an attorney, the attorney will complete the steps described below. If you are representing yourself without an attorney in a probate guardianship case, the court clerk will help you with steps 1 and 2 below, including doing the mailing and signing the certificate of mailing on page 9 of the Notice, but you must deliver copies of the Notice and other documents listed in step 1 below to the court in addressed envelopes ready for mailing and then do step 3.

1. Mail to the persons and organizations listed at the top of this page, by registered or certified mail, with return receipt requested, copies of the following filled-out and signed forms:
   a. Your petition;
   b. Form ICWA-010(A), *Indian Child Inquiry Attachment ;* and
   c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.* Your proof must consist of the following:
   a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A);
   b. All return receipts given to you by the post office and returned from the mailing; and
   c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

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Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

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   a. Is the child a member of a tribe or eligible for tribal membership, and if they think he or she might be, then which tribe or tribes?

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   c. Does the child, or do the child's parents or Indian custodian, if any, live in Indian country, including a reservation, rancheria, Alaska Native village, or othertribal trust land?

   d. Does the child or any of the child's relatives receive services or benefits from a tribe, and if yes, which tribe?

   e. Does the child or any of the child's relatives receive services or benefits available to Indians from the federal government?

   ~~e.~~f. Do they have any other information indicating the child is an Indian chlld?

3. If you are in touch with any of the child's relatives, ask them the same questions.

The court clerk's office cannot file your petition unless you have filled out form ICWA-010(A), *Indian Child Inquiry Attachment,* and attached it to the petition. This requirement does not apply to a petition for appointment ~~of a probate guardian of the estate only or a petition filed in the juvenile court under Welfare and Institutions Code sections 601 or 60z~~2.

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(1) Contacting the tribe's designated agent for service of notice under the Indian Child Welfare Act, which is published in the Federal Register, by telephone, facsimile, or email; and

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Some tips to help you figure out if you have a reason to know the child is an Indian child.

You have reason to know:

1. If the child, an Indian tribe, an Indian organization, an attorney, a public or private agency, ~~or~~ a member of the child's extended family or any other person having an interest in the child says the child is an Indian child or provides information to anyone involved in the case suggesting that the child is an Indian child;
2. If the child, the child's parents, or an Indian custodian live in ~~a predominately Indian community~~on a reservation or in an Alaskan Native village; or
3. If the child ~~or the child's family has received services or benefits from a tribe or services that are available to Indians from tribes or the federal government, such as the Indian Health Service~~is or has been a ward of the tribal court.
4. If the child or the child's parent(s) have an identification card indicating membership or citizenship in an Indian tribe.

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Copy to the Area Director of the Bureau of Indian Affairs

If you do **not** know the identity and location of the child's parents, Indian custodian, and tribe or tribes, you must send copies of the Notice and the other documents to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825. To help establish the child's tribal identity, provide as much information as possible, including the child's name, birth date, and birth place; the name of the tribe or tribes; the names of all of the child's known relatives with addresses and other identifying information; and a copy of the petition in the case.

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   a. Your petition;
   b. Form ICWA-010(A), *Indian Child Inquiry Attachment ;* and
   c. Form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.*
2. The person who does the mailing must fill out the information requested on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child,* and then date and sign the original form on page 9.
3. Go to the court and file with the clerk of the court proof that you have given notice to everyone listed above and on page 10 of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child.* Your proof must consist of the following:
   a. The original signed Notice (form ICWA-030) and copies of the documents you sent with it (the petition and form ICWA-010(A);
   b. All return receipts given to you by the post office and returned from the mailing; and
   c. All responses you receive from the child's parents, the child's Indian custodian, the child's tribe or tribes, and the Bureau of Indian Affairs.

Please note that you are subject to court sanctions if you knowingly and willfully falsify or conceal a material fact concerning whether the child is an Indian child or if you counsel a party to do so. (Welf. & Inst. Code, § 224.3(e).)

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RUPRO ACTION REQUEST FORM

RUPRO action requested: **Recommend JC approval (has circulated for comment)**

RUPRO Meeting: August 19, 2021

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*
Domestic Violence: Revising Forms to Implement New Laws (forms DV-100, DV-105, DV-110, DV-120, DV-130, DV-500-INFO)

Committee or other entity submitting the proposal:
Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Frances Ho; frances.ho@jud.ca.gov; (415) 865-7662

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by RUPRO: November 2, 2020
Project description from annual agenda:
This proposal implements changes in the law, as described in item 1 of the annual agenda for the Family and Juvenile Law Advisory Committee Annual Agenda.
Item 1: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.
Item 1a (Gloria) Domestic violence

Item 1b
SB 1141 (Rubio) Domestic violence: coercive control (Ch. 248, Stats. of 2020)
Expands the definition of "disturbing the peace" for which a court may issue a restraining order under the Domestic Violence Prevention Act to include, among other things, coercive control.

While a more substantive redesign has been postponed (item 19 on the agenda) in light of the challenges posed by the COVID-19 pandemic, the committee recommends making a number of changes to these forms to make them more accessible to domestic violence survivors. The committee believes that these changes are timely as many agencies report that domestic violence is on the rise while fewer resources are available. A more significant redesign of the protective order forms will occur at a later time, in collaboration with the CIvil and Small Claims Advisory Committee.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)
This proposal does not follow the convention of highlighting proposed changes, with the exception of form DV-105, because a significant amount of content was reorganized in the forms, making it challenging to accurately show changes through highlights. In addition, some minor copyediting changes need to be made to the forms before it is sent to the Judicial Council.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.:
For business meeting on September 30–October 1, 2021

Title
Domestic Violence: Forms That Implement New Laws

Rules, Forms, Standards, or Statutes Affected
Forms DV-100, DV-105, DV-110, DV-120, DV-130, and DV-500-INFO

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2022

Date of Report
August 16, 2021

Contact
Frances Ho, 415-865-7662
frances.ho@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising a collection of Domestic Violence forms to implement changes to the Domestic Violence Prevention Act. Senate Bill 1141 (Stats. 2020, ch. 248) elaborates on the definition of "disturbing the peace," and Assembly Bill 2517 (Stats. 2020, ch. 245) allows the court to make a finding that certain debts were incurred as a result of domestic violence and made without the petitioner's consent. In addition to the revisions needed to implement these new laws, the committee recommends a number of changes to the forms to make them easier to understand and complete.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council revise the following forms, effective January 1, 2022:

- *Request for Domestic Violence Restraining Order* (form DV-100)
- *Request for Child Custody and Visitation Orders* (form DV-105)

- *Response to Request for Domestic Violence Restraining Order* (form DV-120)
- *Restraining Order After Hearing (CLETS—OAH) (Order of Protection)* (form DV-130)
- *Can a Domestic Violence Restraining Order Help Me?* (form DV-500-INFO)

The proposed revised forms are attached at pages 13–51.

Relevant Previous Council Action

Under the Domestic Violence Prevention Act, the Judicial Council must provide forms and instructions for use in domestic violence restraining order matters. The council has approved revisions to the forms when changes to the law required revisions and in response to suggestions made by the public, judicial officers, and court professionals. In 2012, form DV-500-INFO was revised to clarify the definition of abuse, specify relationships that qualify a litigant for the order, reorganize text to match that adopted by the other civil restraining order forms, and add a warning about the prohibition on travel with children on issuance of a temporary order. In 2016, forms DV-100, DV-110, DV-120, and DV-130 were revised to reflect several changes to the law related to (1) adding a new remedy that provided the court with the authority to transfer a wireless phone number from the restrained person to the protected person; (2) including additional requirements when the court orders the restrained person to complete a batterer intervention program; and (3) providing notice of a new requirement in matters involving mutual restraining orders.

Analysis/Rationale

This proposal is needed to implement two laws. The first is SB 1141, which took effect on January 1, 2021. Under Family Code section 6320, the court can enjoin a restrained person from a number of actions, including disturbing the peace of any person protected by the restraining order. The bill added "coercive control" to the definition of disturbing the peace, which is defined as "a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty." Because most litigants in domestic violence restraining order proceedings represent themselves, it is particularly important for the council to act quickly to ensure that litigants have notice that disturbing the peace includes coercive control. To implement SB 1141, the committee recommends revising the request form, two order forms and an information form to include information about disturbing the peace and coercive control.[1] The new language includes examples of coercive control on the request and order forms, as well as definitions of disturbing the peace and coercive control on the order forms, as shown below, from form DV-110.

[1] See form DV-100 item 10, form DV-110 item 7, form DV-130 item 8, and page 1 of form DV-500-INFO.

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Order to Not Abuse ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must not do the following things to the person in (1) and any person listed in (3):

- Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.
- "Disturb the peace" means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- "Coercive control" means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status.

The other new law implemented in this proposal is AB 2517, effective January 1, 2022, to allow the court, when issuing an order for debt payment under Family Code section 6324, to make a finding that the debt was incurred as a result of the abuse by the respondent and made without the petitioner's permission. To implement AB 2517, the committee recommends adding a new subpart to the item to allow the petitioner to request this finding, as shown below, in item 22b of form DV-100. The order form would parallel the request form and provide a space for the court to make this finding.[2] The committee also recommends adding examples of types of debts that can be ordered under Family Code section 6324, including car payments and rent, and changing the title of this item to "Pay Debts (Bills) Owed for Property" to better describe the relief available under Family Code section 6324.

b. **Special decision (finding) by the judge if you did not agree to the debt** *(optional)*
(If you did not agree to the debt or debts listed above, you can ask the judge to decide (find) that one or more debts was made without your permission and resulted from the person in (2)'s abuse. This may help you defend against the debt if you are sued in another case.)

Do you want the judge to make this special decision (finding)?
☐ No ☐ Yes *(If yes, answer the questions below.)*

(1) Which of the debts listed above resulted from the abuse? *(check all that apply)*
☐ a(1) ☐ a(2) ☐ a(3)

(2) Do you know how the person in (2) made the debt or debts?
☐ No ☐ Yes

(If yes, explain how the person in (2) made the debt or debts):
_____
_____
_____

[2] See item 19b on the attached form DV-130.

Other changes to improve the forms

Based on feedback from court users, domestic violence advocates, judicial officers, and self-help and other court staff, the committee also recommends making a number of changes to the forms to make them more user-friendly and easier for self-represented litigants (SRLs) to complete. These changes include simplifying language, explaining legal concepts, eliminating unnecessary repetition, providing more white space on each page, reorganizing content, minimizing the use of italics, and using bullet points to break up content. Changes to each form contained in this proposal are detailed below.

Revise Request for Domestic Violence Restraining Order *(form DV-100)*

Form DV-100 is the most important form that the moving party must complete. In many counties, judges decide whether to grant temporary protection based on the request form alone. It is, therefore, crucial that this form be as accessible as possible for anyone seeking protection. To improve the usability of this form, even though making it several pages longer, the committee recommends the following changes to form DV-100:

- In the instructions (top of form), indicate that other forms are also required, and reference additional instructions at the end of the form.
- At item 2, limit the questions regarding the proposed restrained person to name, gender, race, and age, with date of birth optional, consistent with what is required by the Department of Justice to register a protective order into the law enforcement database known as CLETS (California Law Enforcement Telecommunications System). All other information regarding the restrained person, including address and physical characteristics, will be requested only on the order forms and form CLETS-001. A "nonbinary" option will be included for gender.
- At item 3, provide a checklist of relationships within the second degree, and provide a description of cohabitant, as defined by long-standing case law, so that the petitioner can identify the relationship with the respondent.
- At item 4, simplify the item requesting information about other cases, by limiting the number of case types listed and describing case types in terms that lay people are more likely to be familiar with (e.g., custody instead of parentage).
- At items 5–7, expand the "describe abuse" section, as more fully described below.
- At item 8, combine questions on additional people who need protection and the reasons why they need protection into one item; the current version contains these questions in separate places.[3] Also, expand item 8 to allow up to four additional protected persons; the current version allows for three.

[3] On current form DV-100, additional protected people are listed at item 3 and the reasons they need protection are contained at item 28.

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- At item 9, expand the questions about firearms or ammunition that the respondent may possess.[4]
- At item 10, include a list of behaviors that can be enjoined under Family Code section 6320, including "repeatedly contact" as a simplified way of describing prohibited conduct defined by Penal Code section 653m.[5]
- At item 11, create a standalone "no-contact" order.
- At item 12, simplify the question on Stay-Away Orders because many SRLs do not understand the question on the current version of the form at item 7b. The committee proposes adding two questions that would provide the court with information on whether the parties live together, live close to each other, go to the same school, or work together.
- At item 13, rename current item from "Move-Out Order" to "Order to Move Out" to use more natural language, and provide checkable options where the person is asked to explain their right to live at the address.
- At item 16, rename current item from "Care of Animals" to "Protect Animals" to more accurately describe all the orders that may be requested to protect animals.
- At item 17, rename current item from "Property Control" to "Control of Property" to use more natural language, and include space for petitioner to explain why they need control of the property listed.
- At item 18, rename current item from "Insurance" to "Health and Other Insurance" and explain this remedy in more natural language. Changes to this item do not reflect a change in the law but are recommended to help SRLs better understand this remedy.
- At item 19, rename current item from "Record Unlawful Communications" to "Record Communications" to simplify language.
- At item 21, change wording for current item from "Time for Service (Notice)" to "Extend My Deadline to Give Notice to Person in ②" to use more natural language and to better explain what an "order shortening time" provides.
- At item 23, rename current item from "Pay Costs and Services" to "Pay Expenses Caused by the Abuse" to more accurately describe the orders that can be made under Family Code section 6342.
- At item 24(c), remove "MediCal" because receiving MediCal benefits alone would not generate the filing of a child support petition by the local child support agency.
- At item 27, explain what a Batterer Intervention Program is, including goals and program requirements.
- In item 28, simplify the "Rights to Mobile Device and Wireless Phone Account" item because providers report that this remedy is not requested very often. Instead of listing the three possible remedies associated with mobile devices (property control of the device, debt payment of the wireless account, and transfer of the wireless phone account),

[4] The committee proposes this addition, to ensure that the judicial officer has access to this information. If this information is not included on the request form and a temporary restraining order is not granted, the judicial officer would not have access to this information.

[5] These orders are currently listed at item 6a of form DV-100. The committee recommends separating these orders from the no-contact orders listed in item 6b of the current version of form DV-100.

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this item would provide for the transfer of wireless accounts only. Changing this item does not reflect a change in the law because property control and debt payment can still be requested under "Control of Property" and "Pay Debts (Bills) Owed for Property," respectively.

- Items 29 (No Guns, Other Firearms, or Ammunition) and 30 (Cannot Look for Protected People) reflect orders that would be automatically included in a restraining order, unless the court grants an exemption or finds good cause not to make the order, respectively.[6]
- In items 32 and 33, make the signature lines for the petitioner and lawyer, if any, numbered items to ensure they can be located by the party. Also, move the declaration under penalty of perjury to item 32, the petitioner's signature, instead of above both signature lines as it is currently.
- At the end of the form, create a new instruction box titled "Your Next Steps." The committee recommends that information regarding additional forms needed be moved to the end of the form. The information is often missed because the petitioner is unlikely to stop in the middle of completing form DV-100 to complete or pull up another form.

"Describe Abuse" section

The "Describe Abuse" section now starts with an inexhaustive list of examples of abuse. The committee believes that a list of concrete examples, including some examples of coercive control, will help SRLs better understand what abuse means under the law. This section has also been moved up closer to the beginning of the form, as noted above, and expanded to allow up to three types of abuse to be described on the form. This change should lessen the need for parties to use the attachment *Description of Abuse* (form DV-101) to describe additional incidents of abuse. At items 5(g), 6(g), and 7(g), the petitioner can indicate whether a type of abuse has occurred at other times.[7]

Revise* Response to Request for Domestic Violence Restraining Order *(form DV-120)

The committee proposes the following changes to the response form:

- Add instructions at the top of the form.
- For most items, provide space to allow respondent to propose an order that they would agree to or state why they disagree with an order requested. Item 16, regarding allowing the petitioner to record communications, does not include the additional space because the committee believes that a respondent is highly unlikely to propose an alternative order that they would agree to.
- Use the same item headings as on the request form (DV-100).
- List items in the same sequence as on the request form.
- At item 3, remove the spaces for the date and place of hearing to avoid the possibility of conflicting information, leaving the cross-reference to the *Notice of Court Hearing* (form

[6] Fam. Code, §§ 6389(h) and 6322.7.

[7] Self-help center staff have reported that SRLs are unlikely to use an attachment when completing these forms on their own and without help.

DV-109); explain the consequences of not going to the court date; and include an icon for the court date to draw attention to it.
- At item 4, include space to allow respondent to correct information about their age, date of birth, gender, and race that may have been misstated by petitioner.
- At item 5, allow respondent to provide information regarding any other court case or restraining order between the parties.
- At item 6, rather than ask the respondent to describe their relationship with petitioner, ask if the petitioner's description is accurate, and provide space for correction.
- At item 7, give a brief explanation of who can be protected by restraining orders in addition to the petitioner.
- At item 13, allow respondent to propose alternative orders using form DV-105 or the space provided.
- At item 30, add "Additional pages" as a heading.
- At the end of the form, include a new instruction box titled "Your Next Steps" for the reasons noted above for form DV-100.

Revise* Request for Child Custody and Visitation *(form DV-105)

The committee proposes to change the instruction at the top of page 1 of the form to indicate that the form could be attached to a request *or* response form in order to allow respondents to propose child custody and visitation orders that they would agree to. Currently, the form serves only as an attachment to the request form. Minor formatting revisions were also made at the same time. This proposed change was not circulated for public comment. However, the committee believes that the changes are minor and unlikely to be controversial and, therefore, does not need to circulate for public comment.

Revise* Temporary Restraining Order (CLETS—TRO) *and* Restraining Order After Hearing (CLETS—OAH) (Order of Protection) *(forms DV-110 and DV-130)

The committee proposes the following changes to the two order forms:

- Use the same item headings as on the request form (DV-100).
- List items in the same sequence as on the request form, except for two orders ("No Guns, Other Firearms, or Ammunition" and "Cannot Look for Protected People"), which will be listed first on the order forms but last on the request and response form. During user testing, users found it confusing to have these two items at the beginning of the orders section because the orders required no action on the part of the user.
- At item 1, remove the name, address, and contact information for the protected person's lawyer, if they have one, and the contact information for SRLs. This change is consistent with the committee's previous recommendation to remove the contact information from order forms for restraining orders, because courts generally do not use the information to update petitioner's contact information in court case management systems.

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- At item 2, which is to be completed by the petitioner, indicate that certain information is required to add the order into California's law enforcement database and that the petitioner should provide any other requested information that is known to the petitioner.[8]
- At item 2, which is completed by the petitioner, add spaces to allow the petitioner to include information about firearms or ammunition that may be in the restrained person's possession or control to ensure that law enforcement has this information at the time of enforcement.
- At item 3, allow the listing of up to four additional protected persons without the use of an attachment.
- At item 4, form DV-110, include an icon for the court date to call attention to the court date and the expiration of the temporary restraining order.
- At items 8 and 9 on form DV-110, and items 9 and 10 on form DV-130, allow the court to craft more tailored exceptions for no-contact and stay-away orders, respectively. Domestic violence service providers report challenges with enforcing restraining orders that have broad exceptions to allow for court-ordered parenting time.
- Include "Judge's signature" as the heading for the judicial officer's signature to make it more visible to law enforcement and other users.

The committee also recommends removing from the order forms the item specifically listing existing criminal protective orders (on the current forms, at item 5 on DV-110 and item 26 on DV-130). The committee believes that this item is unnecessary because criminal protective orders do not automatically have priority in enforcement over other restraining orders, as they did before the passage of Assembly Bill 176 (Campos; Stats. 2013, ch. 263). In response to an alleged violation, a law enforcement officer would check CLETS for the existence of any restraining order between the parties and would have information in real time that would be more accurate and complete than information provided on the order forms.

Revise* Can a Domestic Violence Restraining Order Help Me? *(form DV-500-INFO)

This form needs to be revised to include the new definition of "disturbing the peace" because the form is used to provide general information about domestic violence restraining orders, including the types of orders that may be granted and eligibility criteria. The committee also recommends removing information that is beyond the scope of this form (e.g., information related to preparing for a court hearing). Where appropriate, references to other information sheets and the California Courts website have been included. The committee also revised the list of other kinds of restraining orders to add gun violence restraining orders and remove workplace violence restraining orders, which—because they must be requested by an employer--are unlikely to be filed by self-represented litigants.

[8] Information that is required for this item is information that must be provided for a restraining order to be entered into the protective order registry within CLETS.

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Policy implications
This recommendation helps implement Goal I of the Judicial Council's strategic plan—Access, Fairness, and Diversity—by helping make forms easier for self-represented litigants.

Comments
This proposal was released for public comment from April 15 through May 27, 2021. Seventeen commenters responded to the proposal. Three agreed with the proposal, seven agreed if modified, and seven did not indicate a position; no commenters disagreed with the proposal. Commenters were the Superior Courts of Los Angeles, Orange, Sacramento, San Diego, and Santa Cruz Counties; the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee; Bay Area Legal Aid; the California Department of Justice; the California Partnership to End Domestic Violence; the Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM); the Family Violence Appellate Project; the Harriett Buhai Center for Family Law; Human Options; the Orange County Bar Association; and three individuals.

The committee thanks commenters for taking the time to respond to this proposal. In general, commenters supported many of the changes. A commenter noted that the proposal makes the forms more accessible, intuitive, and helpful to unrepresented survivors of domestic violence and restrained parties. All comments and the committee's responses to each are provided in the attached comments chart at pages 52 to 125.

The committee sought specific comment on a number of issues. Commenters' responses are summarized below.

Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110.
Most commenters responded that removing these questions would not result in any negative consequences. The committee agrees and recommends removing this information from the request form, except the question regarding the restrained person's race, which is information that is required for the restraining order to be entered into CLETS. The committee recommends keeping on the request form information that is required in order to enter an order into CLETS.

Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110.
Most commentators responded that there would be no negative consequences. One possible consequence that was noted by a few commenters is that the address could be used as the restrained person's address for purposes of serving a restraining order after hearing if the restrained person does not appear at the court hearing, and that removing it would remove that option. Family Code section 6384, however, requires that the address be included on a Judicial Council *order* form; therefore, including the address on the request form alone would be insufficient to comply with the requirements of the code section. The committee concluded that

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having the petitioner complete the address on the proposed order is sufficient, and avoids unnecessary repetition and the potential for inconsistencies inherent in such repetition.

Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law?
Many suggestions were made, and the committee considered them all. Due to space limitations, all examples could not be included. Examples that the committee decided to include are "stopped you from accessing or earning money"; "choked or strangled you"; and "abused your children."

Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating?
Some commenters noted that the expansion would be helpful; others noted that it would be intimidating and suggested including instructions for using an attachment. On balance, the committee believes that providing extra space on the form for this important section outweighs the negative consequences. Self-represented litigants without access to legal help are more likely to limit their response to the space provided and may not provide sufficient information to the judicial officer to make a determination regarding a temporary order if the form does not include sufficient space to include it.

Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order?
A majority of commenters who responded to this question suggested option 1 because it is easier to read and more likely to be understood by a layperson. See the "Alternatives Considered" section for more information.

Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing?
Commenters noted that eliminating the use of italics from longer instructions was helpful and none found it confusing. The forms will continue to use italics for short phrases or sentences, consistent with the *Judicial Council Forms Manual*.

Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)?
Most commenters who responded to this question noted that having more white space was helpful. The committee agrees and recommends including ample white space on these forms.

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Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date?
Some commenters noted that the icons were not particularly helpful; others found them helpful and a way to promote accessibility. One commenter noted that the exclamation point is potentially confusing because it could lead the petitioner to think that the information in that section is the most important. The committee appreciates the comments received. In response to comments on the use of an exclamation point to flag the protected person's address:, the committee believes that the information in that section relating to the various address that may be used to protect the petitioner's privacy is crucial and could have severe safety implications if missed. The committee supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. The committee will continue to work on developing icons that are intuitive and help represent important concepts.

Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally?
A commenter noted that including additional space on the form is helpful.

Alternatives considered
The committee did not consider the alternative of not recommending any form revisions, because with the changes SB 1141 and AB 2517 discussed above, the forms would not reflect current law if left as is.

In implementing SB 1141, the committee considered not including a definition of disturbing the peace or coercive control—just including examples-- because feedback from commenters and user testing showed that providing examples was more helpful to and understandable by laypeople. On the other hand, the committee was concerned that not providing legal definitions might limit the relief provided by the Legislature. To address both concerns, the committee recommends including examples with a shorter explanation of disturbing the peace on the request (form DV-100) and a slightly longer version on the orders (forms DV-110 and DV-130), which include a plain language definition of coercive control.

The committee also considered adding optional check boxes to the no-contact and stay-away orders on the request (form DV-100) to allow the petitioner to request exceptions needed for court-ordered visits, as suggested by some commenters. The committee decided that this revision should go out for public comment before a final recommendation could be made, and so will consider this addition in a future forms cycle.

The committee also considered only making the changes required to implement the new statutes, without any other revisions to the forms, particularly in light of the directive from the chairs of the internal committees of the council to limit proposals during the COVID-19 pandemic. However, because the forms needed to be changed in any event to implement new statutory requirements, the committee concluded that revising the forms to make them more accessible to SRLs at the same time made sense and would benefit both parties and the courts.

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Fiscal and Operational Impacts

Commenting courts noted anticipated costs for implementing newly revised forms, including staff and judicial officer training and updates to paper forms packets, online forms, and tools. All courts that responded indicated that three months for implementation would be sufficient.

Attachments and Links

1. Forms DV-100, DV-105, DV-110, DV-120, DV-130, and DV-500-INFO, at pages 13–51
2. Chart of comments, at pages 52–127
3. Link A: Senate Bill 1141:
   https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1141
4. Link B: Assembly Bill 2517:
   https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2517

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DV-100 Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

DRAFT
Not approved by
the Judicial Council
8.16.21

Instructions: To ask for a domestic violence restraining order, you will need to complete this form and other forms. After you complete this form, see next steps on page 12.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Person Asking for Protection

a. **Your name:** _____

b. **Your age:** _____

c. ! **Address where you can receive court papers**

(This address will be used by the court and by the person in 2 to send you official court dates, orders, and papers. For privacy, you may use another address like a post office box or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

d. ! **Your contact information** *(optional)*

(The court could use this information to contact you. If you don't want the person in 2 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Telephone: _____ Fax: _____

Email Address: _____

e. **Your lawyer's information** *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

2 Person You Want Protection From

a. **Full Name**: _____

b. **Age** *(give estimate if you do not know exact age)*: _____

c. **Date of Birth** *(if known)*: _____

d. **Gender**: ☐ M ☐ F ☐ Nonbinary

e. **Race**: _____

This is not a Court Order.

3 Your Relationship to the Person in 2

(If you do not have one of these relationships with the person in 2, you are not eligible for this type of restraining order. You may be eligible for another type of restraining order. Learn more at www.courts.ca.gov/selfhelp-abuse.htm.)

☑ ***Check all that apply***

a. ☐ We have a child or children together
(names of children): _____

b. ☐ We are married or registered domestic partners.

c. ☐ We used to be married or registered domestic partners.

d. ☐ We are dating or used to date.

e. ☐ We are or used to be engaged to be married.

f. ☐ We are related. The person in 2 is my *(check all that apply):*

- ☐ Parent, stepparent, or parent-in-law
- ☐ Child, stepchild, or legally adopted child
- ☐ Child's spouse
- ☐ Brother, sister, sibling, or sibling-in-law
- ☐ Grandparent or grandparent-in-law
- ☐ Grandchild or grandchild-in-law

g. ☐ We live together or used to live together. *(If checked, answer question below):*
Have you lived together with the person in 2 as a family or household (more than just roommates)?
☐ Yes ☐ No (If no, you do not qualify for this kind of restraining order unless you checked one of the other relationships listed above.)

4 Other Restraining Orders and Court Cases

a. Are there any restraining orders currently in place **or** that have expired in the last six months (examples: Did the police give you a restraining order that lasts a few days? Do you have one from the criminal court?)
☐ No
☐ Yes *(If yes, give information below and attach a copy if you have one.)*
(1) *(date of order):* _____ *(date it expires):* _____
(2) *(date of order):* _____ *(date it expires):* _____

b. Are you involved in any other court case with the person in 2?
☐ No
☐ Yes *(If you know, list where the case was filed (city, state, or tribe), the year it was filed, and case number.)*
- ☐ Custody _____
- ☐ Divorce _____
- ☐ Juvenile Court _____
- ☐ Criminal _____
- ☐ Other *(what kind of case?):* _____

This is not a Court Order.

Describe Abuse

In this section, explain how the person in (2) has been abusive. The judge will use this information to decide your request. Here are some examples of what "abuse" means under the law ***(not a complete list)***:

- harassed you
- made repeated unwanted contact with you
- tracked, controlled, or blocked your movements
- kept you from getting food or basic needs
- isolated you from friends, family, or other support
- made threats based on actual or suspected immigration status
- made you do something by force, threat, or intimidation
- stopped you from accessing or earning money
- hit, kicked, pushed, or bit you
- injured you or tried to
- threatened to hurt or kill you
- sexually abused you
- abused a pet or animal
- destroyed your property
- choked or strangled you
- abused your children

(5) Most recent abuse

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in (2) use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon)*: _____

d. Did the person in (2) cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*

_____

_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in (4).)*

f. Give more details about how the person in (2) was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.

_____

_____

_____

_____

_____

_____

_____

_____

_____

g. How often has the person in (2) abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:

_____

_____

This is not a Court Order.

6 Has the person in (2) abused you in a different way from the abuse you described in (5)? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date)*: _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names)*: _____

c. Did the person in (2) use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon)*: _____

d. Did the person in (2) cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm)*:
_____
_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in (4).)*

f. Give more details about how the person in (2) was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in (2) abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:
_____
_____

This is not a Court Order.

7 Is there other abuse by the person in 2 that you want the judge to know about? If yes, describe below.

a. Date of abuse *(give an estimate if you don't know the exact date):* _____

b. Did anyone else hear or see what happened on this day?
☐ I don't know ☐ No ☐ Yes *(If yes, give names):* _____

c. Did the person in 2 use or threaten to use a gun or other weapon?
☐ No ☐ Yes *(If yes, describe gun or weapon):* _____

d. Did the person in 2 cause you any emotional or physical harm?
☐ No ☐ Yes *(If yes, describe harm):*
_____
_____

e. Did the police come? ☐ I don't know ☐ No ☐ Yes *(If the police gave you a restraining order, list it in 4.)*

f. Give more details about how the person in 2 was abusive on this day. Details can include what was said, done, or sent to you (examples: text messages, emails, or pictures), how often something happened, etc.
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

g. How often has the person in 2 abused you like this?
☐ Just this once ☐ 2–5 times ☐ Weekly ☐ Other: _____
Give dates or estimates of when it happened, if known:
_____
_____

☐ **Check this box if you need more space to describe the abuse**. You can use **form DV-101, *Description of Abuse***, and turn it in with this form. You can also use a separate sheet of paper, write "Describe Abuse" abuse at the top, and turn it in with this form.

This is not a Court Order.

8 Other Protected People

Do you want the restraining order to protect your children, family, or someone you live with?

a. ☐ No

b. ☐ Yes *(If yes, complete the section below)*:

(1) Full name	Age	Relationship to you	Lives with you?
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

☐ Check this box if you need to list more people. Use a separate piece of paper and write "DV-100, Other Protected People" at the top. Turn it in with this form.

(2) Why do these people need protection?

9 Does Person in 2 Have Firearms (Guns) or Ammunition?

a. ☐ I don't know

b. ☐ No

c. ☐ Yes *(If you have information, complete the section below.)*

(1) Describe firearms or ammunition *(examples: long, short, black, silver, handgun, rifle, semiautomatic)*:

(2) Number of firearms or ammunition, if known:

(3) Where they are located or stored, if known:

This is not a Court Order.

Choose the Orders That You Want a Judge to Make

In this section, you will choose the orders you want a judge to make now. Every situation is different. Choose the orders that fit your situation.

☑ ***Check all the orders that you want a judge to make (order).***

10 ☐ Order to Not Abuse

I ask the judge to order the person in (2) to not do the following things to me or anyone listed in (8):

Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.

Disturbing the peace includes, but is not limited to:

- Isolating you from friends, relatives, or other support; keeping you from food or basic needs; controlling or keeping track of you, including your movements, contacts, actions, money, or access to services; and making you do something by force, threat, or intimidation, including threats related to actual or suspected immigration status.
- Destroying your mental or emotional well-being. This can be done directly or indirectly, such as through someone else. This can also be done in any way, including by phone, text, or online.

11 ☐ No-Contact Order

I ask the judge to order the person in (2) to not contact me or anyone listed in (8).

12 ☐ Stay-Away Order

a. I ask the judge to order the person in (2) to stay away from:

☑ *Check all that apply*

☐ Me.	☐ My vehicle.	☐ My children's school or child care.
☐ My home.	☐ My school.	☐ Other *(please explain):*
☐ My job or workplace.	☐ Each person in (8).	_____

b. How far do you want the person to stay away from all the places you checked above?

☐ 100 yards (300 feet) ☐ Other *(give distance in yards)*: _____

This is not a Court Order.

12 Stay-Away Order (continued)

c. Do you and the person in 2 live together or live close to each other?

☐ No ☐ Yes (*If yes, check one*):

- ☐ Live together *(If you live together, you can ask that the person in 2 move out in 13)*
- ☐ Live in the same building, but not in the same home
- ☐ Live in the same neighborhood
- ☐ Other *(please explain):* _____

d. Do you and the person in 2 have the same workplace or go to the same school?

☐ No ☐ Yes (*If yes, check all that apply):*

- ☐ Work together at *(name of company):* _____
- ☐ Go to the same school *(name of school):* _____
- ☐ Other *(please explain):* _____

13 ☐ Order to Move Out

a. I ask the judge to order the person in 2 to move out of the home, located at:

(Give address): _____

b. I have a right to live at this address because:

☑ *Check all that apply*

- ☐ I own the home.
- ☐ My name is on the lease.
- ☐ I live at this address with my child(ren).
- ☐ I have lived at this address for years, months.
- ☐ I pay for some or all the rent or mortgage.
- ☐ Other *(please explain):* _____

14 ☐ Other Orders

(Describe any additional orders you want the judge to make to keep you, your children, or the people in 8 safe.):

_____

_____

_____

15 ☐ Child Custody and Visitation

Check this box if you have a child with the person in 2 and want the court to make or change a child custody/visitation order. You must also fill out form DV-105, *Request for Child Custody and Visitation Orders*, and turn it in with this form.

This is not a Court Order.

16 ☐ Protect Animals

a. (You may ask the court to protect your animals, your children's animals, or the person in 2's animals.)

	Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color
(1)				
(2)				
(3)				
(4)				

b. I ask the judge to protect the animals listed above by ordering the person in 2 to:

☑ *Check all that apply*

(1) ☐ Stay away from the animals by at least:
☐ 100 yards (300 feet) ☐ Other *(give distance in yards)*: _____

(2) ☐ **Not** take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

(3) ☐ Give me sole possession, care, and control of the animals because *(check all that apply)*:
☐ Person in 2 abuses the animals. ☐ I take care of these animals.
☐ I purchased these animals. ☐ Other *(please explain)*: _____

17 ☐ Control of Property

a. I ask the judge to give **only me** temporary use, possession, and control of the property listed here *(describe)*:

_____

_____

b. Explain why you want control of the property you listed:

_____

_____

_____

18 ☐ Health and Other Insurance

I ask the judge to order the person in 2 to **not** make any changes to any insurance or other coverage for me, the person in 2, or our children, including not being allowed to cancel, cash, borrow against, transfer, dispose of, or change the beneficiaries for the insurance.

19 ☐ Record Communications

I ask the judge to allow me to record calls or communications the person in 2 makes to me, when those calls or communications violate this restraining order.

This is not a Court Order.

20 ☐ Property Restraint *(only if you are married or a registered domestic partner with the person in 2.)*

I ask the judge to order the person in 2 **not to** borrow against, sell, hide, or get rid of or destroy any possessions or property, except in the usual course of business or for necessities of life. I also ask the judge to order the person in 2 to notify me of any new or big expenses and to explain them to the court.

21 ☐ Extend My Deadline to Give Notice to Person in 2

(Usually, the judge will give you about two weeks to give notice, or to "serve" the person in 2 of your request. If you need more time to serve, the judge may be able to give you a few extra days.)

I ask the judge to give me more time to serve the person in 2.

Explain why you need more time: _____

_____

22 ☐ Pay Debts (Bills) Owed for Property

(If you want the person in 2 to pay any debts owed for property that, list them and explain why. The amount can be for the entire bill or only a portion. Some examples include rent, mortgage, car payment, etc.)

a. I ask the judge to order the person in 2 to make these payments while the restraining order is in effect:

(1) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(2) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(3) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Explain why you want the person in 2 to pay the debts listed above:

_____

_____

_____

b. **Special decision (finding) by the judge if you did not agree to the debt** *(optional)*

(If you did not agree to the debt or debts listed above, you can ask the judge to decide (find) that one or more debts was made without your permission and resulted from the person in 2's abuse. This may help you defend against the debt if you are sued in another case.)

Do you want the judge to make this special decision (finding)?

☐ No ☐ Yes *(If yes, answer the questions below.)*

(1) Which of the debts listed above resulted from the abuse? *(check all that apply):*

☐ a(1) ☐ a(2) ☐ a(3)

(2) Do you know how the person in 2 made the debt or debts?

☐ No ☐ Yes

(If yes, explain how the person in 2 made the debt or debts):

_____

_____

_____

This is not a Court Order.

Case Number:

Orders That You Want a Judge to Make at Your Court Date

Below, is a list of orders that a judge cannot make right away but can make at your court date in a few weeks. The person in (2) must be notified of your court date before the judge can consider making any of the orders listed below. Check all the orders that you want the judge to make at your court date.

(23) ☐ Pay Expenses Caused by the Abuse

I ask the judge to order the person in (2) to pay for things **caused directly** by the person in (2) (damaged property, medical care, counseling, temporary housing, etc.). Bring proof of these amounts to your court date.

Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____
Pay to: _____ For: _____ Amount: $ _____

(24) ☐ Child Support *(this only applies if you have a minor child with the person in (2))*

☑ *Check all that apply*

a. ☐ I do not have a child support order and I want one.
b. ☐ I have a child support order and I want it changed *(attach a copy if you have one)*.
c. ☐ I now receive or have applied for TANF, Welfare, or CalWORKS.

(25) ☐ Spousal Support *(this only applies if you are married or a registered domestic partner with person in (2))*

I ask the judge to order the person in (2) to give me financial assistance.

(26) ☐ Lawyer's Fees and Costs

I ask that the person in (2) pay for some or all of my lawyer's fees and costs.

(27) ☐ Batterer Intervention Program

I ask the judge to order the person listed in (2) to go to a 52-week batterer intervention program.
(The goal of a batterer's intervention program is to stop abuse. There are weekly classes to teach accountability, abuse effects, and gender roles. If ordered to complete this program, the person in (2) would have to show proof to the judge that they enrolled and completed the program.)

(28) ☐ Transfer of Wireless Phone Account

(If the person in (2) holds the rights to your cell phone account, you can ask the judge to transfer your number or your child's number to you. This means you will be financially responsible for these accounts. If you want to have control over a mobile device, like a cell phone, make this request at (17).)

I ask the judge to order the wireless service provider to transfer the billing responsibility and rights to the wireless phone numbers listed below to me because the account currently belongs to the person in (2):

a. ☐ My number ☐ Number of child in my care (including area code): _____
b. ☐ My number ☐ Number of child in my care (including area code): _____

This is not a Court Order.

Case Number:

Automatic Orders That a Judge Can Make Right Away

(29) No Guns, Other Firearms, or Ammunition

If the judge grants you a restraining order, the person in (2) must sell or turn in any firearms that they have or control. The person in (2) would also be prohibited from buying firearms and ammunition.

(30) Cannot Look for Protected People

If the judge grants you a restraining order, the person in (2) will not be allowed to look for the address or location of any person protected by the restraining order, unless the court finds good cause not to make this order.

(31) Additional pages

If you used additional paper or forms, enter the number of extra pages attached to this form: _____

(32) Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

(33) Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

❶ **You must complete at least three additional forms**:

- Form DV-110, *Temporary Restraining Order (only items 1, 2 and 3)*
- Form DV-109, *Notice of Court Hearing (only items 1 and 2)*
- Form CLETS-001, *Confidential CLETS Information*
- **If you are asking for child custody and visitation**, you must complete forms DV-105, *Request for Child Custody and Visitation Order*s and DV-140, *Child Custody and Visitation Order*.

❷ Turn in your completed forms to the court. Find out when your forms will be ready for pick up.

❸ Once you get your forms back from the court, have someone "serve" a copy of all forms on the person in (2). The sheriff or marshal can do this for free. Learn more about how to "serve" and prepare for your court date: https://selfhelp.courts.ca.gov/sheriff-serves-your-request-restraining-order.

❹ If you are asking for child support, spousal support, or lawyer's fees, you must also complete form FL-150, *Income and Expense Declaration*. If you are only asking for child support (item 23), you may be eligible to fill out a simpler form, FL-155. Read form DV-570 to see if you are eligible. Turn in your completed form to the court before your court date. You must also have someone mail or personally deliver a copy to the person in (2).

This is not a Court Order.

DV-105 Request for Child Custody and Visitation Orders

Case Number:

This form is attached to *(check one):* ☐ form DV-100 ☐ form DV-120

Draft- Not approved by Council.8.13.21

1 Your name: _____ ☐ Mom ☐ Dad ☐ Other*

2 Other parent's name: _____ ☐ Mom ☐ Dad ☐ Other*

*If Other, specify relationship to child: _____

3 ☐ Child Custody

I ask the court for custody as follows:

Child's Name	Date of Birth	Legal Custody to *(Person who makes decisions about health, education, and welfare)*			Physical Custody to *(Person you want the child to live with)*		
		Mom	Dad	Other	Mom	Dad	Other
a.		☐	☐	☐	☐	☐	☐
b.		☐	☐	☐	☐	☐	☐
c.		☐	☐	☐	☐	☐	☐
d.		☐	☐	☐	☐	☐	☐

☐ Check here if you need more space. Attach a sheet of paper and write "DV-105, Child Custody" for a title.

4 ☐ Change Current Court Order

I want to change a current child custody or visitation court order.

Case Number *(if you have it):* _____ County: _____

Explain your current order and why you want a change. _____

☐ Check here if you need more space. Attach a sheet of paper and write "DV-105, Change Current Court Order" for a title.

5 Child's Address

Where has the child in 3a lived for the last five years? List each city and state the child has lived in unless it is unknown to the other parent and you want to keep it confidential because of domestic violence or child abuse. Start with where the child lives now and work backwards in time. If the current address is confidential, check the box below and just provide the current state.

Child 3a addresses *(city and state):*	Child 3a lived with: Mom	Dad	Other	Dates lived there:
☐ Confidential	☐	☐	☐	From _____ to present
	☐	☐	☐	From _____ to _____
	☐	☐	☐	From _____ to _____
	☐	☐	☐	From _____ to _____

☐ Check here if you need more space. Attach a sheet of paper and write "DV-105, Child's Address" for a title.

This is not a Court Order.

6 Other Children's Addresses

☐ Check here if the other child's (or children's) address information is the same as listed in 5.
☐ If it is different, check here. Attach a sheet of paper and write "DV-105, Other Children's Addresses" for a title. List other children's address information, including dates, and name of person child lived with.

7 Other Custody Case

Were you involved in, or do you know of, any other custody case for any child listed in this form?

☐ No ☐ Yes *(If yes, fill out below and attach a copy of any custody or visitation orders if you have them):*

a. Name of each child in other case: _____

b. Type of case: ☐ Parentage (Paternity) ☐ Divorce ☐ Child Support ☐ Juvenile/Dependency ☐ Domestic Violence ☐ Guardianship ☐ Other *(specify):* _____

c. I was a ☐ party ☐ witness ☐ Other *(specify):* _____

d. Court *(name):* _____
Address: _____ County: _____ State: _____

e. Date of court order: _____

f. Case number *(if you have it):* _____

8 Other People With or Claiming to Have Custody or Visitation Rights

Do you know of anyone who is not involved in this case who has or claims to have custody or visitation rights with any child listed on this form? ☐ No ☐ Yes *(If yes, fill out below):*

That person (*give name and address*): _____

☐ has custody ☐ claims custody rights ☐ claims visitation rights

for these children *(name of each child):* _____

9 ☐ Visitation

I ask the court to order that the person in 2 have the following temporary visitation rights:
☑ *(Check all that apply)*

a. ☐ No visitation until the hearing
b. ☐ No visitation after the hearing
c. ☐ The following visitation ☐ until the hearing ☐ after the hearing
(1) ☐ **Weekends** *(starting):* _____ (The 1st weekend of the month is the 1st weekend with a Saturday.)
☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th weekend of month
from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m. to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m.
(2) ☐ **Weekdays** *(starting):* _____
from _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m. to _____ *(day of week)* at _____ *(time)* ☐ a.m. ☐ p.m.

This is not a Court Order.

Case Number:

10 ☐ Other Visitation

I ask the court to make other visitation orders, like summer vacation, birthdays, and holidays. (List the orders you want on a separate sheet of paper. Write "DV-105, Other Visitation" for a title and attach it to this form).

11 ☐ Responsibility for Transportation

(The parent will take or pick up the child or make arrangements for someone else to do so.)
I ask the court to order that:

a. ☐ Mom ☐ Dad ☐ Other *(name):* _____ **take children to** the visits.
b. ☐ Mom ☐ Dad ☐ Other *(name):* _____ **pick up children from t**he visits.
c. ☐ Drop-off / pick-up of children will be at *(address):* _____
d. ☐ Check here if other arrangement. Attach a sheet of paper and write "DV-105, Responsibility for Transportation" for a title.

12 ☐ Supervised Visitation

a. I ask that the visitation in 9 be supervised by
☐ a professional supervisor ☐ a non-professional supervisor ☐ Other: _____
(Name and telephone number, if known:) _____

b. I ask that the visitation in 10 be supervised by
☐ a professional supervisor ☐ a nonprofessional supervisor ☐ Other: _____
(Name and telephone number, if known): _____

c. I ask that any costs for supervision be paid by:
Mom _____ % Dad _____ % Other *(name):* _____ _____ %

13 ☐ Travel With Children

I ask the court to order that:
☐ Mom ☐ Dad ☐ Other *(name):* _____ ***must*** have written permission from the other parent, or a court order, to take the children outside of:

a. ☐ California
b. ☐ County of *(list):* _____
c. ☐ Other place(s) *(list):* _____

14 ☐ Child Abduction Risk

☐ I believe that there is a risk the other parent will take our child out of California and hide the child from me. (If you check this box you must fill out and attach Form DV-108, *Request for Order: No Travel with Children.*)

Important Instructions

- **You must tell the court if you find out any other information about a custody case in any court for the children listed on this form.**
- **If the court makes a temporary custody order, the parent receiving custody must not take the child out of California without a noticed hearing. (See Family Code, § 3063.)**

This is not a Court Order.

For your protection and privacy, please press the Clear This Form button after you have printed the form.

27

Print this form | Save this form | Clear this form

DV-110 Temporary Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council 8.14.21

Instruction: The person asking for a restraining order must complete items (1), (2), and (3) only. The court will complete the rest of this form.

(1) Protected Person *(name)*: _____

(2) Restrained Person

*__Full Name__: _____

*__Gender__: ☐ M ☐ F ☐ Nonbinary

*__Age__: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

*__Race__: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

Type, number, and location of firearms or ammunition: _____

_____

_____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

(3) ☐ Other Protected People

In addition to the person named in (1), the people listed below are protected by the orders listed in (6) through (9).

Full name	Relationship to person in (1)	Age

☐ Check here if you need to list more people. List them on a separate piece of paper, write "DV-110, Other Protected People" at the top, and attach it to this form.

(The court will complete the rest of this form)

---

(4) Your Hearing Date (Court Date)

This order expires at the end of the hearing listed below:

Hearing Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

This order must be enforced throughout the United States. See page 5.

To the Person in (2)

The judge has granted temporary orders. See items (5) through (18).

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.

(5) No Guns, Other Firearms, or Ammunition

- You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- **Within 24 hours of receiving this order, you must** sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms you have in your immediate possession or control.
- **Within 48 hours of receiving this order**, you must file a receipt with the court that proves guns have been turned in or sold. (You may use **form DV-800**, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.)

☐ The court has received information that you own or possess firearm(s) or ammunition.

(6) Cannot Look for Protected People

You must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was **not granted** because the judge found good cause not to make the order.

(7) Order to Not Abuse ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must not do the following things to the person in (1) and any person listed in (3):

- Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.
- "Disturb the peace" means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- "Coercive control" means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status.

This is a Court Order.

Case Number:

8 No-Contact Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You must **not contact** ☐ the person in (1) ☐ the persons in (3) directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ Exception to 8a:

(1) ☐ You may have brief and peaceful contact with the person in (1) only to communicate about your children for court-ordered visits.

(2) ☐ You may have contact with your children only during court-ordered contact or visits.

(3) ☐ Other (*explain*): _____

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

9 Stay-Away Order ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. You must stay at least *(specify):* _____ yards away from *(check all that apply)*:

☐ Person in (1).
☐ Home of person in (1).
☐ Job or workplace of person in (1).
☐ Vehicle of person in (1).
☐ School of person in (1).
☐ Persons in (3).
☐ Children's school or child care.
☐ Other *(explain):* _____

b. ☐ Exception to 9a:

The stay-away orders do not apply:

(1) ☐ For you to briefly and peacefully exchange your children for court-ordered visits.

(2) ☐ For you to visit with your children for court-ordered contact or visits.

(3) ☐ Other *(explain):* _____

_____

10 Order to Move Out ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must take only personal clothing and belongings needed until the hearing and move out immediately from *(address):* _____

11 Other Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

_____

_____

_____

12 Child Custody and Visitation ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Child custody and visitation are ordered on the attached **form DV-140**, *Child Custody and Visitation Order,* or *(list other form)*: _____ . The parent with temporary custody of the child must not remove the child from California without permission from the court.

This is a Court Order.

(13) Protect Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

c. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below.

Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color

(14) Control of Property ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, **only** the person in (1) can use, control, and possess the following property:

_____

_____

(15) Health and Other Insurance ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person ☐ in (1) ☐ in (2) is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their children, if any, for whom support may be ordered, or both.

(16) Record Communications ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (1) may record communications made by the person in (2) that violate this order.

(17) Property Restraint ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person ☐ in (1) ☐ in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted (8), the person in (2) must not contact the person in (1). To notify the person in (1) of new or big expenses, have a server mail or personally give the information to the person in (1) or contact their lawyer, if they have one.)

(18) Pay Debts Owed for Property ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in (2) must make these payments until this order ends:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

Pay to: _____ For: _____ Amount: $ _____ Due date: _____

This is a Court Order.

19 Orders That May Be Made At the Hearing Date (Court Date)

If the person in 1 checked any of these orders on form DV-100, a judge could grant them at your court date.

- **Child Support**
- **Spousal Support**
- **Lawyer's Fees and Costs**
- **Pay Expensed Caused by Abuse**
- **Batterer Intervention Program**
- **Transfer of Wireless Phone Account**

20 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free.
Bring a copy of all the papers that you need to be served to the sheriff or marshal.

21 ☐ Attached pages

Number of pages attached to this seven-page form: _____

Judge's Signature

Date: _____

_____
Judge or Judicial Officer

Certificate of Compliance With VAWA

This temporary protective order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA), upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

This is a Court Order.

Warnings and Notices to the Restrained Person in ②

Your Address to Receive Court Orders

If the judge makes a restraining order at the hearing (court date), which has the same orders as in this Temporary Restraining Order, you will get a copy of that order by mail at your last known address, which is written in ② on page 1. If your address was not listed on this form or is incorrect, contact the court. If you did not go to your court date and want to know if the judge granted a restraining order against you, contact the court.

Child Custody, Visitation, and Support

- **Child custody and visitation:** If you do not go to your hearing (court date), the judge can make custody and visitation orders for your children without hearing from you.

- **Child support:** The judge can order child support based on the income of both parents. The judge can also have that support taken directly from a parent's paycheck. Child support can be a lot of money, and usually you have to pay until the child is age 18. File and serve a *Financial Statement (Simplified)* (form FL-155) or an *Income and Expense Declaration* (form FL-150) if you want the judge to have information about your finances. Otherwise, the court may make support orders without hearing from you.

- **Spousal support:** File and serve an *Income and Expense Declaration* (form FL-150) so the judge will have information about your finances. Otherwise, the court may make support orders without hearing from you.

Instructions for Law Enforcement

This order is effective when made. It is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.

Conflicting Orders–Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced according to the following priorities (see Pen. Code, § 136.2, and Fam. Code, §§ 6383(h), 6405(b)):

1. **EPO:** If one of the orders is an *Emergency Protective Order* (form EPO-001), and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. **No-Contact Order:** If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. **Criminal Order:** If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. **Family, Juvenile, or Civil Order:** If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

Child Custody and Visitation

- The custody and visitation orders are on form DV-140, items (3) and (4). They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.
- At items 8b(1) or 9b(1) of this order, the judge may allow the person in (2) to have brief and peaceful contact with the person in (1), as needed to follow court-ordered visits. Conduct of the person in (2) that is **not** brief and peaceful is a violation of this order.
- **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

(The clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-120 Response to Request for Domestic Violence Restraining Order

Clerk stamps date here when form is filed.

Draft- Not approved by Judicial Council 8.14.21

Use this form if someone has asked for a domestic violence restraining order against you, and you want to respond in writing. You will need a copy of form DV-100, *Request for Domestic Violence Restraining Order*, that was filled out by the person who asked for a restraining order against you. There is no cost to file this form with the court.
Do not use this form if you want to ask for your own restraining order. Read **form DV-500-INFO**, *Can A Domestic Violence Restraining Order Help Me?* To find out more about this type of restraining order.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Name of Person Asking for Protection:

(See form DV-100, item 1):

_____

2 Your Name: _____

! Address where you can receive court papers

(**This address will be used by the court and by the person in 1 to send you official court dates, orders, and papers**. For privacy, you may use another address like a post office box or another person's address, if you have their permission and can get your mail regularly. If you have a lawyer, give their information.)

Address: _____

City: _____ State: _____ Zip: _____

! Your contact information *(optional)*

(The court could use this information to contact you. If you don't want the person in 1 to have this information, leave it blank or provide a safe phone number or email address. If you have a lawyer, give their information.)

Email Address: _____ Telephone: _____ Fax: _____

Your lawyer's information *(if you have one)*

Name: _____ State Bar No.: _____

Firm Name: _____

3 Your Hearing Date (Court Date)

Your hearing date is listed on form DV-109, *Notice of Court Hearing*. If you do not agree to having a restraining order against you, go to your hearing date. If you do not go to your hearing date, the judge could grant a restraining order that could last up to five years.

This is not a Court Order.

How to complete this form: To answer the questions below, look at the form DV-100 filled out by the person in (1). Tip: When the restraining order forms say "the person in (2)" that means you, and the "person in (1)" means the person who is asking for a restraining order against you.

(4) Information About You *(see (2) on form DV-100)*

The person in (1) listed your name, age, gender, and date of birth. If any of the information is incorrect, use the space below to give the correct information.

(5) History of Court Cases and Restraining Orders *(see (4) on form DV-100)*

The person in (1) may have listed other court cases or restraining orders involving you. If information is incorrect or missing, use the space below to give information.

☐ Check here if you are including a copy of restraining order or court order that you want the judge to know about.

(6) Your Relationship to the Person in (1)

In item (3) of form DV-100, has the person in (1) correctly described your relationship with them?

☐ Yes ☐ No If no, what is your relationship with the person in (1)?:

(7) ☐ Other Protected People

If the judge grants a restraining order, it can include family or household members of the person in (1). See (8) on form DV-100 to see if the person in (1) is asking for other people to be protected by the restraining order.

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

(8) ☐ Order to Not Abuse *(see (10) on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to:

This is not a Court Order.

9 ☐ **No-Contact Order** *(see 11 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

10 ☐ **Stay-Away Order** *(see 12 on form DV-100)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

11 ☐ **Order to Move Out** *(see 13 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

12 ☐ **Other Orders** *(see 14 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

13 ☐ **Child Custody and Visitation** *(see 15 on form DV-100)*

a. ☐ I am **not** the parent of the child listed in form DV-105, *Request for Child Custody and Visitation Orders.*

b. ☐ I am the parent of the child or children listed in form DV-105 *(check all that apply below)*:

(1) ☐ I agree to the order requested.

(2) ☐ I do not agree to the order requested, because: _____

_____

(3) ☐ I would agree to a different order *(explain the orders that you would agree to, or use form DV-105)*:

_____

_____

☐ Check here if you will complete form DV-105 and turn it in with this form.

This is not a Court Order.

14 ☐ **Protect Animals** *(see 16 on form DV-100)*

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

15 ☐ **Control of Property** *(see 17 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

16 ☐ **Health and Other Insurance** *(see 18 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

17 ☐ **Record Communications** *(see 19 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

18 ☐ **Property Restraint** *(see 20 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

19 ☐ **Pay Debt (Bills) Owed for Property** (*see 22 on form DV-100*)

a. ☐ I agree to the orders requested.

b. ☐ I do not agree to the orders requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

This is not a Court Order.

20 ☐ **Pay Expenses Caused by the Abuse** *(see 23 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

21 ☐ **Child Support** *(see 24 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

c. ☐ I agree to pay guideline child support. *(Learn more about guideline child support at www.courts.ca.gov/selfhelp-support.htm.)*

22 ☐ **Spousal Support** *(see 25 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

23 ☐ **Lawyer's Fees and Costs** *(see 26 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

c. ☐ I ask that the person in 1 pay for some or all of my lawyer's fees and costs.

24 ☐ **Batterer Intervention Program** *(see 27 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

This is not a Court Order.

25 ☐ Transfer Wireless Phone Account *(see 28 on form DV-100)*

a. ☐ I agree to the order requested.

b. ☐ I do not agree to the order requested.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

26 Guns, Other Firearms, or Ammunition *(see 29 on form DV-100)*

If you were served with form DV-110, *Temporary Restraining Order*, you must turn in any guns or firearms in your immediate possession or control. You must file a receipt with the court from a law enforcement agency or a licensed gun dealer within 48 hours after you received form DV-110.

☑ *Check all that apply*

a. ☐ I do not own or have any guns, firearms, or ammunition.

b. ☐ I have turned in my guns and firearms to law enforcement or sold/stored them with a licensed gun dealer. A copy of the receipt showing that I turned in, sold, or stored my firearms *(check all that apply)*:

☐ is attached ☐ has already been filed with the court.

c. ☐ I ask for an exemption from the firearms prohibition under Family Code section 6389(h) because *(explain):* _____

27 Cannot Look for Protected People *(see 30 on form DV-100)*

a. ☐ I agree to the order.

b. ☐ I do not agree to the order.

Explain why you disagree, or describe a different order that you would agree to: _____

_____

28 ☐ Additional Reasons I Do Not Agree with the Request *(optional)*

Explain why you do not agree to any of the orders requested by the person in 1 *(give specific facts and reasons):*

_____

_____

_____

_____

_____

_____

_____

☐ Check here if you need more space. Attach a sheet of paper, and write "DV-120, Additional Reasons I Do Not Agree"at the top.

This is not a Court Order.

29 ☐ My Out-of-Pocket Expenses

If the request for restraining order is denied by the judge at the court hearing, I ask the judge to order the person in 1 to pay my out-of-pocket expenses because the temporary restraining order was granted without enough supporting facts. The expenses are:

For: _____ Because: _____ Amount: $ _____

For: _____ Because: _____ Amount: $ _____

For: _____ Because: _____ Amount: $ _____

30 Additional Pages

Number of pages attached to this form, if any: _____

31 Your signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

Type or print your name *Sign your name*

32 Your lawyer's signature *(if you have one)*

Date: _____

_____ ▶ _____

Lawyer's name *Lawyer's signature*

Your Next Steps

- If the person in 1 asked for child support, spousal support, or anyone is asking for lawyer's fees, you must complete form FL-150, *Income and Expense Declaration*. If the person in 1 is only asking for child support (item 23), you may be eligible to fill out a simpler form, form FL-155. Read form DV-570 to see if you are eligible to fill out form FL-155. Before your court date, you must file form FL-150 or FL-155 with the court. Then you must have a server mail a copy to the person in 1 and have your server complete form DV-250, *Proof of Service by Mail*. After form DV-250 is completed, file it with the court.

- Prepare for your court date by gathering evidence or witnesses, if you have any. Learn more at: *https://selfhelp.courts.ca.gov/respond-domestic-violence-restraining-order*. More information is also available on form DV-120-INFO, *How Can I Respond to a Request for Domestic Violence Restraining Order?*

This is not a Court Order.

DV-130 Restraining Order After Hearing (Order of Protection)

☐ **Original Order** ☐ _____ **Amended Order**

Clerk stamps date here when form is filed.

Draft-Not approved by Judicial Council 8.16.21

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

(1) Protected Person *(name)*: _____

_____

(2) Restrained Person

***Full Name**: _____

***Gender**: ☐ M ☐ F ☐ Nonbinary

***Age**: _____ *(Give estimate, if age unknown.)*

Date of Birth: _____ Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

***Race**: _____

Relationship to person in (1): _____

Address of restrained person: _____

City: _____ State: _____ Zip: _____

Type, number, and location of firearms or ammunition: _____

_____

_____

(**Information that has a star (*) next to it is required** to add this order into a California police database. Give all the information you know.)

(3) ☐ Other Protected People

In addition to the person in (1), the following persons are protected by orders as indicated in items (7) through (10).

Full name	Relationship to person in (1)	Age

(4) Expiration Date

This restraining order, except the orders noted below,* end on:

(date): _____ at *(time):* _____ ☐ a.m. ☐ p.m. or ☐ midnight

***Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18.**

- If no date is written, the restraining order ends three years after the date of the hearing in item (5)a.
- If no time is written, the restraining order ends at midnight on the expiration date.

This order must be enforced throughout the United States. See page 7.

This is a Court Order.

5 Hearings

a. The hearing was on *(date):* _____ with *(name of judicial officer):* _____

b. These people were at the hearing *(check all that apply)*:

☐ The person in 1 ☐ The lawyer for the person in 1 *(name)*: _____

☐ The person in 2 ☐ The lawyer for the person in 2 *(name)*: _____

c. The people in 1 and 2 must return to court on *(date):* _____ in Department: _____ at *(time):* _____ ☐ a.m. ☐ p.m. to review *(list issues):* _____

To the Person in 2

The court has granted a long-term restraining order. See 6 through 28.

- If you do not obey these orders, you can be charged with a crime, go to jail or prison, and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.

6 No Guns or Other Firearms or Ammunition

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. **Within 24 hours of receiving this order, you must** sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms you have in your immediate possession or control.

c. **Within 48 hours of receiving this order, you must file a receipt with the court** that proves guns have been turned in or sold. (You may use **form DV-800**, *Proof of Firearms Turned In, Sold, or Stored,* for the receipt.)

d. ☐ The court has received information that the person in 2 owns or possesses a firearm.

e. ☐ Limited Exemption: The court has made the necessary findings to grant an exemption under Family Code section 6389(h). Under California law, the person in 2 is not required to relinquish this firearm *(specify make, model, and serial number of firearm):* _____ but must only have it during scheduled work hours and to and from their place of work. Even if exempt under California law, the person in 2 may be subject to federal prosecution for possessing or controlling a firearm.

7 Cannot Look for Protected People

You must not take any action to look for any person protected by this order, including their addresses or locations.

☐ If checked, this order was not granted because the court found good cause not to make this order.

This is a Court Order.

8 ☐ Order to Not Abuse

You must not do the following things to the person in (1) and any person listed in (3):

- Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, keep under surveillance, impersonate (on the internet, electronically, or otherwise), block movements, annoy by phone or other electronic means (including repeatedly contact), or disturb the peace.
- "Disturb the peace" means to destroy someone's mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control.
- "Coercive control" means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order. Examples include isolating them from friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something by force, threat, or intimidation, including threats based on actual or suspected immigration status.

9 ☐ No-Contact Order

a. You must **not contact** ☐ the person in (1), ☐ the persons in (3), directly or indirectly, by any means, including by telephone, mail, email, or other electronic means.

b. ☐ Exception to 9a:
   (1) ☐ You may have brief and peaceful contact with the person in (1) to only communicate about your children for court-ordered visits.
   (2) ☐ You may have contact with your children only during court-ordered contact or visits.
   (3) ☐ Other *(explain):* _____

c. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.

10 ☐ Stay-Away Order

a. You **must** stay at least *(specify)*: _____ yards away from *(check all that apply):*

- ☐ Person in (1).
- ☐ Home of person in (1).
- ☐ Job or workplace of person in (1).
- ☐ Vehicle of person in (1).
- ☐ School of person in (1)
- ☐ Persons in (3).
- ☐ Children's school or child care.
- ☐ Other *(specify):* _____

b. ☐ Exception to 10a:
   The stay-away orders do not apply:
   (1) ☐ For you to briefly and peacefully exchange your children for court-ordered visits.
   (2) ☐ For you to visit with your children for court-ordered contact or visits.
   (3) ☐ Other *(explain):* _____

This is a Court Order.

(11) ☐ Order to Move Out

You must move out immediately from *(address):*

_____

(12) ☐ Other Orders

_____
_____
_____
_____

(13) ☐ Child Custody and Visitation

The judge has granted child custody and visitation orders in this case. They are on the attached form DV-140, *Child Custody and Visitation Order*

or *(specify other form):* _____

(14) ☐ Protect Animals

a. ☐ You must stay at least _____ yards away from the animals listed below.

b. ☐ You must not take, sell, hide, molest, attack, strike, threaten, harm, get rid of, transfer, or borrow against the animals.

c. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below.

Name *(or other way to ID animal)*	Type of animal	Breed *(if known)*	Color

(15) ☐ Control of Property

Only the person in (1) can use, control, and possess the following property:

_____
_____

(16) ☐ Health and Other Insurance

The person ☐ in (1) ☐ in (2) is ordered **not** to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their children, if any, for whom support may be ordered, or both.

(17) ☐ Record Communications

The person in (1) may record communications made by the person in (2) that violate this order.

(18) ☐ Property Restraint

The person ☐ in (1) ☐ in (2) must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (If the court granted (9), the person in (2) must not contact the person in (1). To notify the person in (1) of new or big expenses, have a server mail or personally give the information to the person in (1) or contact their lawyer, if they have one.)

(19) ☐ Pay Debts (Bills) Owed for Property

a. You must make these payments until this order ends:

(1) Pay to: _____ For: _____ Amount: $ _____ Due date: _____
(2) Pay to: _____ For: _____ Amount: $ _____ Due date: _____
(3) Pay to: _____ For: _____ Amount: $ _____ Due date: _____

b. ☐ The court finds that the debt or debts listed above in ☐ a(1) ☐ a(2) ☐ a(3) were the result of abuse in this case, and made without the person in (1)'s agreement.

(20) ☐ Pay Expenses Caused by the Abuse

You must pay the following:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

(21) ☐ Child Support

Child support is ordered on the attached form FL-342, *Child Support Information and Order Attachment* or *(specify other form):* _____

(22) ☐ Spousal Support

Spousal support is ordered on the attached form FL-343, *Spousal, Partner, or Family Support Order Attachment* or *(specify other form):* _____

(23) ☐ Lawyer's Fees and Costs

You must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: $ _____ Due date: _____
Pay to: _____ For: _____ Amount: $ _____ Due date: _____

This is a Court Order.

24 ☐ Batterer Intervention Program

a. The person in (2) must go to and pay for a probation certified 52-week batterer intervention program and show proof of completion to the court.

b. The person in (2) must enroll by *(date):*_____ or if no date is listed, must enroll within 30 days after the order is made.

c. The person in (2) must complete, file, and serve form DV-805, *Proof of Enrollment for Batterer Intervention Program.*

25 ☐ Transfer of Wireless Phone Account

The court has made an order transferring one or more wireless service accounts from you to the person in (1). These orders are contained on form DV-900, *Order Transferring Wireless Phone Account*.

26 Service

a. ☐ **No other proof of service is needed**. The people in (1) and (2) were at the hearing or agreed in writing to this order.

b. ☐ **The person in (2) was not present.** Proof of service of form DV-109 and form DV-110 (if issued) was presented to the court.

(1) ☐ Order can be served by mail. The judge's orders in this form are the same as in form DV-110 except for the expiration date. The person in (2) must be served, either by mail or in person.

(2) ☐ Order must be personally served. The judge's orders in this form are different from the orders in form DV-110, or form DV-110 was not issued. The person in (2) must be personally served (given) a copy of this order.

c. ☐ **Proof of service of form FL-300 to modify the orders in form DV-130 was presented to the court.**

(1) ☐ The people in (1) and (2) were at the hearing or agreed in writing to this order. No other proof of service is needed.

(2) ☐ The person ☐ in (1) ☐ in (2) was not at the hearing and must be personally served (given) a copy of this amended (modified) order.

27 No Fee to Serve (Notify) Restrained Person

The sheriff or marshal will serve this order for free.
Take a copy of all the papers that you need to be served to the sheriff or marshal.

This is a Court Order.

(28) ☐ Attached pages

All of the attached pages are part of this order.

a. Number of pages attached to this eight-page form: _____

b. Attachments include forms *(check all that apply):*

☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ DV-900 ☐ FL-342 ☐ FL-343 ☐ Other: _____

Judge's Signature

Date: _____

_____

Judge or Judicial Officer

Certificate of Compliance With VAWA

This restraining (protective) order meets all "full faith and credit" requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Instructions for Law Enforcement

Start Date and End Date of Orders

The orders *start* on the earlier of the following dates:

- The hearing date in item (5)(a) on page 2; or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item (4) on page 1. If no date is listed, they end three years from the hearing date.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code § 166 or 273.6.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the California Restraining and Protective Order System (CARPOS). (Fam. Code, § 6381(b)-(c).)

This is a Court Order.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Child Custody and Visitation

- The custody and visitation orders are on form DV-140, items (3) and (4). They may be written on additional pages or referenced in form DV-140 or other orders that are not part of this restraining order.
- At items 9b(1) or 10b(1) of this order, the judge may allow the person in (2) to have brief and peaceful contact with the person in (1), as needed to follow court-ordered visits. Conduct of the person in (2) that is **not** brief and peaceful is a violation of this order.

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. **EPO:** If one of the orders is an *Emergency Protective Order* (form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.

2. **No-Contact Order:** If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.

3. **Criminal Order:** If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.

4. **Family, Juvenile, or Civil Order:** If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(The clerk will fill out this part.)

Clerk's Certificate
[seal]

—Clerk's Certificate—

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

DV-500-INFO Can a Domestic Violence Restraining Order Help Me?

Draft-Not approved by Judicial Council. 8.12.21

What is a "domestic violence restraining order"?

It is a court order that can help protect people who have been abused by someone they've had an intimate relationship with, are closely related to, or have lived with as more than just roommates.

How can the restraining order help me?

The court can order the restrained person to:

- Not contact or go near you, your children, other relatives, or others who live with you;
- Not have any guns or ammunition;
- Move out of your home;
- Obey child custody and visitation orders;
- Pay child support;
- Pay spousal support; and
- Obey orders about property.

Does this request cost money to file?

No, filing this request with the court is free.

How soon can I get the order?

The judge will decide within one business day whether to grant you a temporary restraining order. Sometimes the judge decides sooner.

How long does the order last?

If the judge makes a temporary order, it will last until your hearing date (court date). At your court date, the judge will decide whether to grant you a long-term restraining order that can last up to five years.

Do I have to go to court?

Yes. Go to court on the date the clerk gives you. If you do not, any order you have will end. To learn more about what to expect at your court date go to *www.courts.ca.gov/selfhelp* or read form DV-520-INFO, *Get Ready for the Restraining Order Court Hearing.*

Am I eligible?

You can ask for one if:

❶ You want a restraining order against:

- Your spouse, ex-spouse, registered domestic partner, or ex-registered domestic partner;
- Someone you have a child with;
- Your parent, child, sibling, or grandparent (includes in-laws);
- Someone you live with or used to live with (more than just roommates);

and

❷ That person has been abusive.

Abuse can be spoken, written, or physical. It can be physical, sexual, or emotional. It includes threats to harm you or your family, stalking, harassment, destroying personal property, repeatedly contacting you, and disturbing your peace.

Disturbing your peace means destroy your mental or emotional calm. This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online. Disturbing the peace includes coercive control**.**

Coercive control means a number of acts that unreasonably limit the free will and individual rights of any person protected by this restraining order**.** Examples include isolating someone from their friends, relatives, or other support; keeping them from food or basic needs; controlling or keeping track of them, including their movements, contacts, actions, money, or access to services; and making them do something that they don't want to do by force, threat, or intimidation. This includes threats related to actual or suspected immigration status.

How do I ask for a domestic violence restraining order?

See form DV-505-INFO, *How Do I Ask for a Temporary Restraining Order?* The forms are available at any California courthouse or county law library or at: *www.courts.ca.gov/forms*.

What if I don't qualify for a domestic violence restraining order?

There are other kinds of restraining orders you can ask for. Here are some examples:

- **Civil harassment order** (can be used for neighbors, roommates, cousins, uncles, and aunts).
- **Dependent adult or elder abuse restraining order** (if you are at least 65 or a dependent adult).
- **Gun violence restraining order** (to prevent someone from hurting themselves or others with a firearm). Note that all restraining orders include a firearms restriction. A gun violence restraining order gives limited protection because it only restrains the person from having firearms and ammunition.

To learn more about other kinds of restraining orders go to *https://www.courts.ca.gov/selfhelp-abuse.htm*.

Can I use the restraining order to get divorced or terminate a registered domestic partnership?

No. These forms will not end your marriage or registered domestic partnership. You must file other forms to end your marriage or registered domestic partnership.

Can the order stop the other parent from taking our children away?

If you get a temporary restraining order that includes an order for custody, the parent with custody may not remove the child from California before notice to the other parent and a court hearing on the request to establish or modify custody. Read the order and form DV-140, *Child Custody and Visitation Order*, if issued, for any other limits. There are some exceptions. Ask a lawyer.

Is the restraining order valid outside of California?

Yes, the restraining order would be valid anywhere in the United States. This means that police must enforce the restraining order anywhere in the country.

What if I don't have a green card?

You can get a restraining order even if you are not a U.S. citizen. If you are worried about deportation, talk to an immigration lawyer.

Do I need a lawyer to make this request?

No, but this type of request can be hard to get through on your own. Free help may be available at your local court's self-help center. (See below.)

Where can I find a self-help center?

Find your local court's self-help center at *www.courts.ca.gov/selfhelp*. Self-help center staff will not act as your lawyer but may be able to give you information to help you decide what to do in your case.

Where can I find other help?

The National Domestic Violence Hotline provides free and private safety tips and help in over 100 languages. Call them at 1-800-799-7233; 1-800-787-3224 (TTY); or visit online at *www.thehotline.org*.

I need an interpreter. How can I get help?

You may use form INT-300 to request an interpreter or ask the court clerk how you can request one.

I have a disability. How can I get help?

You may use form MC-410 to request assistance. Contact the disability/ADA coordinator at your local court for more information.

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to *www.courts.ca.gov/forms.htm* for *Disability Accommodation Request* (form MC-410). (Civ. Code, § 54.8.)

	Commenter	Position	Comment	Committee Response
1.	Bay Area Legal Aid by Erin Orum	N/I	Overall, BayLegal supports the proposed changes to the DV Restraining Order forms though we do recommend some changes to the proposal. Below, we detail those changes that we find particularly beneficial to litigants and also describe our recommendations. While we have chosen to detail those changes for which we particularly want to highlight our support, we also support all other changes unless specifically addressed in our recommendations. We have organized our comments by addressing each form's proposals and then separately addressing the Request for Specific Comments. Proposed Changes to DV-100 1. Information Box: Bay Legal recommends removing the added box identifying and linking to the other required forms. This information is already available on the DV-500-INFO. Additionally, the majority of pro se litigants are completing these forms on paper after receiving a packet from the court or a community organization which would include the required forms. And because the list is non-exhaustive for all litigants (it does not include DV-105, 108, 140, 145) we believe it is likely to be more confusing than helpful to most pro se litigants.	1. The committee believes that the information would be more helpful than confusing. The information is designed for self-represented litigants (SRLs) without access to legal help, or the ability to get a packet from the court. SRLs might find form DV-100 online and, without any instructions, the committee believes that SRLs may complete form DV-100 only without completing other required forms. The committee has added forms DV-105 and DV-140 to the list of forms that would be required if the person is asking for custody or visitation orders. Because form DV-105 refers to form DV-108, the latter was not added to the list. The list of forms has been moved to the end of form DV-100.

	Commenter	Position	Comment	Committee Response
			2. Item 2: We recommend restoring the additional physical description and address information for the restraining party. Pro se litigants frequently fail to properly complete all portions of the DV-110. The only other place where this information could be found is on the CLETS-001 form. However, that form is confidential which means that if a court clerk, attorney, or DV advocate attempts to correct missing demographic information on the DV-110, they won't have access to it. Moreover, if the DV-110 is denied pending hearing but a DV-130 is issued after hearing, it will be difficult to complete the DV-130 without the information being listed on the DV-100.	2. In general, the committee is interested in removing requests for information from the forms when the information is not needed or redundant. In some situations, there may be a compelling reason to require a litigant to provide information more than once. The situation described by commenter could be remedied by asking the petitioner for this information, when needed. In addition, a temporary restraining order could still be issued without this information and entered into CLETS. Because the commenter's concerns can be addressed in other ways, the committee believes that the benefit to a petitioner in not having to fill out redundant information should be prioritized in this instance.
			3. Item 3: We strongly recommend returning the lines that require the protected party to list the names of the children the parties have in common. Without this information, the Court won't know if any minor children listed as protected parties are the Respondent's children unless the Petitioner is asking for custody orders (which they don't always do) or if they mention it in their declaration. Removing this information also makes it harder for court clerks or advocates to identify when a litigant may have forgotten to fill out a DV-105.	3. The committee agrees and recommends including space for the applicant to list any children the parties have together.
			4. Item 4(b): We recommend keeping the column from the current form that asks parties	4. The committee has made this change

	Commenter	Position	Comment	Committee Response
			to list a case number if known. This information can be very helpful to advocates attempting to look up prior cases, particularly if the advocate represents the restrained party who may not be aware of the case numbers.	
			5. Item 5: We strongly support this change as it will be helpful for pro se litigants trying to write their declarations. However, we recommend adding "abused your children" to the examples of abuse (*see* Gou v. Xiao (2014) 228 Cal.App.4th 812).	5. This example has been added.
			6. Item 5(d): We recommend replacing "any other time when" with "any other ways that." In addition to specific incidents, abuse can also involve tactics and behaviors that occur over time and throughout a relationship. This is particularly true for coercive control. The applicant has already been prompted 3 times to write about incidents and we recommend that they should now be prompted to address these other aspects of abuse if relevant. Limiting the language to "times" the person was abusive makes it difficult to discuss more nuanced aspects of abuse that the court should also hear about.	6. This section has been revised to allow the litigant to indicate whether a specific incident or type of abuse happened more than once, and to prompt the applicant to provide the different ways in which they have been abused. Feedback from testing and interviews support the idea that people may not recall abuse as discrete incidents organized by dates and times, especially in relationships with a long history of abuse.
			7. **Item 10:** We recommend removing the second paragraph defining abuse since a comprehensive definition is already provided in Item 5.	7. The "Order to Not Abuse" item is provided to allow the petitioner to request this as a remedy. The committee agrees that there is overlap between the orders listed in both items because the list of behaviors under Family Code section

	Commenter	Position	Comment	Committee Response
				6320 are included in the definition of abuse and also represent a list of enjoinable behaviors.
			8. **Items 11 and 12:** We strongly recommend replacing the sentences beginning "Exception to contact children" and "Exception for visits with children" with the following language and checkboxes following Items 11 and 12, respectively: □ **I request an exception to the No-Contact Order to allow for brief and peaceful contact with the person in 1 and the children in 3 as required for court-ordered visitation of children. Page 3 of 9** □ **I request an exception to the Stay-Away Order to allow for brief and peaceful contact with the person in 1 and the children in 3 as required for court-ordered visitation of children.**	8. The committee does not recommend making this change without public comment. The committee will consider this proposed change in a future forms cycle.
			9. **Item 12(b):** We recommend adding a line for the protected party to provide further explanation so the court has sufficient information to make any appropriate exceptions to the stay-away order. We frequently see cases where the parties live in apartments, SROs, or other situations near to but not directly with each other. Unless the Petitioner notes that they live close together or requests a shorter stay-away, the court may end up making de facto move out orders by requiring a restrained party to stay 100 yards away. If the court has	9. The committee agrees and has made this addition, at item 12c on form DV-100.

	Commenter	Position	Comment	Committee Response
			information about where the parties live, the court may choose to reduce the stay away distance and protect the restrained party from potential homelessness if the court deems doing so safe and appropriate. 10. Item 13(b): Bay Legal strongly supports this proposed change of providing a checklist for the Protected Party to explain why they have right to live in the home. Unrepresented parties in particular will now have clear guidance as to what information they need to provide to the Court sufficient to support a move-out order. 11. **Item 14**: We recommend that, for clarity, previous language be reinstated, and additional language be added to cover all possible situations regarding custody and visitation such as the following: □ I do not have a child custody or visitation order and I want one □ I have a child custody or visitation order and I want it changed. □ I don't want a custody order or I want to keep my current order the same We have frequently seen court clerks reject applications (i.e. refuse to file them) because the protected party did not include a custody or visitation request, even if the party didn't want one. When we provide services, we know to write into Item 14 that the Petitioner either	10. The committee agrees and believes that this checklist will help self-represented litigants provide relevant information to the court. 11. The committee believes that the proposed language is more clear and easier to understand for the applicant. The issue of court clerks improperly rejecting applications will be noted for future trainings of court clerks and staff.

	Commenter	Position	Comment	Committee Response
			doesn't want an order or doesn't want it changed, but pro se litigants don't know to do that. Their safety may be compromised if the court clerk improperly rejects their filing. We have also had situations where the court clerk did not accept our representation that a party was not required to change their current custody order in order to file a DVRO and have had to resort to filing on demand which pro se litigants also usually do not know they can do. 12. **Item 15:** To reduce form length, we recommend only two lines for listing pets with a check box for an attachment if necessary. 13. **Item 16**: We recommend including a request for control of mobile phones so an order giving temporary use, control and possession can granted prior to hearing. Since the last form change, courts commonly do this (see item 18(a) on current form.). The modified form no longer allows for this as orders regarding the wireless phone (transfer of account) can only be granted after a hearing (see proposed Item 28). Our recommendation is to move the current language from item 18(a) to this section regarding property control: I ask the judge to give only me temporary use, possession, and control of the property listed here (describe): _____ Explain why you want control of the property	12. At this time, reducing the number of animals to two would not impact the length of the form therefore this change was not accepted. 13. The committee has included an instruction to complete item 16 (Control of Property) if the petitioner also wants control over a mobile device, like a cell phone. The committee will also consider whether more information should be included on an informational form in the future.

	Commenter	Position	Comment	Committee Response
			you listed:_____ **Property control of mobile device and wireless phone account** ☐ **I ask the court to give only me temporary use, possession, and control of the following mobile devices:** **_____** **and the wireless phone account for the following wireless phone numbers because the account currently belongs to the person in 2: (include area code): _____** ☐ **my number** ☐ **number of child in my care (include area code): _____** ☐ **my number** ☐ **number of child in my care (include area code): _____** ☐ **my number** ☐ **number of child in my care** While litigants could write this request into the property control section on their own, we have found that the prior form change to include this prompt has led to many more survivors making this request. It's an important safety protection for survivors, but one they might not think of while filling out their forms unless prompted. 14. **Item 19**: We recommend adding the following additional language: If you need the above debts paid before your hearing, explain why. If any of the debts listed above resulted from the abuse in this case and were made without your permission, explain which debt and how it happened. It is our experience that if a litigant does not	14. The committee agrees that the additional information would be helpful for the court and has added a section to allow the applicant to explain why they are making the request for debt payment.

	Commenter	Position	Comment	Committee Response
			specifically explain why it is an emergency that a debt be paid pending a hearing, the court will not grant their request. While we know to have litigants add this explanation, pro se litigants don't know to do so.	
			15. **Item 22**: We recommend adding "to keep you and your children or the people in 6 safe" to the instructions in parentheses. Frequently litigants don't understand the scope of the orders that can be made in the "other orders" section and ask for a wide range of orders that are not available under the DVPA, in particular orders regarding property division in dissolution cases.	15. The committee has added "to keep you, your children, or the people in 8 safe" to the item for "Other Orders" which is now at item 14.
			16. **Item 29**: We recommend removing this section entirely. Each county tends to count additional pages differently (some include attachments like the DV-105 and some don't). If this section is required, it should be completed by the court clerk to ensure that it's done properly. The idea behind this section may be that the court clerk would be alerted if a page has been forgotten by the litigant, but our experience is that, even when that's the case, court clerks are not routinely checking the number of pages expected against the number included and litigants are not being notified of missing attachments. Proposed Changes to DV-110	16. The committee did not accept this change. This item, now at item 31, is included on every plain language form, consistent with the Judicial Council forms style guide. The intent behind the item is so the party can inform the court what the party considers to be part of the filed document, and so included within the declaration under penalty to perjury and under the attorney's signature. There is no expectation for clerks' checking this item at the time of filing.

	Commenter	Position	Comment	Committee Response
			17. **Item 6**: BayLegal supports this change as we have often found that the box on the current DV-110/DV-130 regarding not looking for protected people is left unchecked in error, even though the Court found no good cause not to check the box. We would propose adding in a line for the Court to write the specific good cause stated. This will create a clear record and help ensure that this box is not checked in error (Courts may think they are granting an order by checking the box if they are filling out the form quickly). Also, if circumstances change in the future, it is good to have a clear record for why the box is checked. For example, a court may find good cause and check the box because the abuser already knows where the protected party is living (this is a scenario we often see when arguing that the box should be checked). However, if the protected party then moves and wants to request these orders or litigate them in a request for renewal, there is a clear record of what the good cause was and if it still applies. 18. **Item 9**: While we generally like the clarity that this new section brings, we propose adding back in the language that the exception to the stay away order must be "brief and peaceful." We often see abuse occur at custodial exchanges. This can include following the person before or after the custody exchange. We once had a client who was followed	17. The change proposed by commenter would need to be circulated for public comment. The committee will consider this suggestion in the future. 18. The committee agrees that conduct with the petitioner should be "brief and peaceful" and has added this language.

	Commenter	Position	Comment	Committee Response
			extensively by her abuser, on the freeway and side streets, after exchanging her child at the visitation center. The abuser also drove erratically to scare her and followed her closely. The parties lived in opposite directions. The police interpreted this contact to be part of the custody exchange and refused to take a report. We believe that keeping the "brief and peaceful" exception in is important for situations like these.	
			19. **Item 16**: We support the change of language in this section and think it adds clarity. However, we recommend the parenthetical read: "If the court granted 8, you can notify the person in 1 of new or big expenses by having a third party or process server serve them or by contacting their lawyer." This would be less likely to be interpreted as encouraging direct contact between the parties	19. The committee agrees and has added an additional instruction with language similar to that proposed by the commenter. See new item 17 on form DV-110 and item 18 on form DV-130.
			20. Also, we recommend referencing the INFO form regarding service rather than putting in a hyperlink. This is because most pro se litigants are filling out paper forms, and if the form is in place for many years the URL may change.	20. The committee did not make this change because there is not a Judicial Council form on point for this situation. Form DV-200-INFO explains the process for personally serving the petition on respondent. Form DV-120-INFO does not provide information about how to serve the other side after initial service of process has been completed. The link provided is to a webpage on the California Courts' website.
			21. **Warnings and Notices to the Restrained**	21. These warnings are still listed on the order

	Commenter	Position	Comment	Committee Response
			Person: The prior DV-110 and DV-130 contained warnings and notices to the restrained person. In the new version, these warnings were substantively changed in the DV-110 to include only warnings regarding child custody and child/spousal support. They were eliminated from the DV-130. We believe that these warnings are very important. Informing people that they may be charged with a crime if they violate the order (and be subject to jail time or monetary penalties), that it is a felony to take or hide a child in violation of the order, etc. is extremely important. As a matter of due process, we strongly recommend these warnings and notices should be added back in to the DV-110 and DV-130 forms. 22. **Instructions to Law Enforcement**: To the section regarding mandatory arrest if the order is violated, we propose adding the following language: "If the restrained party and the protected party have children together, a judge may make an exception for "brief and peaceful" contact to effectuate custody and visitation orders. Even if this exception is noted on the order, a restrained person may still violate the order by contacting the protected person in a way that is not brief and peaceful, that violates the custody orders, or is not regarding the children." We have noticed that law enforcement is very hesitant to enforce the order if the "brief and	forms but have been moved to page 2 where the notice is more prominent. The committee believes that the warning there is sufficient to warn the person in 2 that there are criminal penalties for violating the order. 22. The committee agrees that it is important to emphasize that conduct that does not fall within the exception (i.e. brief and peaceful) could be a violation of the restraining order. The committee has included an instruction on this at page 8 of form DV-110, under "Child Custody and Visitation."

	Commenter	Position	Comment	Committee Response
			peaceful" contact box is checked. Here are some examples of our cases where violations were not noted in police reports and where arrests were not made, because police believed them to fall within the exception (all of these were by different law enforcement departments): -A protected party has sole legal and sole physical custody of the parties' child pursuant to a DV-130. The restrained party has no visitation, but the Court chose to check the boxes for brief and peaceful contact in case the restrained party wants to file a motion in the future for visitation. The restrained party contacts the protected party every day on WhatsApp (approx. 10-20 times per day), asking to reconcile, to be allowed to see the child in common, and for the protected party not to cooperate with the district attorney in the parallel criminal case. Police refuse to take a report because the exception box is checked and they believe no crime was committed. A protected party has sole legal and sole physical custody pursuant to a temporary order; the restrained party has supervised visitation. The restrained party contacts the protected party multiple times in the middle of the night by calling her back to back. When she answers one call, he tells her he is standing outside her house and he wants to see the children. He sounds high or drunk. Police refuse to take a report because the exception box is checked and they	

	Commenter	Position	Comment	Committee Response
			believe no crime was committed. -A protected party is driving back from exchanging her child at a supervised visitation center. The parties live in opposite directions, but the restrained party follows her, driving erratically, through side streets and onto the freeway. Once on the freeway, he pulls up beside her, rolls down his window, and screams obscenities at her. Police refuse to take a report because the exception box is checked and they believe no crime was committed. 23. **Conflicting Orders – Priorities for Enforcement:** We do not believe that, as written, this section conforms with Family Code Sections 6383(h) and 6405(b). To conform with the law, it should be written as follows: • Emergency Protective Order: an emergency protective order takes precedence over all other orders. If the parties have an emergency protective order, that order must be enforced first. - Criminal Protective Order: if there is no emergency protective order and the parties have a criminal protective order, that order takes precedence over all other orders and must be enforced. If the parties have more than one criminal protective order, enforce the order issued last. - Civil, Family, or Juvenile Order: If there is no Criminal Protective Order or Emergency Protective Order and the parties have an order from a civil court, including a Family or	23. The committee believes that this section, as written, is legally accurate. While criminal protective orders used to take precedence in enforcement over civil restraining orders, that is no longer the case. For example, if a civil restraining order contains a "no contact" order but the criminal order does not, then the civil restraining order must be enforced. See Family Code section 6383(h)(2).

	Commenter	Position	Comment	Committee Response
			Juvenile court, enforce that order. If there are multiple civil orders, enforce the order issued last. - Nonconflicting terms: if the parties have multiple orders (e.g. a criminal protective order and a civil protective order), first enforce the order which takes precedence, as noted above. Then, if the less precedential order has any nonconflicting but more restrictive terms, enforce those terms. Proposed Changes to DV-120 24. BayLegal supports all of the proposed changes to the DV-120 and has no recommendations. We believe the format and organization of the form improve clarity and make it easier for pro se litigants to complete. Proposed Changes to DV-130 25. Item 7: Please see recommendation 17 above. 26. Items 9&10: Please see recommendation 18 above. 27. Item 17: Please see recommendation 19 above. 28. Item 26: We recommend adding in an "other" box here to note any alternative forms of service. Examples of alternatives include situations such as the following: restrained party was not at the hearing, but agreed via counsel to accept service of the order by some	24. Thank you for your comment 25. Same comment as above. 26. Same comment as above. 27. Same comment as above. 28. The committee did not accept this change. Respondents who do not appear for the hearing must still be served consistent with Family Code section 6384.

	Commenter	Position	Comment	Committee Response
			alternative means like mail, via counsel who received the order in person, or even electronically via counsel. 29. **Warnings and Notices to the Restrained Person:** Please see recommendation 20 above. 30. **Instructions to Law Enforcement**: Please see recommendation 21 above. 31. **Conflicting Orders – Priorities for Enforcement:** Please see recommendation 22 above. 32. **Term of Custody and Visitation Orders**: We strongly recommend bolding the sentences on page 1 that read, "Custody, visitation, child support, and spousal support remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18." We believe this to be a very important sentence, and often find ourselves highlighting it and sending it back to providers such as schools or childcare, medical offices, and even government agencies like the United States Consulate or Department of State. We also propose adding this to the end of the DV-130 in the instructions to law enforcement regarding the duration of the orders. Proposed Changes to DV-500-INFO 33. How can the restraining order help me?: We	29. Same response as above. 30. Same response as above. 31. Same response as above. 32. The information has been bolded, as suggested by commenter. Since law enforcement must enforce the order itself, the committee does not believe it is necessary to repeat this information again at the end of the form. 33. This change has been made.

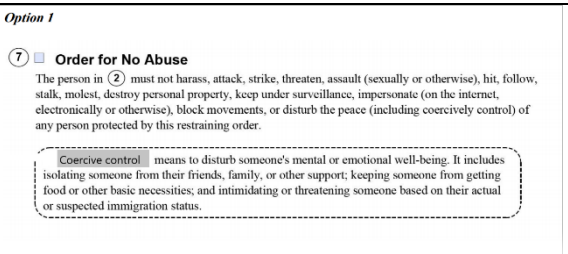
	Commenter	Position	Comment	Committee Response
			recommend adding "orders" after "Obey child custody and visitation"	
			34. Can the order stop the other parent from taking our children away?: We recommend changing this section to more clearly answer the question by saying: Yes. If you get a temporary restraining order that includes an order for custody, the other parent may be prohibited from taking your children away. The parent with custody also may not remove the child from California before notice to the other parent and a court hearing on the request to establish or modify custody. Read the order and form DV-140, Child Custody and Visitation Order, I issued, for any other limits. There are some exceptions. Ask a lawyer.	34. The committee has incorporated this suggestion and also made other changes to improve readability.
			35. What if I want to leave the county or State? We recommend changing this language to better warn parties with temporary custody to check their orders before leaving with their children: The restraining order is valid anywhere in the United States. If you move out of California, contact the local police so they know about your orders. If you have children, be sure to check your orders for any restrictions on your ability to leave the county or state with them. Request for Specific Comments	35. The committee has modified the language in light of this and other comments received. The form now notes that "the parent without custody may not remove the child from California before notice to the other parent and a court hearing on the request to establish or modify custody"

	Commenter	Position	Comment	Committee Response
			36. Does the proposal appropriately address the stated purpose: With the recommendations above, BayLegal believes that the proposal appropriately addresses the stated purpose.	36. Thank you for reviewing this proposal.
			37. **Removal of questions regarding restrained person's physical characteristics:** Please see recommendation 2 above.	37. Same response as above.
			38. **Removal of questions regarding restrained person's address**: Please see recommendation 2 above.	38. Same response as above.
			39. **Other examples of abuse to include in Describe Abuse section:** Please see recommendation 5 above.	39. Same response as above.
			40. **Expansion of Describe Abuse section:** Please see recommendation 6 above.	40. Same response as above.
			41. **Implementation of SB 1141:** We recommend Option 1 as this option is easier to read and more organized. We recommend adding the language from Option 2 saying "This can be done directly or indirectly, such as through someone else. This can also be done in any way, such as by phone, over text, or online." With this change, we believe Option 1 includes all relevant information for the restrained person to understand the activities from which they are prohibited.	41. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.

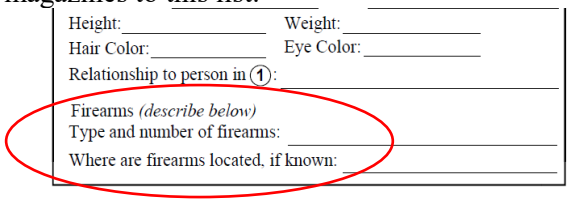
	Commenter	Position	Comment	Committee Response
			42. **Eliminating italics in longer instructions:** We support eliminating the italics in longer instructions. It makes the forms clear, easier to read, and less intimidating. 43. Adding more white space: We support adding more white space on forms. While it is unfortunate that it makes the forms longer, it is easier to read and makes the forms less intimidating overall. 44. Addition of Icons: Overall, the icons do not seem particularly helpful. The exclamation point on item 1(c) of the DV-100 might be mistaken for an error alert if the applicant is completing the forms on a computer. A flag might be a better icon to use. The court icon does not seem helpful. The box that is around that information should be enough to direct attention to it. 45. General incorporation of proposed formatting/organization changes: In general, we support the addition of white space and the simplification of language to make forms more readable and approachable.	42. The committee agrees and recommends limiting the amount of italics used on forms. 43. The committee agrees and recommends using ample white space to ensure that the content is less intimidating and less likely to be glossed over. 44. The committee supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. These forms were user-tested during the comment period and no issues were raised regarding the icons. One user noted that the exclamation point was helpful. The committee will continue to work on developing icons that are intuitive and help represent important concepts. 45. Thank you for your response.
2.	California Department of Justice By Elizabeth Troxel, SSM II Justice Data & Investigative Services Bureau	NI	1. Does the proposal appropriately address the stated purpose? Yes 2. Would removing the questions regarding the	1. Thank you for reviewing this proposal. 2. Because this information should be listed on at

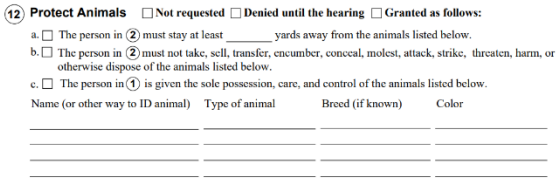
	Commenter	Position	Comment	Committee Response
	Law Enforcement Support Program		restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110. Updating the DV 100 does not impact the California Department of Justice (CA DOJ) California Restraining and Protective Order System (CARPOS) as the DV 100 is not required to be entered into CARPOS. However, if the information is used to assist with entering information once an order is issued, the council should reconsider modifying the DV 100 as it could impact the quality of the data for orders entered into CARPOS.	least two other forms (the order form itself (form DV-110) and the CLETS-001), the committee recommends removing the questions regarding the person's height, weight, eye color and hair color from form DV-100. Other information that is mandatory for entry into CARPOS would be retained on form DV-100.
			- We'd also like to point out that this information should continue to be required for the DV-110 as our Division of Law Enforcement relies on this information in some cases to assist in determining if someone who might match to a record that could be prohibiting.	- The committee proposes to continue to include this information on the order forms (forms DV-110 and DV-130).
			3. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. This change does not impact CARPOS.	3. This is consistent with the committee's understanding of the process for entering orders into CARPOS.
			4. Are there other examples of abuse that should be included in the Describe Abuse section (new	4. No response required.

	Commenter	Position	Comment	Committee Response
			item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? Not applicable for entry into CARPOS. 5. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? Not applicable for entry into CARPOS 6. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Either option will require modifications to CARPOS. Option 1 is easy to read. Suggest changing the definition to reflect Coercive Control instead of Disturbing the Peace, since that was what was added in the bill. See example below:	5. No response required. 6. The committee agrees that option 1 is easy to read. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (form DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.

	Commenter	Position	Comment	Committee Response
			 7. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? - This change does not impact CARPOS.	7. No response required.
			8. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? - This change does not impact CARPOS	8. No response required.
			9. Is the addition of icons likely to be helpful to SRLs (self represented litigants aka petitioner), such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? - This change does not impact CARPOS.	9. No response required.
			10. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? - Ensure all other order forms have consistent verbiage.	10. Thank you for your comment.

	Commenter	Position	Comment	Committee Response
			12. Other Changes The suggested changes related to AB 2517 (financial obligations) do not impact CARPOS	12. No response required.
			13. DV-100 Although this form is not entered into CARPOS, the information could be used to provide additional information to the existing CARPOS record	13. No response required.
			14. DV-110 and DV-130 (Nonbinary option) Due to the limitations of NCIC, the CA DOJ is researching the feasibility of adding nonbinary to CARPOS. At this point we are not recommending the change to the forms but will advise the Judicial Council as soon as a decision is made on whether nonbinary can be added to CARPOS.	14. Based on conversations with DOJ staff after this comment was submitted, the DOJ has stated that the CARPOS will be able to accommodate a nonbinary option for the restrained person by January 1, 2022. The committee thanks DOJ staff and leadership for their work to ensure accurate gender identification.
			15. Date of Birth and Race Currently the proposed DV 110 and DV 130 do not have the Date of Birth and Race fields in bold nor do they have an asterisk in section 2. For a record to be entered into CARPOS and NCIC these fields are required. Without the bold font and asterisk, it appears these are optional. If not filled out properly the entry will reject, causing problems for the individual attempting to enter the order into CARPOS.	15. The committee has noted that "race" is required for entry into "California's police database." The committee has confirmed with commenter that an age is sufficient for entry into CARPOS. Therefore, the committee does not recommend indicating that date of birth is required, especially since some litigants will not know the restrained person's date of birth. However, the committee has added an instruction to "give all the information you know."
			16. Firearms addition This information is already included in the	16. This change is not based on a change in the law but consistent with existing law which

	Commenter	Position	Comment	Committee Response
			CLETS 001. Is this a change based on statute? This will require changes to CARPOS. CA DOJ would like to add ammunition and magazines to this list.  Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____ Relationship to person in (1): _____ Firearms *(describe below)* Type and number of firearms: _____ Where are firearms located, if known: _____ 17. Other Protected People The "Sex" field is required for entry into CARPOS but was removed from section 3 "Other Protected People" on the proposed form. If agencies or the courts want to continue to include Other Protected People in CARPOS, Sex is required. We are also suggesting to change the Age to Date of Birth for the other protected people because date of birth is a required field for a record to be submitted to NCIC.	requires that the petitioner provide the number, types, and locations of firearms possessed by the restrained person under Family Code section 6389(c)(3). While this question is included on form CLETS-001, it is not on a form that the judicial officer reviews or has access to. Including this information in the items on the order (form DV-110) that the petitioner must complete ensures that the judicial officer, as well as law enforcement, has access to this information. In light of this comment, the committee has added "ammunition" to this section, which also covers magazines. 17. Based on the committee's understanding, CARPOS will allow a restraining order to be entered even if the gender or sex of the protected person is unknown. Because CARPOS has this option, the committee does not recommend adding gender of the protected persons onto the order forms at this time, as it is available on the CLETS form. The committee will consider this in a future forms cycle. Because the current public facing forms do not ask for the date of birth of protected persons, the committee does not recommend making this change at this time but will consider it in a future cycle. There may be other considerations including privacy issues that could support not including this information on the order forms. This information is included on form CLETS-001, which is not filed with the court but transmitted to the entering agency for

	Commenter	Position	Comment	Committee Response
				entry into CARPOS.
			18. Protected Animals: Would require changes to CARPOS. Is there a statutory mandate requiring these changes?  (12) **Protect Animals** ☐ **Not requested** ☐ **Denied until the hearing** ☐ **Granted as follows:** a. ☐ The person in (2) must stay at least _____ yards away from the animals listed below. b. ☐ The person in (2) must not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals listed below. c. ☐ The person in (1) is given the sole possession, care, and control of the animals listed below. Name (or other way to ID animal) Type of animal Breed (if known) Color	18. This revision does not reflect a statutory change but is consistent with what the law allows in terms of protecting animals under Family Code section 6320(b). The information regarding the animals (name, type, breed, and color) are consistent with the descriptors currently allowed in CARPOS (CLETS).
			19. Wireless phone Accounts Although the DV-900 exists for the Order to transfer wireless phone accounts, was it the intent to remove this from the DV-110? Also for consistency, this information still exists on the DV-130.	19. Yes, this item was removed because an order transferring a wireless phone account can only be issued at a noticed hearing and not on a temporary restraining order (form DV-110) issued without notice.
			20. CA DOJ would like to add "ammunition feeding devices" and "firearms precursor parts" to the list of prohibited items on the forms. Currently just firearms and ammunition are listed as prohibited items the restrained subjects must relinquish. Could you show the list of prohibited items for a restrained person as: Firearms, ammunition, bullets, cartridges, magazines, clips, speed loaders, ammunition feeding devices, firearm precursor parts (unfinished firearm frames or receivers).	20. The committee would like public comment on this list and the opportunity to coordinate with other advisory committees which are responsible for other civil and criminal protective orders. Therefore this recommendation will be considered in a future forms cycle.
			21.Effective 7/1/2022 prohibited persons can't	21. These forms, if approved by the Judicial

	Commenter	Position	Comment	Committee Response
			have firearms precursor parts (unfinished firearm frames and receivers that are used to make ghost guns).	Council, would be effective on January 1, 2022. A change needed to implement new law that becomes effective after January 1, 2022 would need to be made in a future forms cycle.
3.	California Partnership to End Domestic Violence By Christine Smith Public Policy Coordinator	AM	1. Does the proposal appropriately address the stated purpose? Yes, the proposal addresses the stated purposes to implement SB 1141 and AB 2517. 2. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110. This potential change is not particularly impactful for applicants and service providers, but we are interested in the perspective of bench officers to determine whether or not they will sign an order without this information. 3. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. The inclusion of the address on the DV-100 gives notice and opportunity to be heard on the address so if there is no objection filed to the DV-100, Petitioner can serve the DV-130 by mail, instead of in person. Without notice of the address to which the ROAH can be mailed, the Restrained Person can challenge the service by	1. Thank you for reviewing this proposal. 2. The committee believes that bench officers would still have access to this information on form DV-110, Temporary Restraining Order. 3. Family Code section 6384 requires that respondent's address be provided on the order form therefore having it on form DV-100 would be insufficient for purposes of providing notice to the restrained person.

	Commenter	Position	Comment	Committee Response
			mail . As to whether the address belongs on both the DV-100 and the DV-110 is a question for bench officers, see comment above. 4. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? We recommend adding "choked you" as an example of abuse, to include survivors who have experienced choking or strangulation. Research has found that the term "choked" is better understood and more frequently used by the general public than strangulation. - We recommend removing "contacted too much" since it is confusing and overly broad language. - We also recommend modifying "tracked your movements" to "tracked or blocked movements" to make it inclusive of survivors whose movements have been blocked. This is also reflective of language currently used on the DV-100. 5. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? We believe that expanding the length of this	4. The committee has added "choked or strangled you" as an example. - The committee has removed this example and replaced it with "repeated unwanted contact." - The committee has added "tracked, controlled, or blocked your movements" as an example of abuse. 5. The committee believes that SRLs completing the form without help are unlikely to use attachments, but would limit their response to the space provided on the form. The committee is sensitive to the cost of printing forms and balances this with the need to provide forms that

	Commenter	Position	Comment	Committee Response
			form is potentially intimidating. Instead of including the three ½ page items, we recommend continuing to utilize the check boxes allowing survivors to attach additional pages with further description as needed. Please keep in mind that many litigants are low income, and as the page length of a Domestic Violence Temporary Restraining Order application extends from 6 to 11 pages, it will increase the costs for people who now receive electronic copies of their Temporary Restraining Orders and must find a location to print these documents and must pay per page.	SRLs can successfully understand and complete.
			6. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Our recommendation is to use Option 1, but to also include the definition of coercive control in Option 2. "Coercive control means a number of acts that unreasonably limits the free will and individual rights of any person protected by this restraining order."As currently written, the addition of this sentence is critical because without the inclusion of a sentence explicit to "free will", the language around coercive control could be used against a survivor. This Option is also shorter, which relates to our concerns about page length mentioned above.	6. The committee agrees that option 1 is easier to read. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (form DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.

	Commenter	Position	Comment	Committee Response
			7. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? The new format eliminating italics is not confusing. If it is helpful for people generally, including those with dyslexia, we are supportive of the elimination.	7. The committee agrees and recommends limiting the use of italics to short phrases.
			8. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? While we appreciate the addition of some white space for readability, the length of the form could be intimidating for survivors and is costly to print. Right now, the form would print at 11 pages. As noted above, our recommendation is to remove the three ½ page items added in the new version of the form, and we believe that other areas of white space could be reduced slightly. We feel that there is a balance that can be found between the difficulty in reading the current form and the amount of white space on the proposed draft. This will help to reduce costs for survivors when printing the forms, and reduce the likelihood of the form's length being intimidating for survivors.	8. The committee is sensitive to the cost of printing forms and balances this with the need to provide forms that SRLs can successfully understand and complete. White space is needed to ensure that content is not glossed over.
			9. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date?	9. The committee supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. The committee will continue to work on developing icons that are intuitive and help

	Commenter	Position	Comment	Committee Response
			These do not appear to support readability but are also not impeding it. 10. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? No. We appreciate the Judicial Council staff's work on the implementation of these important laws. 11. Specific to the proposed AB 2517 implementation changes, we recommend the following changes to the mock ups provided on pages 3 and 4 of the request for comment. On the DV-100 proposed changes, we suggest adding "(if known)" after Amount " and a note that failure to list is a debt on this form is not a waiver of future responsibility by the restrained party. 12. We also recommend removing the requirement for a survivor to explain "how it happened" as this language can be read as victim-blaming and survivors may not know how the debt was incurred if it was taken out without their consent and knowledge. 13. We would also suggest modifying the sentence to make it clear that a survivor can indicate that multiple debts were the result of abuse and incurred without their permission. Taken together with our other feedback, we	represent important concepts. 10. Thank you for your comments 11. The amount, or an estimate of the amount should be provided to give the restrained person notice of the debt that is being requested. The committee does not believe that this item needs to include the disclaimer suggested by commenter as the debt would be governed by the underlying contract or agreement. 12. The committee has reworded this question so that it asks whether the petitioner knows how the debt or debts were incurred. The petitioner would provide an explanation if they indicate that they know how the debt or debts were incurred. 13. The item has been reworded to allow the petitioner to request the finding under Family Code section 6342.5(b) for one or more debts.

	Commenter	Position	Comment	Committee Response
			suggest rewriting this sentence as follows. : "If any of the debts listed above resulted from the abuse in this case and were made without your permission, explain which debt or debts." 14. On the DV-130, we suggest amending the proposed (b) to allow judges space to indicate multiple debts were the result of the abuse and made without the survivor's permission. As currently drafted, there appears to be space for only one debt to be indicated, however our experience is that it is common for an abusive partner to take out multiple debts in the survivor's name without their consent or knowledge.	14. Item 19b has been changed to allow the judicial officer to refer to one or more debts.
4.	Family Violence Appellate Project By Arati Vasan, Senior Managing Attorney Oakland, CA	AM	1. We are writing to express enthusiastic support for SPR21-14, but with amendments to address some areas of potential concern. We commend the Advisory Committee and staff for the positive changes and updates proposed. The members and staff have done an admirable job of using this opportunity to make the forms significantly more accessible, intuitive and helpful to unrepresented survivors of domestic violence and restrained parties. FVAP responds to the specific questions from the Invitation to Comment below. In response to question 10, FVAP has included a list of comments and suggestions by form and line item number. 2. Does the proposal appropriately address the stated purpose? The primary purpose of the proposal is to	1. Thank you for reviewing this proposal. 2. Thank you for your response.

	Commenter	Position	Comment	Committee Response
			implement the new laws enacted by Senate Bill 1141 (Rubio; Stats. 2020, ch. 248) and Assembly Bill 2517 (Gloria; Stats, ch 245). While Senate Bill 1141 did not codify the definition of "disturbing the peace" under the Domestic Violence Prevention Act, it explicitly identified certain types of abuse as "coercive control". The bill placed that language under the definition of "disturbing the peace", provided specific examples and direction to recognize when disturbing the peace in the form of coercive control is present. To that end, the proposal does well in adding the term "coercive control", its definition and its relationship to disturbing the peace and abuse. It goes beyond adding language to existing segments and provides explanation and clarity on the issue. Assembly Bill 2517 allows for a person to request or a court to find that a specific debt was incurred because of domestic violence. The added sentence and checkbox are helpful. At the same time, there is likely to be confusion between debts "incurred because of domestic abuse" and costs and services incurred as a result of the restrained person. Further language is needed to explain the difference. In addition, the language "made without permission" is slightly different from a court determining that a debt was incurred "without the petitioner's consent". Changing or adding in language that clarifies that the petitioner did not want the debt would be helpful. An unrepresented litigant	

	Commenter	Position	Comment	Committee Response
			may not be clear that "giving permission" through coercion or duress is not consent. Additional purposes of the proposal are to make the forms themselves more useable including changes to formatting, language, order of information. The proposal achieves these purposes with meaningful changes that will make it easier and clearer for survivors to request protection. 3.Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110. Racial identification and physical characteristics have the potential to feed into implicit and explicit biases about individuals alleged to have committed domestic violence. In particular, where that information is at the beginning of the request and is based solely on a petitioner's description, the potential increases the risk that subsequent descriptions of abuse or requests will be viewed through a lens of bias. For the purposes of law enforcement, the information may be necessary but unless a petitioner uses these characteristics or identities as part of their explanation of abuse, it is unclear why a court would need to know these details to review a request.	3. The committee is interested in removing requests for information from the forms when the information is not needed or redundant. In some situations, there may be a compelling reason to require a litigant to provide information more than once. This is a situation where the committee believes that redundancy is necessary. The committee is concerned that not requiring information needed to enter an order into CLETS could lead to orders not being entered into this law enforcement database. Although form DV-110 is a required form and petitioners are required to complete items 1, 2 and 3, there are times when form DV-110 is not properly completed or not turned into the court. For this reason, the committee proposes to include information that is required to enter a restraining order into CLETS (restrained person's race, age, and gender) on the request form as well as the order form. Because the restrained person's weight, height, eye color and hair color are not required to enter a restraining order into CLETS, the committee

	Commenter	Position	Comment	Committee Response
			-Separately, under question 10, we have indicated concerns with the petitioner identifying the gender of the respondent including as non-binary. The gender identity of only the restrained party is not required knowledge to determine if a temporary restraining order should issue.	recommends removing questions on the request form regarding the restrained person's weight, height, eye color and hair color. This information would still be listed on form DV-110 and form CLETS-001. (The comment as to gender is addressed below where raised relating to item 10.
			4. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. Possibly. If the parties live in the same place or close to one another or if one lives in a different state, the location information could influence a judge in determining the specific requests to grant. While a petitioner could always put this information in their description of abuse, it may be relevant to the request overall and should remain on the form in the absence of a more compelling reason.	4. The current question is only listed as a way to provide the restrained person notice that this address could be considered the restrained person's last known address for purposes of mailing a restraining order after hearing. Because this information is listed on form DV-110, in the items to be completed by the petitioner, the committee recommends removing this question from the request. If the petitioner is requesting stay away orders and the parties live close to one another, this information will be captured in item 12 on form DV-100. Currently, the forms do not capture information on the restrained person's residence for purposes of venue or jurisdiction, and these issues are typically raised by the respondent.
			5. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law?	5. The committee has bolded the "not a complete list" as suggested by commenter.

	Commenter	Position	Comment	Committee Response
			Additional language would be helpful to emphasize that the examples are not an exhaustive list and that an act does not have to look exactly like one of these examples in order to be abuse. While there is the parenthetical that says it is "not a complete list", it would be helpful to have a full sentence perhaps in bold or underline which makes the point clear. -One example of abuse we recommend adding is "kept you from accessing money or working". This example is slightly different from "basic needs" and highlights the issues of economic abuse, which are now named in the definition of coercive control. Additional examples of abuse to include are "pulled your hair", "put their hands around your throat (strangled)", and "prevented you from leaving or moving about freely." - Separately, the word "intimidation" may not be clear when citing the example of abuse based on immigration status. "Caused you fear", "made you afraid", or "threatened you" are some alternatives that might clarify this type of abuse for petitioners. -. In addition, the example "contacted you too much" may be easier to understand as "kept contacting you when you said to stop" or "contacted you repeatedly when you did not want it." or another variation. Further, the term sexually abused is somewhat self- referential.	-The committee has added "stopped you from accessing or earning money" to the list of examples of abuse. The committee has also added "choked or strangled you" and "blocked your movements." Because of space limitations, the committee was not able to add all suggested examples. - This example has been reworded to "made threats based on actual or suspected immigration status." - This example has been reworded to "repeated unwanted contact" which could include situations where petitioner did not tell the respondent to stop the contact but it could be implied by the type or frequency of the contact. The committee

	Commenter	Position	Comment	Committee Response
			One suggestion might be "sexually assaulted" or "engaged in sexual acts without your consent"?	prefers the term "sexual abuse" over the term "sexual assault" as the former seems easier to understand by laypeople and could be interpreted to be broader than "sexual assault."
			6. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? For survivors of domestic violence, it is unlikely that the DV-100 and related forms would not be intimidating or overwhelming regardless of length. Depending on the circumstances, a petitioner may be forced to complete the form in a rush e.g. before the court closes, before an emergency protection order expires or during the limited time available during a clinic or self-help appointment, so any length will be hard. The expansion gives a petitioner more opportunity to explain their experience and a bit more clarity on what to include. A petitioner might be worried they do not have enough to get an order if they do not fill in every line or all the pages e.g. only one incident of abuse or simply not a lot to describe. The benefits of the changes outweigh this possibility and should be incorporated into the new forms.	6. The committee agrees that the benefits of lengthening this section outweigh the consequences of doing so. User-testing also showed that the form took an average of 15-20 minutes to complete.
			7. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option	7. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the

	Commenter	Position	Comment	Committee Response
			2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Option 1 is the better option for ease of understanding and clarity. The primary concern is whether eliminating the specific terms in Option 2 creates an issue of notice whereby certain behaviors if not explicitly listed are not clearly prohibited. There is enough information in Option 1 and in the accompanying language on enforcement to be clear, but it would be concerning if law enforcement or a court were to determine that the section is too vague or incomplete to prohibit all the behavior listed in Option 2. 8. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? The usage of italics overall in these forms does not seem to achieve their intended purpose. Where italics are juxtaposed with bold headings, color blocks, borders and other formatting, the italicized characters look light, thin and are more difficult to read, rather than serving as a highlight that attracts attention. The forms already have different font sizes, bold text, graphics and text boxes. Form numbers are underline which is can be easier to follow than looking at the names of forms in italics. Italics are not necessary where there are these other formatting tools. It is easier to read without the	peace on the request (form DV-100) and a slightly longer version on the order forms which includes the definition of coercive control. 8. The committee agrees and recommends limiting the use of italics on these forms.

	Commenter	Position	Comment	Committee Response
			italics in the longer instructions and further removal of italics from these forms is encouraged. 9. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? Yes, the additional space makes the form much easier to read and allows increased on just the information on that page. We would also recommend that the order of the items in the DV-100 match the order of items as in the DV-110 and DV-130 even though the numbering would not be the same. 10. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? Yes. In general, the icons are very helpful as long as it is clear what they stand for. The calendar icon could be bigger but including the icon overall is a positive change. It is less clear what the exclamation point stands for. Having visual representations of words is a critical aspect of accessibility and can be more effective than italics or bold type so further use of icons is welcome. 11. Separately, we have a general recommendation that when the forms refer to a person or information in an earlier or later	9. The committee agrees that additional white space makes the content easier to read and also will ensure that the orders appear in the same sequence on the request and order forms. 10. The committee agrees and supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. The calendar icon has been made larger. The exclamation point is being used to draw attention to important information. During testing, users did appear to respond positively to the icon in that they stopped and read the information under item 2 of form DV-100. The committee will continue to work on developing icons that are intuitive and help represent important concepts. 11. The committee did not accept this suggested revision. Using item numbers rather than

	Commenter	Position	Comment	Committee Response
			number, that an additional word be used to give context. For example, saying the "protected person in 1" or the "move-out request in 13" would allow for the use of the numbers but make easier for the reader to remember what the numbered section was about. 12. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? Please see the list below for form-specific comments. The majority of the comments are centered on the DV-100 Request form but as the Invitation to Comment has noted, changes on this form generally require some adjustment on the other forms so that the language is consistent. In short, we support SPR-21-14 with amendments. We urge the Council to take additional steps, outlined, to realize the goal of protecting people from domestic violence. **DV-100** 13. • 1c: Address: We suggest adding information about what someone can do if they are in a temporary confidential location or shelter. It is primarily a safety issue and not a privacy issue. Adding information about how to find an address they can safely use or even to talk to shelter personnel would be helpful.	descriptors helps reduce the amount of text on these forms. Also, this form set and other civil protective order forms refer to the petitioner as "the person in 1" and the respondent to "the person in 2". The committee recommends keeping the language consistent. 12. See responses below. 13. The committee did not accept this revision but will consider adding it to an information form in a future cycle. This information can also be included on the California Courts' website.

	Commenter	Position	Comment	Committee Response
			14. • 2d. Gender: Allowing a petitioner to identify someone else's gender without their consent can be problematic. DVROs can be used as a tool of litigation abuse. Everyone should have a choice of whether to identify their gender and how. Misgendering and dead-naming individuals in a restraining order request is a tactic that we have seen when the request is used to retaliate or abuse a survivor who is not cisgender.	14. A restraining order granted by the court cannot be entered into the statewide protective order database, known as CARPOS (CLETS), without this information. While the committee understands the issue raised here, omitting this information would prevent the restraining order from being entered. However, the committee does believe that respondent should have the opportunity to correct this information and has included an item on the response (form DV-120).
			15. • 4a. Other Restraining Orders: The italics here and the lack of lines are visually more difficult. It would seem important to include the name of the order they have or had or who gave it to them, even if in some cases that information is in CLETS.	15. Lines have been added to appear under each text field. This item does not refer to "emergency protective orders" as input from providers showed that litigants do not refer to these orders as such.
			16 • 4b. Other Court Cases: Recommend adding child support as a type of case, as that is a common way that cases can get started and they may never move to a larger matter. It may be helpful to add the word dependency to the word juvenile or child welfare.	16. This item was identified during user-testing as one that causes confusion and takes up a lot of space on the form. If there is a child support case, the petitioner can enter it in the "other" category. Because juvenile cases can also include juvenile justice (delinquency cases) the committee did not accept the suggestion but did change "juvenile" to "juvenile court" as the latter is a term frequently used by litigants involved in a juvenile case.
			17. • 5. Describe Abuse: The use of the word "qualify" can be problematic here especially since the list is not exhaustive. People who experience abuse have mixed feelings about	17. The committee has reworded the introduction to this section and no longer uses the word "qualify."

	Commenter	Position	Comment	Committee Response
			how they would describe these acts. The word "qualify" could lead them to consider their experience as less important or insufficient.	
			18. 5a(4) Most Recent Abuse: It is great that there is a recognition of emotional injuries but the term would benefit from examples or additional words. One suggestion might be "physical or emotional effects" Same for 5b.(4) and 5c(4)	18. The committee has modified the form to state "emotional harm" instead.
			19. • 5a(5) Recommend changing the "restraining" to "protective", since police will give an EPO. Same for 5b(5), 5b(6)	19. The committee prefers to refer to all protective orders consistently as "restraining orders." Based on feedback from providers, litigants do not identify the type of restraining order they have by the title of the restraining order.
			20. • 6. Other Protected People: Recommend adding the word "children" to the phrase protect "family or someone you live with". • Recommend adding a sentence of examples for why someone would need protection. In particular, examples of any abuse or threats that have happened to protected people or in front of them. Petitioners often add names for protection but they do not know what they have to show to get that protection. Including the added information would provide more detail that is helpful.	20. The committee did add "children" to the list of people that can be protected. The committee did not accept the suggestion to include examples of why someone would need protection. The law requires the court to find "good cause" to protect others, which is not limited to direct abuse or threats toward others. Giving examples in this item may prove to be more limiting than helpful.
			21. • 7. Guns or Firearms: Recommend adding a checkbox option for whether the restrained	21. The committee did not accept this change to the item (now numbered 9). This information, if it

	Commenter	Position	Comment	Committee Response
			person has ever discussed or talked about having access to a gun or using a gun. It is not uncommon for a survivor to note that while the restrained party may not have a gun, they know that they have used one or have access to one through other people.	relates to the abuse, can be included in the "describe abuse" section.
			22. • Automatic Orders: Calling the orders automatic while also stating that a judge could not decide not to make the orders is bit confusing. Another option may be "Orders the Judge May Make Without Request" or "Orders the Judge Will Make." These examples are consistent with the language used in the other sections about on order to make now and orders to make after hearing.	22. The committee has modified the heading to "Automatic Orders That a Judge Can Make Right Away."
			23. • Orders that you want Judge to Make: Recommend adding to language to clarify that these are orders that would last until their court date and then the court will decide if they will continue.	23. The committee did not accept this suggestion as it may confuse the petitioner who may not fully understand the process yet. The committee will consider adding this information on an information form in a future cycle.
			24. • 11. Stay-Away Order: It is not clear why there is the option to fill in a yardage. Courts are unlikely to grant more than 150 yards even in a criminal protective order. It would be helpful to give examples and to ask them to explain why they want a distance other than the standard 100 yards.	24. Courts have varying practices on this issue. Because the court has discretion on the number of yards, the committee did not make the suggested revision.
			-In addition, if the judge then declined to make	-The committee did not incorporate this

	Commenter	Position	Comment	Committee Response
			the order for the requested number of yards, there should be a reason given. This would be useful in any situation where the judge makes an order different from what is requested by the party.	suggestion. The court has the discretion to issue ex parte orders and is already required to provide a reason for denying a jurisdictionally adequate petition under Family Code section 6320.5.
			25. • 13: Order to Move Out: There are still ongoing issues with courts denying move-outs because they believe the petitioner does not have a legal right to be stay. The checkbox for living at home with their children is an important and will help survivors who believe they may not have a right to stay.	25. No response required.
			26. • 14. Child Custody and Visitation: Recommend dividing the paragraph into first whether they have children in common and then whether they want an order, whether they have order and if so do they want the order changed. The options are separated out on the current version of the form and that may be clearer.	26. The committee did not accept this revision as it is clear that it only applies if the parties have children together (at new item 15 on form DV-100). Form DV-105 asks whether the parties have an existing order that they would like to be changed.
			27. • 15. Protect Animals: Recommend keeping the order of the language consistent with other sections and start with by "ask the judge to protect the list of animals below" rather than listing the animals first.	27. The committee has included an opening sentence to explain this type of order, consistent with other items.
			28. • 16. Control of Property: Recommend putting in examples of property such as cars and other items since some people think property refers to real property only.	28. The committee will consider including examples in a future forms cycle.

	Commenter	Position	Comment	Committee Response
			29. 19. Pay Debts (Bills): Recommend changing "resulted" to "because of"	29. The committee modified the wording to "resulted from."
			30. • 22. Other Orders: Some examples of additional orders that would be helpful are: civil standby, return of documents, and access to passwords. If not added as specific request, they would helpful to list as examples of other orders that may be requested. Civil standby is particular problem as some law enforcement will not assist unless it is clearly ordered by the court, If the request for does not include it as an option and a petitioner does not know to ask for it by name, they may be left unable to access belongings for at least the duration of the TRO.	30. The committee considered including examples but struggled with identifying examples that would be helpful. Some law enforcement agencies do not provide civil standbys even when ordered by the court therefore having it as an example could lead to a false expectation that it is available. The committee decided to leave the item as originally proposed.
			31. • FL-150 Income and Expense Declaration: Recommend replacing the word "mailed" with served so it is clear that service is not limited to by mail. It would be helpful to add that they need to file a proof of service in advance or bring it to court.	31. The committee has added information about filing the FL-150 and that service can be by mail or personally delivered. This instruction is now on the last page of form DV-100.
			-Separately, Family Code 6344 subd.(a) does not require an FL-150 to be filed prior to a court ordering attorney's fees where it is requested.	-Forms act as rules of court, which can set out the terms of court administration and court processes. The current form DV-100 requires the filing of form FL-150 before the hearing and the committee does not recommend changing this requirement.
			32. • 26. Batterer Intervention Program:	32. The committee believes that this level of

	Commenter	Position	Comment	Committee Response
			Recommend adding in information about payment, including that some programs are free or have fee waivers while others have some cost that is generally paid for by the batterer. Fears about cost may dissuade petitioner's from requesting this order. **DV-110** 33. • 2. Restrained Person: The addition of firearms information to this section is welcome and well done. 34. • 3. Other Protected People: Recommend allowing the court to fill in this section instead of leaving it to the petitioner. If the protected parties are not included, it is not helpful to have that section already filled in with names that will then be crossed out. 35. • 4. Hearing Date: The information on the DV-120 about the need to go to court is helpful. It would be helpful to add related language here so that the protected party knows what will happen if they do not go to court. This may be particularly helpful in cases where the restrained party or others are making misstatements and giving misinformation about the court process. While there is information on the DV-500-Info form to this effect, it would be more accessible if it were also on the DV-110. 36.• 8c. No Contact Order: Recommend	detail is not necessary for the request form. While this additional information may be helpful in some cases, the committee must also consider the length of this form. On balance, the committee decided not to include this information. 33. Thank you for your response. 34. The committee did not accept this change as it is the current practice to require petitioners to complete this item. A judicial officer can strike any protected person that is not covered by the order. 35. Under "Your Next Steps" on the last page of form DV-100, the committee has added a link to information on preparing for the court date. This will help direct the petitioner to the next steps in the process. 36. The committee believes the current description is sufficient to cover contact that is in

	Commenter	Position	Comment	Committee Response
			emphasizing the word "written" because if that is the limitation under the law, it is not regularly being followed.	writing.
			37. • 12. Protect Animals: Recommend keeping the format consistent with "You must" rather than changing to "The Person in 2".	37. This change has been made.
			38. • 14. Health and Other Insurance: It is unclear from the DV-100 that the court would have the ability to make an order against both parties. It would be helpful to include a reference in Item 17 on the DV-100 that the petitioner can also be ordered not to take these actions.	38. The committee did not make this suggested revision. While this information may provide some value, the committee is concerned that stating that some orders could be made against the petitioner could lead to more confusion as a common misconception is that a restraining order can be enforced against a petitioner.
			39.• Instructions for Law Enforcement: Recommend adding language or changing language in the heading to clarify that "Protected Person Cannot Be Arrested for Contact" or "No Arrest of Protected Person for Contact." Another addition could be "it is the responsibility of the restrained person to avoid contact with the protected party and to leave if the protected party appears."	39. The committee did not accept this revision at this time. The committee would want to know more about what issues protected persons are having with law enforcement on the ground.
			DV-120 40 • 4(a)(b) Relationship: Recommend changing the language from "agree" and "do not agree" to "have" and "do not have". The sentence would read "The protected person in 1 and I have the relationship in item 4 of Form DV-100".	40. The committee agrees that this item (now numbered as item 6) should not be in the same agree/disagree format as the other items. The question now asks, "has the person in 1 correctly described your relationship with them?"

	Commenter	Position	Comment	Committee Response
			41. • Existing Court Cases: Recommend adding a section similar to Item 3 on the new DV-100 which asks the restrained party about any existing court cases as they may have different information than the petitioner. **DV-130** 42. • 6. No Guns or Firearms: Family Code 6389 does not allow for storage of firearms with a local dealer. It allows storage with law enforcement or selling to a licensed dealer. Family Code 6389 appears to control the issue over the language of AB 539. 43. • Judge's Signature: Recommend making this an item number, Item number 29 44. DV-500-Info • Recording Confidential Communications: Recommend adding language that reflects the Penal Code Section 633.6 subd.(b) which allows a victim seeking a DVRO to record a communication from the perpetrator for use as evidence. This is separate from the ability of a court to order permission to record upon request as described in Penal Code Section 633.6 subd. (a). Penal Code Section 633.6 subd.(c) requires amending the DVRO application and order forms to incorporate these provisions. Since this is information that is relevant to petitioners who are going to court, it would be helpful to have this information in the DV-500 Info Form. This	41. The committee agrees, and has added an item to ask about other court cases and restraining orders. 42. Because Penal Code section 29830 allows a person prohibited by a restraining order to store their firearm with a licensed gun dealer, the committee does not recommend removing storage with a licensed gun dealer as an option. 43. This change is not consistent with the Judicial Council forms style guide 44. The committee will consider this suggestion in a future forms cycle. This information may be better to include on form DV-520-INFO, Get Ready for the Restraining Order Court Hearing.

	Commenter	Position	Comment	Committee Response
			information could also be added to the DV-110 if appropriate. 45. • I need and interpreter. How can I get help? Unfortunately, the linked Council form is not being used by all courts the same way. Courts still have their own procedures, forms and timelines that may prevent or make it difficult for a petitioner to get an interpreter. In addition, it is not clear who are the "court staff" they should go to and ask to get more information. It may be more helpful to state that they need to check their court's website online and with their court clerk to find out what is the process for getting an interpreter. 46. • What if I want to leave the country or state: Recommend changing this heading and paragraph. While the restraining order is valid anywhere, there is a difference between leaving short term and moving away particularly where children are involved. In addition, recommending that someone contact the local police is not necessarily a safe option and should not be part of the paragraph as a necessary step. A different heading could be "Is this order valid outside of California?"	45. The committee has added an instruction to ask the court clerk. 46. The committee agrees and has changed the language and heading to address the concerns noted by commenter.
5.	FLEXCOM (Executive Committee of the Family Law Section of the California Lawyers Association)	A	Domestic Violence: Revising Forms to Implement New Laws – SPR21-14 1. FLEXCOM agrees with this proposal.	1. Thank you for reviewing this proposal.

	Commenter	Position	Comment	Committee Response
	By Justin M. O'Connell FLEXCOM Legislation Chair , and Saul Bercovitch Director of Governmental Affairs California Lawyers Association		As to specific requests for comment, FLEXCOM responds as follows: 2. Does the proposal appropriately address the stated purpose? Yes. 3. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"— Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? They both provide a simple explanation, but Option 1 appears to highlight one form of DV in a manner that might appear to place importance on it. Option 2 provides uniformity of presentation of types of DV. 4. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? Yes. It could limit enforceability because if the request is lacking information the order may also lack information. If the court is not provided this information, then it might not be included in an order, or the court might believe it is not needed in an order if it is not part of the request. Including this information takes up little room on a form but could have significance for enforcement.	2. No response required. 3. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control. 4. The committee is interested in removing information from the forms when it is not needed or redundant. In some situations, there may be a compelling reason to require a litigant to provide information more than once. The committee notes that the restrained person's weight, height, eye color and hair color are questions on forms CLETS-001 and DV-110. Additionally, this information is not required to enter a restraining order into CLETS. Because of these reasons, the committee recommends removing height, weight, eye color and hair color. Race, however, is a piece of information that is required to enter a restraining order into CLETS-001, and will be included on form DV-100 in an abundance of

	Commenter	Position	Comment	Committee Response
				caution.
			5. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? This presents the same issue as omitting a description of the restrained party. A single address line takes up little room on the form but could have significance for enforcement.	5. Family Code section 6384 requires that respondent's address be provided on the order form therefore having it on form DV-100 would be insufficient for purposes of providing notice to the restrained person.
6.	Harriett Buhai Center for Family Law By Rebecca L. Fischer HBCFL Staff Attorney Los Angeles, California	AM	1. Does the proposal appropriately address the stated process? In general, yes. In the event that remote appearances continue to be permitted, it would be helpful for the instructions to identify that fee waivers may be necessary for remote appearances and associated costs. If this is not appropriate on the DV-100, it could be added to DV-100-INFO which currently lists the costs of DVROs as nothing.	1. The committee will consider adding information about fees for remote appearances to another information form. Form DV-500-INFO has been revised to clarify that there is no cost for filing the application.
			2. Would removing the questions regarding the restrained person's physical characteristics from form DV-100 result in any negative consequences? -No	2. The committee agrees and recommends removing questions on the request form regarding the restrained person's weight, height, eye color and hair color. The committee proposes adding "race" back on the request form, as this information is required for entry into CLETS (CARPOS), as indicated by the Department of Justice.
			3. Would removing the questions regarding the restrained person's address from form DV-100	3. The committee agrees and proposes removing the question regarding the restrained person's

	Commenter	Position	Comment	Committee Response
			result in any negative consequences? As long as the information is on the order, no anticipated negative consequences.	address from the request form.
			4. Are there other examples of abuse that should be included in the Describe Abuse section, either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? Examples of physical abuse should not be listed first. Listing physical abuse perpetuates the stereotype that physical abuse is required for issuance of a restraining order	4. The committee agrees and has moved the examples of physical abuse to the second column.
			-Other types of abuse to consider adding: strangulation, choking, and interfering with phone or mail.	-The committee has added choking/strangulation to the list of examples. Because of limited space, the committee was not able to add all the suggested examples and did not include "interfering with phone or mail."
			-The term "sexual assault" is not generally useful to SRLs as SRLs are unlikely to describe the sexual abuse they experienced as sexual assault. Given the high rates of abusive sexual conduct, if the term sexual assault is left on the list, it would be helpful to include specific examples of sexual assault (including examples related to pregnancy such as forced pregnancy or forced abortion) or, if the terms become too lengthy, provide some general language like "sexual abuse includes any sexual activity without your consent or being made to do	-Instead of "sexual assault" the committee is now recommending using "sexual abuse" which may be easier for laypeople to understand.

	Commenter	Position	Comment	Committee Response
			something you did not want to do by force, threats, or intimidation". -If there are too many examples of abuse to list, we would encourage the types of abuse to be listed on the DV-500-INFO in greater detail and a reference to that help sheet be put on the DV-100. 5. In the explanation of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? Multiple sets of the "Describe Abuse" section are likely to be intimidating to SRLs. Many SRLs may assume that if there is space for three specific dated incidents of domestic violence then three specific dated incidents of abuse are required. In addition, many litigants have experienced domestic violence as a course of conduct rather than specific dated events and course of conduct descriptions do not fit well in the describe abuse section. We suggest that one section of the "describe abuse" be included and the full additional page be included as a place for SRLs to provide abuse about additional events. The page could provide language instructing the litigant to "Describe any other abuse you want the judge to know about." This would be particularly useful for SRLs who	-This may be helpful but the committee believes further consideration and public comment would be appropriate before making that revision and so does not recommend making this revision at this time. The committee will consider this in a future cycle. 5. The committee agrees that allegations can often be described as a “course of conduct” and the committee has added a new subsection under each incident for litigants to indicate if a type of abuse has occurred other times. The committee believes it is important to provide as much space as possible for this important section as SRLs may not understand the concept of using attachments and therefore limit their response to the form itself. The committee believes the language clearly indicates that additional incidents are optional and not required. If the petitioner needs more space, there are instructions at the end of the “Describe Abuse” section for how to include additional incidents.

	Commenter	Position	Comment	Committee Response
			frequently do not have assistance in composing or attaching a separate declaration. - In the "Describe Abuse" section, we would encourage the order and language of the questions to be reconsidered. Asking as the second question whether anyone else heard or saw the abuse may make SRLs believe they should not describe abusive incidents if they were not witnessed. Many of the most severe forms of abuse are not witnessed. Similarly, the question about whether the police came implies that the SRL should have called the police when many instances of abuse-including severe abuse-are never reported. We recommend those questions be rephrased and be moved to after the place for the description of the abuse. The witness question could be asked as: "Did anyone witness the abuse? Yes/ No If yes, please provide their name _____ " The police question could be asked as: "Was the incident reported to the police? If so, what happened? If the police gave you a restraining order, provide it in section x." 6. Which is the better option to include on the forms to implement SB 1141 's new definition of "disturbing the peace"-Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? Option 1 is better. It is clearer and SRLs may lose focus with the long paragraphs and the sub-definitions. In the event Option 2 is selected, we	- The committee agrees that the questions listed in the “Describe Abuse” section (e.g. witnesses, whether police were called) should be rephrased as “yes”, “no” and “I don’t know”, when appropriate. The committee believes that SRLs generally have a hard time answering open-ended questions. Helpers report that they often have to prompt SRLs and ask pointed questions to elicit relevant information. The committee recommends keeping these questions before the narrative section because these questions act as a primer, to get the person ready to provide details. 6. The committee agrees that option 1 is easier to read. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request (form DV-100) and a slightly longer version on the order forms which includes the definition of coercive control. The committee also proposes to use dots

	Commenter	Position	Comment	Committee Response
			would strongly encourage the text be divided into shorter paragraphs. 7. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? No response. 8. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read? Yes it is helpful and is easier to read. 9. Is the addition of icons likely to be helpful to SRLs, such as, on form DVI 00, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? These were not helpful and are potentially confusing to SRLs. The exclamation point at item 1 may make SRLs believe that is the most important piece of information to fill out. In addition, for litigants completing the form through interpretation, the pictures are not readily interpretable. 10. Are there any other formatting or organizational changes proposed here that should be incorporated in Judicial Council	(bullet points) to break up the content in this section. 7. No response required 8. The committee agrees and believes the addition of white space makes the content less overwhelming for the SRL and more likely that information will not be glossed over. This was confirmed during user testing where helpers reported that the information was easier to read through. 9. The exclamation point is used to draw the person's attention to important information. During user-testing, the exclamation point was noticed by users, who stopped to read through the instruction at item 2 on form DV-100. The committee will continue to work on developing icons that are intuitive and help represent important concepts. 10. Thank you for commenting on this proposal. The committee agrees that additional space, including white space, is helpful as it makes the

	Commenter	Position	Comment	Committee Response
			forms generally? Additional space on forms is very helpful.	forms easier to read.
7.	Human Options By Sara Behmerwohld, Esq. Legal Advocacy Program Manager Irvine, CA	N/I	This is not in response to any of the existing proposed changes, but rather to make a new one. We have seen an increase in clients whose permanent ROs have expired (who were unaware that they had the option to renew). I know there is an info sheet that explains the renewal process, but it seems like a line or two in the order itself (near the expiration date) letting folks know they have a right to request a renewal (and maybe directing them to the info sheet) would be really helpful. I think this proposal is pretty self-explanatory, but I'm happy to provide more detail or talk to you all about it further if that would be helpful.	The committee appreciates the comment but declines to accept this suggestion at this time. The committee notes that information regarding renewing an order should also include information about how to change or terminate an order. The committee believes that this type of information is better on an information form, instead of the order itself.
8.	Natasha Moiseyev	N/I	Include check boxes and instructions on DV-100/DV-120 to guide the requesting/responding party to provide the necessary proof of parentage per FC 6232 and 6246, and corresponding boxes on the DV-110 and DV-130.	This type of change would require public comment. The committee will consider this suggestion in a future forms cycle.
9.	Orange County Bar Association	A	The forms accurately reflect the new changes in the law. Option 2 will be easier for most SRLs to understand.	The committee notes the commenter's agreement with the proposal. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the

	Commenter	Position	Comment	Committee Response
				peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.
10.	Pallavi Dhawan	N/I	1. I like Option 1 but would remove (including coercively control) so that the final clause in Option 1 reads "..., or disturb the peace of any person protected by this restraining order. Then, in the bubble, I'd insert after "Disturbing the peace means to disturb someone's mental or emotional well-being": "This includes coercive control, a pattern of acts that unreasonably interfere with someone's free will and personal liberty, such as: [insert list from Option 2 starting with "isolating them from friends, relatives, or other support" and ending with "making a person do something that they don't want to do by force, threat, or intimidation. This includes threats related to the protected person's actual or suspected immigration status"]. I would remove the phrase "keeping track of them" in the list from Option 2 and throughout the forms. - The only other suggestion I have is for Item 5, the "describe abuse" section. I would remove "contacted you too much" from the list and would replace "tracked" with "controlled" for "tracked your movements". - I would rephrase the language in the first column to grammatically align with the other two columns by inserting the word "you" (hit, kicked, pushed or bit you; caused injuries to	1. For the request form (form DV-100), the committee recommends providing a list of examples of coercive control, as examples are easier for SRLs to understand. This would include "keeping track" of the protected person or persons. The definitions of disturbing the peace and coercive control will be included on the order forms to provide sufficient notice to the restrained person (DV-110 and DV-130). - This example has been revised to "tracked, controlled, or blocked your movements" to account for more situations. - These changes have been made.

	Commenter	Position	Comment	Committee Response
			you; threatened to hurt or kill you; sexually abused you; destroyed your property). - I would add something related to forced debt/economic abuse: "prevented you from earning money or accessing finances."	 - This example has been added with modifications to the language.
11.	Robert A. Cook Palo Alto CA, 94306	A	1. (I was surprised NOT to find the addition of items 6 (DV-110), and 8 (DV-130) in the list on page 7 of changes to those two forms.) However, I was VERY glad to see these items added, and the simple and elegant way it was done. 2. Re: modifications related to disturbing the peace, I prefer Option 2. To me, simplicity is critical, since the vast majorities of both petitioners and respondents are SRLs	1. Thank you for your comment. The item "Cannot Look for Protected People" reflects the orders that can be made under Family Code section 6322.7. This change does not reflect a change in the law. These orders are included on the current forms (form DV-100 at item 6b, form DV-110 at item 6a, and form DV-130 at item 6a). In this proposal, the committee recommends that this be a stand-alone item on all the forms. It is currently included under "personal conduct orders" and can easily be overlooked. 2. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.
12.	Superior Court of Los Angeles County By Bryan Borys	AM	1. Does the proposal appropriately address the stated purpose? Yes 2. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences?	1. Thank you for reviewing this proposal. 2. The committee agrees and recommends removing questions on the request form regarding the restrained person's weight, height, eye color and hair color. The committee proposes adding

	Commenter	Position	Comment	Committee Response
			The applicant would still have the option to include this information on form DV-110. No	"race" back on the request form, as this information is required for entry into CLETS (CARPOS), as indicated by the Department of Justice.
			3. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. No	3. The committee agrees and has removed this question.
			4. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? No	4. Thank you for your response. Based on other comments, the committee has added additional examples of abuse.
			5.Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? Likely to be intimidating.	5. The committee believes that SRLs completing the form without help are unlikely to use attachments, but would limit their response to the space provided on the form. Because of this, the committee believes that the benefits to providing the additional space (3 pages total) outweigh the consequences of lengthening the form.
			6. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an	6. The committee likes Option 1 because it is simpler and therefore easier to read. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the

	Commenter	Position	Comment	Committee Response
			order? (See page 2 of this Invitation to Comment.) Option 1	peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.
			7. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? It is helpful.	7. The committee agrees and recommends limiting the amount of italics used on forms.
			8. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? Helpful.	8. The committee agrees that using white space is helpful as it makes the form easier to read.
			9. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? Yes	9. Thank you for your comment. The committee agrees and supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency
			10. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? No	10. No response required.
			11. Would the proposal provide cost savings? If so, please quantify. No	11. No response required.
			12. What would the implementation requirements be for courts—for example,	12. Thank you for the feedback.

	Commenter	Position	Comment	Committee Response
			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? • Update online tools. • Training of court staff and self-help centers. • Replacement of forms packets online and physically available in paper form. 13. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes	13. Thank you for your response.
13.	Superior Court of Orange County	NI	1. Does the proposal appropriately address the stated purpose? Yes, this proposal appropriately addresses the stated purpose. 2. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110. No, removing the questions regarding the restrained person's physical characteristics from the DV-100 would not have any negative consequences. It makes more sense to include this information on the DV-110. Law enforcement, children's school, daycares, etc. are primarily given the DV-110 and could find the person's physical characteristics useful for	1. Thank you for reviewing this proposal. 2. The committee agrees and recommends removing questions on the request form regarding the restrained person's weight, height, eye color and hair color. The committee proposes adding "race" back on the request form, as this information is required for entry into CLETS (CARPOS), as indicated by the Department of Justice.

	Commenter	Position	Comment	Committee Response
			identification purposes	
			3. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? No, the examples of abuse that are included in the Describe Abuse section are sufficient.	3. Thank you for your response. Based on other comments, the committee has added additional examples of abuse.
			4. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? This expansion will be helpful to SRLs. The added items make the form easier to understand and serves as a guide as to what type of information should be provided when completing the form. It may be a good idea to add an attachment checkbox to item 5b and 5c that allows parties to attach a separate sheet to further describe the abuse.	4. The committee believes that including an attachment checkbox at the end of every subsection is likely to be confusing and instead recommends including one at the end of the "Describe Abuse" section.
			5. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Option 1 seems to be the best option considering legal accuracy as well as a lay	5. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.

	Commenter	Position	Comment	Committee Response
			person's ability to understand such an order. 6. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? Yes, the new format makes the form easier to understand. 7. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? Yes, the new format makes the form easier to understand. 8. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? Yes, the addition of icons is likely to be helpful to SRLs. 9. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? Item 21 – I recommend that the wording on the last piece of the second sentence be changed to "a few extra days" instead of "a few days extra."	6. The committee agrees and recommends limiting the use of italics on forms. 7. The committee agrees that use of white space is helpful because it makes the form easier to read. 8. The committee agrees and supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. 9. This change has been made.
14.	Superior Court of Sacramento By Rebecca Reddish, Analyst	AM	1. DV-100, Page 3, #5, a.(2): Change "Did anyone else hear or see…" to "Who else heard or saw…"	1. Based on user-testing results and other comments, this question has been reworded as "yes" or "no" question.

	Commenter	Position	Comment	Committee Response
			2. DV-100, Page 6 – 11, "Orders That You Want a Judge to Make": Throughout this section each point begins with "I ask the Judge...". We recommend changing this to "I ask for a court order...". Many courts have commissioners hearing and making orders on these cases and phrases such as "I ask the Judge" give SRL's the idea they may talk to the Judge. 3. DV-100, Page 6: Change title from "Order for No Abuse" to "No Abuse Order" 4. DV-100, Page 7, #10: This paragraph is too long and unnecessary. Recommend it be removed or at least broken up into multiple paragraphs. 5. DV-100, Page 7, #12: Last sentence, replace "…person in (2) is ordered to have time with your children" with "…person in (2) has a visitation order". 6. DV-100, Page 9: The section describing sheriff service has been deleted, what about safety concerns? The sheriff service language is still in DV-110.	2. The committee recommends using "judge" to refer to all judicial officers, including commissioners. Using "judge" is more understandable to a lay person because "court" could mean any person working in the court system. 3. The committee is concerned that "No Abuse Order" could be interpreted as the court not granting an order to stop abuse. Instead, the committee has revised the title to "Order to Not Abuse." 4. The committee agrees and recommends using dots to break up the content in the description of abuse (now above renumbered item 5). 5. The committee decided not to provide information on possible exceptions to the "no-contact" or "stay-away orders" on the request form. The committee will consider the best way to provide this information in a future forms cycle. 6. Information about the sheriff serving for free is now included under "Your Next Steps" on the last page of form DV-100.

	Commenter	Position	Comment	Committee Response
			7. DV-100, Page 10, #24: Change "Spousal Support" to "Spousal or Partner Support"	7. The committee did not accept this change as it is more likely to lead SRLs to believe that spousal support could be ordered for a non-married partner.
			8. DV-100, Page 11, #27: Move this section after #19 the "Pay Debt (Bills)" section	8. The committee has moved the item on restitution (now item 23) to immediately follow the item for debt payment (now item 22).
			9. DV-110, Page 2, #7: Use Option 1 language.	9. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request (form DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.
			10. DV-120, Page 1, #2: The wrong number is referenced. Change (2) to (1).	10. This change has been made.
			11. DV-120, Page 1, #3, below dotted line: Change "…the other side…" to "…Person in (1)…".	11. This change has been made.
			12. DV-120, Page 5, Box at the top of the page: Change "If you…" to "If the Person in (1)…"	12. This section has been rewritten to make the instruction easier to understand.
15.	Superior Court of San Diego County By Mike Roddy	AM	1. Does the proposal appropriately address the stated purpose? Yes.	1. Thank you for reviewing this proposal.
			2. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form	2. The committee agrees and recommends removing questions on the request form regarding the restrained person's weight, height, eye color

	Commenter	Position	Comment	Committee Response
			DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110? No. See General Comments re DV-110, item 2.	and hair color. The committee proposes adding "race" back on the request form, as this information is required for entry into CLETS (CARPOS), as indicated by the Department of Justice.
			3. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. No.	3. The committee agrees and has removed this question from form DV-100.
			4. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? No	4. Thank you for your response. Based on other comments, the committee has added additional examples of abuse.
			5. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating? It may prove overwhelming to SRLS as they are often rushing to complete the paperwork. It is recommended that two sections be included, as provided in the current form, with the instruction that additional instances can be attached if necessary.	5. The committee believes that SRLs completing the form without help are unlikely to use attachments, but would limit their response to the space provided on the form. Because of this, the committee believes that the benefits to providing the additional space (3 pages total) outweigh the consequences of lengthening the form.
			6. Which is the better option to include on the forms to implement SB 1141's new definition	6. To ensure that information is both accessible and comprehensive, the committee recommends

	Commenter	Position	Comment	Committee Response
			of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Option 2, as it provides additional detail which will assist litigants in understanding what constitutes disturbing the peace.	including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control.
			7. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? The new format appears to be clear.	7. The committee agrees and recommends limiting the use of italics on forms.
			8. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? It is unclear whether the additional white space, which in addition to some of the other proposed changes, nearly doubles the number of pages of the DV-100 form from 6 to 11 pages will be helpful or intimidate SRLS completing the paperwork.	8. On balance, the committee believes that providing ample white space to ensure that content is easier to read and not glossed over, outweighs the consequences.
			9. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-110 and DV-120, the courthouse with calendar for the court date? It is unclear whether the addition of icons will be helpful.	9. Thank you for your comment. The committee supports the use of icons to increase the accessibility of content, especially for individuals with limited literacy or English proficiency. The committee will continue to work on developing icons that are intuitive and help represent important concepts.
			10. Are there any other formatting or	10. Responses to general comments are provided

	Commenter	Position	Comment	Committee Response
			organizational changes proposed here that should be incorporated into Judicial Council forms generally? See General Comments below. 11. Would the proposal provide costs savings? If so, please quantify. No. 12. 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. Updating internal procedures, local packets, and ordering printed stock. 13. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, provided the final versions of the forms are provided at least 30 calendar days before the effective date to ensure that there is sufficient time to update procedures, order printed stock, and notify staff. General Comments: 14. "Judge" is used for "court" throughout DV-100, but DV-110 uses "court" and "judge" (e.g. "…without permission from the court", "…that violate the judge's orders."). It is recommended that one term be used throughout both forms.	below. 11. No response required. 12. Thank you for your response to this question. 13. Thank you for your comment. Final versions are posted online on the Judicial Resources Network (JRN) at least 30 days before their effective date. 14. The committee agrees, and recommends using "judge" when referring to a judicial officer and "court" when it could be the judicial officer or court clerk.

	Commenter	Position	Comment	Committee Response
			The following modifications to the forms are recommended: DV-100: 15. Item 3g: "Have you lived with person in 2 as a family or group with common goals (more than roommates)? Propose removing "group with common goals" as it is unclear what "common goals" entails. 16. Item 5a(2), 5(b)(2), & 5(c)(2): Propose adding the following "(If yes, list them)" 17. Item 5d: Propose modifying as follows: "~~Here~~, describe any other time when the person in 2 was abusive that you want the judge to know about below." 18. Item 7(c): Propose modifying as follows: "Yes (if you have information, you may complete the section below. 19. Item 12: Propose modifying "My job" to include "or workplace" to match item 9 of DV-110. DV-110: 20. Item 2: Propose that language indicating that protected person must only provide	15. The committee agrees with this suggestion. User-testing showed that "group with common goals" was not easily understood by lay people or providers. Instead, the committee recommends using "household" instead of "group with common goals." 16. The committee has changed this question (now in renumbered items 5b, 6b and 7b) to be a "yes" or "no" question, and changed the additional instruction to "if yes, give names." 17. This question has been removed. Instead, the person is directed to use an attachment if they are more types or incidents of abuse to list. 18. This change has been made (now in renumbered item 9c). 19. This change has been made. 20. The committee has added "give information that you know" to address commenter's concern.

	Commenter	Position	Comment	Committee Response
			information that has a star next to it be removed. Litigants often include "unknown" in these additional physical characteristics. By including that these fields are not required litigants may elect to simply not provide the information. These additional physical characteristics may be beneficial in identifying the restrained person when law enforcement is trying to enforce the order and the restrained person has a popular name (e.g. John Smith).	
			21. Item 5: Propose modifying section as follows to be consistent with the section name on DV-100: "No Guns, Other Firearms, or Ammunition"	21. This change has been made
			DV-120: 22. Propose restoring the hearing date to the Response form. Responses are often filed within a day or two of the hearing and including the date on the form allows court staff to quickly identify and route paperwork to the appropriate department.	22. The committee did not accept this change. The respondent could provide the wrong date which if left incorrect, could be relied upon by the respondent.
			23. Item 6: For consistency, propose changing to "Guns, Other Firearms, or Ammunition."	23. This change has been made.
			DV-130: 24. Item 2: Propose that language indicating that protected person must only provide information that has a star next to it be removed. Litigants often include "unknown" in these additional physical characteristics. By	24. Same response as above.

	Commenter	Position	Comment	Committee Response
			including that these fields are not required litigants may elect to simply not provide the information. These additional physical characteristics may be beneficial in identifying the restrained person when law enforcement is trying to enforce the order and the restrained person has a popular name (e.g. John Smith 25. Item 6: Propose modifying section as follows to be consistent with the section name on DV-100: "No Guns, Other Firearms, or Ammunition." DV-500-INFO: 26. How can the restraining order help me? Propose adding "orders" after "Obey child custody and visitation" (4th bullet). 27. Requests for Accommodations: Propose updating the title of referenced form, MC-410, to reflect new name: "Disability Accommodation Request."	25. This change has been made 26. This change has been made. 27. Thank you, this change has been made.
16.	Superior Court of Santa Cruz County By Sasha Morgan	NI	1. Does the proposal appropriately address the stated purpose? Yes. 2. Would removing the questions regarding the restrained person's physical characteristics (e.g., race, height, weight, hair color) from form DV-100 result in any negative consequences? The applicant would still have the option to include this information on form DV-110.	1. Thank you for your comment. 2. Based on comments by the Department of Justice, the committee proposes adding "race" to form DV-100 because it is information that is required to enter a restraining order into the statewide database. The committee agrees that other information like height, weight, hair color, and eye color should be removed from form DV-

	Commenter	Position	Comment	Committee Response
			No, approve of this change.	100 and would not result in negative consequences.
			3. Would removing the questions regarding the restrained person's address from form DV-100 result in any negative consequences? The applicant would have the option to include this information on form DV-110. No, approve of this change.	3. The committee agrees and proposes removing the question regarding the restrained person's address from form DV-100.
			4. Are there other examples of abuse that should be included in the Describe Abuse section (new item 5, form DV-100), either as a common form of abuse, or one that is not commonly understood to be "abuse" under the law? Issue we see is that this does not match #7 on DV-110.	4. These items should not be parallel, as the item on "Order to Not Abuse" reflects the conduct that may be restrained under Family Code section 6320 while the non-exhaustive list in the "Describe Abuse" is based on the definition of abuse in Family Code section 6203. .
			5. Think there should at least be an Other or Fill In Section – and a note see other items #7 on DV-110. Reading this list, we are worried someone would think this is an exclusive list.	5. The statement "not a complete list" has been bolded to emphasize that the list is not exhaustive.
			6. Is the expansion of the Describe Abuse section to add three more half-page items that the petitioner may complete (which adds additional pages to the form) likely to be helpful to SRLs or potentially intimidating?	6. The subsections have been reworded to make it more clear that they would only be completed if there are other types of abuse to allege. The committee believes that SRLs completing this form without help would be unlikely to use an attachment instead of the form, and therefore does

	Commenter	Position	Comment	Committee Response
			Would like more space. Make it clear that you can do an attachment and do not have to just fill in. Also state that 5d is optional so you do not feel like you have to keep going. 7. Which is the better option to include on the forms to implement SB 1141's new definition of "disturbing the peace"—Option 1 or Option 2, taking into account legal accuracy as well as a lay person's ability to understand such an order? (See page 2 of this Invitation to Comment.) Option 1 is our vote. Note we did like some of the examples in Option 2 but it is way too dense. 8. Is the new format eliminating italics from longer instructions helpful or does it make the forms confusing? No impact. 9. Is the new format adding more white space to the forms helpful (making the forms longer but individual pages easier to read)? Yes. 10. Is the addition of icons likely to be helpful to SRLs, such as, on form DV-100, the exclamation point at item 1; and on forms DV-	not recommend including an instruction that an attachment could be used in lieu of completing the items in the "describe abuse" section. 7. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly longer version on the order forms which includes the definition of coercive control. 8. No response required. 9. The committee agrees and recommends using ample white space on these forms. 10. The committee supports the use of icons to increase the accessibility of content, especially for

	Commenter	Position	Comment	Committee Response
			110 and DV-120, the courthouse with calendar for the court date? Neutral. 11. Are there any other formatting or organizational changes proposed here that should be incorporated into Judicial Council forms generally? Put items on DV-100 an DV-110 in the same order. Recording Communication, a good example, it does not fall in the same order on these forms. 12. Move additional protective party to #3 on DV-100. This lines up better with TRO and is often something you need to discuss right away with a customer. Feels awkward that this comes later in the new form. 13. #11 DV-100 Exception Children. We do not think this is written correctly. Propose Exception regarding contact about children: The judge may grant an exception to this no-contact order, to allow the parties the ability to discuss issues related the parties' children.	individuals with limited literacy or English proficiency. The committee will continue to work on developing icons that are intuitive and help represent important concepts. 11. The committee agrees and will make this change. 12. The committee does not agree with this suggested revision. The primary reason for making this change is to have the question regarding "why" additional people need to be protected come right after they list additional people that need protection. If we kept item #3 as-is, the question as to why they need additional people protected would come before their own description of why they, the petitioner, needs a restraining order. 13. The committee decided not to provide information on possible exceptions to the "no-contact" or "stay-away orders" on the request form. The committee will consider the best way to provide this information in a future forms cycle. The court would still have the ability to make exceptions on the order forms.

	Commenter	Position	Comment	Committee Response
			14. DV-110 Restrained Party Demographic Information: Make this bigger, especially line to write the person's name. We see very long names that would not fit.	14. There is not extra space to create another line, but the digital version of this form can fit up to 60 characters.
			15. DV-110 *. We think this will be confusing to our customers knowing what to complete. We also have a Sheriff's Department that really insists that all of this be filled out.	15. The committee believes that the instruction is necessary as some petitioners will not have all the information regarding the restrained person. The committee has added "give all the information you know" to address the commenter's concern
			16. DV-120 #2 Your Name: We think there is a typo and should be the person in 1 (not 2).	16. This change has been made.
			17. DV-500-Info: How can the restraining order help me? Obey child custody and visitation – we suggest adding the word order, so it states Obey child custody and visitation *orders*.	17. The committee agrees and will make this change.
			18. Would the proposal provide cost savings? If so, please quantify. Cost Neutral.	18. No response required
			19. 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? Biggest issue staff and community training.	19. No response required.

	Commenter	Position	Comment	Committee Response
			20. Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes that is enough time.	20. The committee agrees that three months would be sufficient time to implement this proposal.
17.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee (JRS)	AM	The JRS notes that the proposal is required to conform to a change of law. **Suggested modification(s):** 1. Concern that removing questions about restrained identifying information might make service and enforcement more difficult. I have reached out to our local law enforcement agencies for feedback. 2. Concern that removing restrained person's address would make service by mail after hearing more problematic. 3. Prefer Option 2 for definition of Order for No Abuse. Find it more accurate and less confusing.	1. The committee believes that removing this information from the DV-100 should not impact law enforcement's ability to serve or enforce the order as the information would also be included on the order forms as well as form CLETS-001. For service, Sheriff Departments are responsible for providing free service of restraining orders and departments usually require the petitioner to fill out an additional form to provide any information needed to serve the restraining order. 2. Family Code section 6384 requires that respondent's address be provided on the order form therefore having it on form DV-100 would be insufficient for purposes of providing notice to the restrained person. The address would still have to be listed on form DV-110. 3. To ensure that information is both accessible and comprehensive, the committee recommends including a shorter explanation of disturbing the peace on the request form (DV-100) and a slightly

	Commenter	Position	Comment	Committee Response
				longer version on the order forms which includes the definition of coercive control.
			4. DV-100: Section 12 removed the question that asked if the person to be restrained could still get to work, their residence, etc. if the order was granted. This is often an issue in small counties/towns and creates the possibility of inadvertent violations and increased conflict.	4. The committee removed the existing question as self-help staff and domestic violence service providers reported that SRLs do not understand the question, as written. Instead the committee has added additional questions under "Stay-Away Order" (item 12) to gather this information.
			5. DV-110: Section 3 has the protected person fill in the names of other protected persons. Sometimes petitioners add people to be protected who may not fall within defined relationship and do not reside with the protected person. Would it be better for court to fill in this section?	5. The committee believes that petitioners should continue to complete this item and judicial officers can strike those persons that do not qualify for protection under the restraining order.
			6. DV-120: Section 2 provides for the restrained person to list their address. Allowing the person to use someone else's address for privacy, seems to open the door for an argument that they did not receive the order in the mail. This could make enforcement of an alleged violation more difficult and a presumption of mailing to correct address could be lost. Because the DV-110 provides that service by mail after the hearing will be to last known address, it might be helpful to explicitly state this in this section. For example, "This address will be considered by the court to be your last known address. Mail from the court sent to this address will be deemed to be received by you in any action to	6. The committee has revised the instruction to include that court orders could also be served at the address. This sentence has also been bolded to draw attention to this instruction.

	Commenter	Position	Comment	Committee Response
			enforce the orders. You must immediately notify the court of any change of your mailing address." 7. Section 26. Provide more space for detailing expenses and reasons why	 7. These changes have been made.

Withdrawn

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Recommend JC approval (has circulated for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Judicial Branch Technology: Electronic Filing and Electronic Service in Criminal Cases

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

Committee or other entity submitting the proposal:
Information Technology Advisory Committee

Staff contact (name, phone and e-mail): Andrea Jaramillo, 916-263-0991, andrea.jaramillo@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A. Approved by Judicial Council Technology Committee: January 11, 2021
Project description from annual agenda: 10.1 Trial Court Rules and Statutes Revisions
Project Summary: Revise statutes and the California Rules of Court for the trial courts to support e-business. In collaboration with other advisory committees, as needed, review rules and statutes and develop recommendations for amendments to align with modern business practices.

Proposals within the scope of this item include:
c) Develop a proposal to amend permissive electronic filing and electronic service rules to reference Penal Code section 690.5.

If requesting July 1 or out of cycle, explain:

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No. 15:

For business meeting on: September 30–October 1, 2021

Title

Judicial Branch Technology: Electronic Filing and Electronic Service in Criminal Cases

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259

Recommended by

Information Technology Advisory Committee

Hon. Sheila F. Hanson, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Date of Report

August 10, 2021

Contact

Andrea L. Jaramillo, 916-263-0991

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Executive Summary

The Information Technology Advisory Committee recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court, effective January 1, 2022. The purpose of the amendments is to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts.

Recommendation

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council amend rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court effective January 1, 2022.

The text of the amended rules is attached at pages 9–12.

Relevant Previous Council Action

In 2017, the Judicial Council sponsored legislation to add section 690.5 to the Penal Code to provide express authority for "permissive filing and service of documents" electronically in criminal proceedings. Penal Code section 690.5 became law effective January 1, 2018.

Analysis/Rationale

The proposal would add references to Penal Code section 690.5 to the electronic filing and electronic service rules of the California Rules of Court to bring criminal cases within the scope of those rules. The proposal complies with Penal Code section 690.5's requirement that the Judicial Council make rules for the electronic filing and electronic service of documents in criminal cases. In addition, Penal Code section 690.5 states:

> Subdivisions (a) and (b) of Section 1010.6 of the Code of Civil Procedure,[1] pertaining to the permissive filing and service of documents, are applicable to criminal actions, except as otherwise provided in Section 959.1 or any other provision of this code.

This provision is not clear on its face whether "permissive" modifies "filing" only or also modifies "service," but the history of the Judicial Council's sponsorship of the legislation shows "permissive" was meant to modify both terms and permissive service was synonymous with service by consent. This language was intended to ensure that courts could not *require* electronic filing and electronic service in criminal matters. As the Judicial Council report recommending the council sponsor Penal Code section 690.5 explains:

> Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate *only the permissive provisions* of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties *consent* to electronic filing and service.[2]

At the time Penal Code section 690.5 became law, courts were the only ones that could require electronic service. However, on September 18, 2020, Senate Bill 1146 was enacted into law to allow a party to require another party represented by counsel to accept electronic service. (Stats. 2020, ch. 112, § 2; Code Civ. Proc., § 1010.6(e).) The

[1] This code section authorizes electronic filing and electronic service in civil cases.

[2] Judicial Council of Cal., Advisory Com. Rep., *Judicial Council–Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Code of Civ. Proc., § 1010.6(a) and (b) to Criminal Actions* (Oct. 28, 2016), p. 3 (italics added). The report may be viewed at https://jcc.legistar.com/View.ashx?M=F&ID=4815159&GUID=80D76D4B-5A18-4048-8B97-346AEBCF1DA5

Legislature did not change Penal Code section 609.5, however, which continued to apply only to "permissive" electronic service, which, as noted previously, requires consent.

Recommended amendments
The following amendments are included in the proposal:

- **Rule 2.251(a):** This provision generally authorizes electronic service and states that service may be made electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5 and specifies that electronic service in criminal cases requires consent.

- **Rule 2.251(c)(1)–(2):** These provisions govern electronic service required by local rule or court order. The amendments specify that courts may only require electronic service in civil actions because mandatory electronic filing and electronic service are not applicable in criminal actions under Penal Code section 690.5.

- **Rule 2.251(k):** This provision authorizes a court to serve documents electronically under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.252(a):** This provision generally authorizes electronic filing as provided under Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.253(a):** This provision specifically authorizes courts to permit electronic filing by local rule subject to the conditions in Code of Civil Procedure section 1010.6 and the California Rules of Court. The amendment adds a reference to Penal Code section 690.5.

- **Rule 2.255(h):** This is a new provision that prohibits electronic filing service providers (EFSPs) and electronic filing managers (EFMs) from charging service fees when an electronic filer is a prosecutor, an indigent defendant, or court appointed counsel for an indigent defendant. These service fees are charged by the service provider and are not filing fees. The rule uses "prosecutor" rather than listing specific agencies to encompass any agency serving in that role. The rule also defines "indigent defendant." The rationale for this new subpart is discussed below.

- **Rule 2.258:** This rule governs the payment of filing fees. The amendment specifies the rule applies to civil actions as criminal cases do not have filing fees.

- **Rule 2.259(e):** This rule provides for issuance of an electronic summons. The amendment adds new provisions authorizing the court to issue an electronic summons pursuant to Penal Code sections 813, 816a, 1390, and 1391. Service of the summons would need to be made as prescribed elsewhere by law.

Service charges

Rule 2.255(a) authorizes courts to contract with electronic filing service providers (EFSPs) to maintain an electronic filing system for the court. Rule 2.255(a) also authorizes courts to contract with electronic filing managers (EFMs) to act as an intermediary between the court and EFSPs. If a court contracts with an EFSP, rule 2.255(b) states the contract may allow the EFSP to charge to charge electronic filers a reasonable fee, in addition to the filing fee, for the service. Rule 2.255 only minimally addresses contracts with EFMs and requires only that such contracts comply with the requirements of Code of Civil Procedures section 1010.6. (Cal. Rules of Court, rule 2.255(b)(3).) EFMs do not typically charge service fees directly to electronic filers unless the EFM is acting both as an EFSP and EFM, but EFMs may charge service fees to EFSPs that in turn pass such fees onto electronic filers. While filing fees may not be charged in criminal cases, the service fees charged by EFMs and EFSPs are not filing fees. There is nothing in the law currently prohibiting EFMs and EFSPs from charging service fees for the services that EFMs and EFSPs provide. Penal Code section 690.5 authorizes only permissive electronic filing, rather than mandatory electronic filing. This means courts are authorized to make local rules permitting—but not requiring—electronic filing in criminal cases. As such, a filer in a criminal case cannot be required to electronically file and so can avoid any service fees charged by service providers for electronic filing by simply not using the service and filing on paper.

Nonetheless, some filers may be willing to pay for the convenience of such a service fee. Paying a service provider a service fee to deliver electronic filings to court is akin to paying a court runner to deliver paper filings to a court. Like using a court runner, using electronic filing provides significant convenience for filers who need not visit the courthouse to submit a filing. Electronic filing also has the additional benefit of an 11:59:59 p.m. deadline statewide whereas paper filing deadlines will vary depending on the hours the clerk's office or drop box is available to accept filings. (Code Civ. Proc., § 1010.6(b)(3); Pen. Code, § 690.5(a) [applying Code Civ. Proc., § 1010.6(b) to criminal cases].) In addition to benefits to filers, electronic filing reduces the amount of physical paper that courts must handle and process.

The recommendation prohibits service providers from charging service fees to prosecutors, indigent defendants, and court appointed counsel for an indigent defendant. The provision regarding indigent filers and their counsel complies with the provision at Code of Civil Procedure 1010.6(b)(6) that requires service providers to waive any service fees for a filer who has been granted a waiver of court fees.[3] This approach is also consistent with the Judicial

[3] Because there are no filing fees in criminal cases, waivers of court fees are not applicable. However, such waivers are used in the context of civil electronic filing to waive not just filing fees, but also EFM and EFSP service fees. (Code Civ. Proc., 1010.6(b)(6).) The committee determined the equivalent to granting a fee waiver in a criminal case would be a determination of indigency for purposes of appointing counsel.

Council's approach when it secured electronic filing master agreements with service providers. The master agreements provide for "no fee" filing for indigent filers and government entities.[4]

Policy Implications

As discussed above, to the extent this proposal would prohibit charging service fees to prosecutors and indigent parties, it is in line with the Judicial Council's actions on electronic filing in civil actions and, in part, with statute. Because the rest of this proposal is to amend current rules so that they conform to law, there are no direct policy implications.

The committee notes that this proposal is in accord with the council's strategic goal of promoting the digital court. Currently, based on survey data from spring 2021, 33 courts accept electronic filing. What types of cases courts accept for electronic filing is a local decision made by the courts (Code Civ. Proc., § 1010.6(b)–(d)), but these rules should facilitate courts acceptance of electronic filing in criminal cases.

The committee is continuing to review rules and procedures impacting electronic filing in California. The committee formed an ad hoc working group, the E-filing Workstream, to review and make recommendations on both technical and procedural aspects of electronic filing. The E-filing Workstream is projected to have recommendations to ITAC finalized by December 2021. The committee is cognizant that rules may need to be reconsidered and possibly new or amended legislation proposed following that review and as electronic filing becomes more widely available across case types. As a result, ITAC may be presenting more recommendations on electronic filing in criminal cases to the council in the near future.

Comments

Before the proposal circulated for public comment, ITAC sought feedback from the Criminal Law Advisory Committee (CLAC). That committee raised concerns that service fees would likely bar most public defender and district attorney offices from opting into electronic filing and would be a hardship for indigent defendants. CLAC recommended no service charges be permitted for filings in criminal actions, at least for prosecutors and all defendants and their counsel. While ITAC agreed with the concerns CLAC raised about prosecutors, public defenders, and indigent defendants, it did not agree that service providers should be unable to charge nonindigent defendants for optional services. ITAC also had concerns that service providers may not provide the services in criminal cases if service fees were prohibited across the board. ITAC circulated the proposal to prohibit service fees for prosecutors, indigent defendants, and counsel for indigent defendants. The committee sought specific comments on the service fee issue.

[4] See Judicial Council of Cal., "E-Filing Services for the Superior Courts of California, RFP #BAP-2017-01-PC," https://www.courts.ca.gov/35604.htm, (document titled "RFP Revision 2" contains the key provisions) (as of July 8, 2021).

The proposal was circulated April 15, 2021 through May 27, 2021. Six commenters responded to the invitation to comment. One commenter did not indicate a position and five supported the proposed amendments though four recommended modifications.

In response to the request for comments about service fees, three commenters recommended no service fees be permitted though only two provided substantive comments on the topic. Both were concerned with fairness, with the Orange County Bar Association noting that there are "no limits on the fees which an electronic filing service provider may charge the non-indigent defendant. It should be of concern that such providers will attempt to offset the expense of not charging prosecutors and indigents by higher fees for non-indigents."

ITAC discussed this issue at length. The committee discussed whether *all* defendants should be exempt from service fees. The committee determined that while an indigent defendant would not have the ability to pay, a nonindigent defendant would not have this barrier. In addition, because Penal Code section 690.5 limits electronic filing to permissive electronic filing, nonindigent defendants would still have the option to file in paper. While there are no limits to the service fees a service provider can charge for permissive electronic filing, if a service provider sets service fees beyond what is acceptable to filers, the filers will either not electronically file or select another service provider.

With respect to counsel for indigent defendants, the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested the proposal would be clearer if the rule specified "court appointed" counsel for indigent defendants. In considering this comment, ITAC noted that there can be instances where a defendant who qualifies as indigent may nonetheless have a well-funded defense with ability to pay the service fees. ITAC agreed with the comment and revised the language to specify that only court appointed counsel for an indigent defendant is exempt from service fees.

The committee noted in discussions that its approach is consistent not only with Code of Civil Procedure 1010.6, which prohibits the charging of service fees to indigent parties granted fee waivers, but also with the approach the Judicial Council took with the statewide electronic filing program master agreements, which prohibit fees for both governmental and indigent filers. It is also consistent with state policies on reducing fines and fees consistent with a defendant's ability to pay. (Gov. Code, §§ 68645-68645.7.)

The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee suggested expanding the scope of the rule to exempt all government entities and not just prosecuting entities. While ITAC ultimately agreed this is something it should consider, expanding the scope of government entities was not something the committee addressed in the invitation to comment. As such, the committee decided to keep the proposal limited to prosecutors but will consider amending the rule in the future to expand its scope.

The invitation to comment also requested specific comments on some additional points, directed to service providers and to attorneys, but outside the comments addressed above that no charge should be applied to any defendant, these requests were not addressed.

Alternatives considered

Because Penal Code section 690.5 requires the Judicial Council to make rules, no alternative to rulemaking was considered. As discussed above, ITAC considered the alternative of recommending that service fees be prohibited for all filers in criminal cases, but concluded, for the reasons discussed above, that it was appropriate to waive the fee only for prosecutors, indigent parties, and court appointed counsel for indigent parties.

Fiscal and Operational Impacts

Commenters from two courts and the Joint Rules Subcommittee of the Court Executives Advisory Committee and Trial Court Presiding Judges Advisory Committee commented on fiscal and operational impacts. All commented more on the impact of the statutes that allow for electronic filing, or electronic filing in criminal cases, rather than on the impact of the recommended rule amendments.

One court staff commenter noted that courts not currently participating in electronic filing would need to develop new processes and procedures for electronic filings in criminal cases, including substantial training and making changes to the case management system. Courts that already accept electronic filing might need to make smaller changes to the case management system and provide staff training. This commenter also expected savings to be insignificant because as there will be a potential for fewer electronic filings to occur for criminal cases. Another court commented that electronic filing could provide a cost savings since electronic filings would require less processing time, but that startup costs to implement electronic filing would be necessary. Costs would include staff time to develop a system and provide staff training on the system.

The Joint Rules Subcommittee noted that updates to processes, technology, and training would be needed. Also, if almost all parties moved to electronic filing, the filing process would be more streamlined and save staff resources, but otherwise a blend of paper and electronic filing is staff intensive. Finally, courts that do not have electronic filing for criminal cases would need to develop local rules for local procedures.

While those comments address the cost and operational impact of electronic filing and electronic filing in criminal cases, those impacts are a result of Code of Civil Procedure section 1010.6 and Penal Code section 690.5. The goal of these rules is to facilitate courts in meeting the requirements of those rules.

Attachments and Links

1. Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259, at pages 9–12.
2. Chart of comments, at pages 13–25.
3. Link A: Pen. Code, § 690.5, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=690.5&lawCode=PEN*
4. Link B: Code Civ. Proc., § 1010.6, *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1010.6*

Rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259 of the California Rules of Court are amended, effective January 1, 2022, to read:

Rule 2.251. Electronic service

(a) Authorization for electronic service

When a document may be served by mail, express mail, overnight delivery, or fax transmission, the document may be served electronically under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter. For purposes of electronic service made pursuant to Penal Code section 690.5, express consent to electronic service is required.

(b) * * *

(c) Electronic service required by local rule or court order

(1) A court may require parties to serve documents electronically in specified civil actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(2) A court may require other persons to serve documents electronically in specified civil actions by local rule, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(3)–(4) * * *

(d)–(j) * * *

(k) Electronic service by or on court

(1) The court may electronically serve documents as provided in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees to accept electronic service by:

(A) Serving a notice on all parties and other persons in the case that the court accepts electronic service. The notice must include the electronic service address at which the court agrees to accept service; or

(B) Adopting a local rule stating that the court accepts electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to accept service.

Advisory Committee Comment

Subdivision (b)(1)(B). The rule does not prescribe specific language for a provision of a term of service when the filer consents to electronic service, but does require that any such provision be clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-CV) provides an example of language for consenting to electronic service.

Subdivision (c). The subdivision is applicable only to civil actions as defined in rule 1.6. Penal Code section 690.5 excludes mandatory electronic service in criminal cases.

Subdivisions (c)–(d). Court-ordered electronic service is not subject to the provisions in Code of Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are established by local rule, the court and the parties must have access to more than one electronic filing service provider.

Rule 2.252. General rules on electronic filing of documents

(a) In general

A court may provide for electronic filing of documents in actions and proceedings as provided under Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(b)–(h) * * *

Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order

(a) Permissive electronic filing by local rule

A court may permit parties by local rule to file documents electronically in any types of cases, subject to the conditions in Code of Civil Procedure section 1010.6, Penal Code section 690.5, and the rules in this chapter.

(b)–(c) * * *

Rule 2.255. Contracts with electronic filing service providers and electronic filing managers

(a)–(g) * * *

(h) Fees for electronic filing services not chargeable in some criminal actions

(1) Electronic filing service providers and electronic filing managers may not charge a service fee when an electronic filer files a document in a criminal action when the electronic filer is a prosecutor, an indigent defendant, or court appointed counsel for an indigent defendant.

(2) For purposes of this subdivision, "indigent defendant" means a defendant who the court has determined is not financially able to employ counsel pursuant to Penal Code section 987. Pending the court's determination, "indigent defendant" also means a defendant the public defender is representing pursuant to Government Code section 27707.

Rule 2.258. Payment of filing fees in civil actions

(a) Use of credit cards and other methods

A court may permit the use of credit cards, debit cards, electronic fund transfers, or debit accounts for the payment of civil filing fees associated with electronic filing, as provided in Government Code section 6159, rule 10.820, and other applicable law. A court may also authorize other methods of payment.

(b) * * *

Rule 2.259. Actions by court on receipt of electronic filing

(a)–(d) * * *

(e) Issuance of electronic summons

(1) The court may issue an electronic summons in the following circumstances:

(A) On the electronic filing of a complaint, a petition, or another document that must be served with a summons in a civil action, the court may transmit a summons electronically to the electronic filer in accordance with this subdivision and Code of Civil Procedure section 1010.6.

(B) On the electronic filing of an accusatory pleading against a corporation, the court may transmit a summons electronically to the prosecutor in accordance with this subdivision and Penal Code sections 690.5, 1390, and 1391.

(C) When a summons is issued in lieu of an arrest warrant, the court may transmit the summons electronically to the prosecutor or person authorized to serve the summons in accordance with this subdivision and Penal Code sections 690.5, 813, and 816a.

(2) The electronically transmitted summons must contain an image of the court's seal and the assigned case number.

(3) Personal service of the printed form of a summons transmitted electronically to the electronic filer has the same legal effect as personal service of a copy of an original summons.

SPR21-16

Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Amitabho Chattopadhyay San Francisco, CA	AM	It would be unconscionable to charge working people accused of crimes these fees, but not taxpayer-funded entities with salaried staff. Prosecutors would be the most obvious income source for any criminal e-filing service provider, and the most able to pay. The best possible alternative would be to simply require e-filing companies to provide e-filing services free of charge in criminal cases. The rules could also set a temporary cap on e-filing fee increases in certain types of cases to ensure that fee increases to offset this added cost do not affect particularly sensitive areas, such as unlawful detainers and family law.	The committee appreciates the concern raised and has considered the matter. The committee decided to keep the proposal as-is and not prohibit service providers from charging service fees for electronic filing to non-indigent defendants. The committee does not agree that prosecutors are an obvious income source as resources available will vary in different localities. Because Penal Code section 690.5 applies only the permissive, not mandatory, electronic filing provisions of Code of Civil Procedure section 1010.6, non-indigent defendants cannot be required to use electronic filing. The committee expects the market will constrain service fees to an appropriate level or non-indigent filers will not use the service. The approach that the committee has taken is consistent with the Judicial Council's approach in statewide electronic filing master agreements, which exempt governmental and indigent filers from paying service fees. The recommendation on service fees charged for certain civil cases is outside the scope of the proposal, but something the committee may consider in the future.
2.	Randy Montejano Courtroom Operations Supervisor Superior Court of Orange County	NI	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 committee appreciates the comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Yes, the proposal appropriately addresses the need to meet Penal Code section 690.5's requirement that the Judicial Council adopt rules for the electronic filing and service of documents in criminal cases in the trial courts. • The proposed amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant. • Is this exemption from service charges appropriate? Yes, exemption from service charges is appropriate when the electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant. No service charge for prosecutor also makes sense, as there should not be a price point for prosecutors to file as that could sway/impact filing quantities. Waiving the service charge for indigent defendant or counsel for an indigent defendant also seems appropriate as those parties are in situations where applying a service charge can impact their right to access to the courts without regard to their economic means. • For EFSPs and EFMs: would you be willing to offer electronic filing in criminal cases with this limitation?	The committee agrees that exempting prosecutors, indigent defendants, and counsel for indigent defendants is appropriate.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			This is a question for EFSPs and EFMs, I cannot answer. Also, our court currently does not use EFSPs or EFMs to support Criminal filings. • For prosecutors, defense attorneys representing indigent defendants, and those representing the interests of indigent, pro per defendants: would a service provider's fee prevent the use of electronic filing?	No response required.
			From the court perspective, we could reasonably assume that a service provider's fee would prevent the use of electronic filing. But, if these types of electronic filers (prosecutors, indigent defendants, or counsel for an indigent defendants) are exempt from a service provider's fee, then we don't see any hindrance in the usage of EFSPs or EFMs. • For defense attorneys representing non-indigent defendants, would a service provider's fee prevent the use of electronic filing?	The committee agrees that a service fee could be a hindrance to prosecutors, indigent defendants, and counsel for indigent defendants and that exempting such filers from paying service fees would remove that hindrance.
			Similar to the above, from the court perspective, it seems that it would likely prevent the use of electronic filing, since the service provider's fee would apply to these electronic filers (defense attorneys representing non-indigent defendants). There are currently no criminal electronic filings, and if a service provider's fee is instituted for criminal filings, then pursuing an electronic filing would be more expensive then	The committee does not agree that service fees will prevent the use of electronic filing for attorneys representing non-indigent defendants through it may dissuade the use of electronic filing if paper filing is more cost effective for the filer.

	Commenter	Position	Comment	Committee Response
			filing on paper. It would be more cost effective to file in person/on paper. • Should there be no service charges for the electronic filing in criminal cases? Based on the responses above if there is a service charge for electronic filings for criminal cases, that may deter the use of EFSPs or EFMs to support criminal filings. If service charges will be placed for defense attorney representing non-indigent defendants, then expect to see little use in EFSPs or EFMs to support criminal filings. 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. Our court currently does not participate in electronic filings for criminal cases and therefore would not see any cost savings. For courts who participate in electronic filings for criminal cases, any potential cost savings would be offset by the fact that service fees would only be applicable to certain electronic filers (prosecutors, indigent defendants, or counsel for an indigent defendants). If cost savings are present, it would likely be insignificant as there will be a potential for less electronic filings to occur for criminal cases.	The committee understands these points. Authorization for electronic filing in criminal is relatively new it may take some time to see how it develops in practice and whether EFSPs and EFMs will support it. The committee appreciates the comments on costs and implementation requirements that would be needed to accepted criminal electronic filings. The committee will include some of this information in its report to the Judicial Council.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			• 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? For courts like ours who do not participate in electronic filings the training would be extensive for there would have to be new processes and procedures surrounding these types of filings. The court would also need to work alongside the EFSPs and EFMs to determine how the application of a service fee or not would be communicated with the e-filer. This would include changes to the CMS and possibly new docket codes. For courts in which electronic filings are already in place, the level of effort to implement this proposal might be smaller and encompass training for staff and slight CMS changes surrounding the current EFSP/EFM communications/exchanges. • How well would this proposal work in courts of different sizes? This proposal would work well for courts who already use electronic filings for criminal cases and/or courts smaller in size. For larger courts, the potential is that there may be a larger amount of filings, which can impact workload.	

SPR21-16

Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
3.	Orange County Bar Association by Larisa M. Dinsmoor President	AM	Rule 2.255(h) is a new proposal which prohibits electronic filing service providers and electronic filing managers from charging a service fee when an electronic filer files a document in a criminal action when the electronic filer is a prosecutor, an indigent defendant, or counsel for an indigent defendant. It should be noted that the service fees of (h) are not filing fees charged by the court. This rule should be extended to include non-indigent defendants which would include non-indigent pro pers and non-indigents represented by private counsel out of fairness. The rule as proposed has no limits on the fees which an electronic filing service provider may charge the non-indigent defendant. It should be of concern that such providers will attempt to offset the expense of not charging prosecutors and indigents by higher fees for non-indigents. Access to the court should not be more burdensome on a defendant simply because they are not an indigent within the definition of Penal Code 987. Notwithstanding the suggested inclusion of non-indigent defendants in Rule 2.255(h), the proposal appropriately addresses the stated purpose.	See the response to the issue addressed in comment 1.
4.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	• Does the proposal appropriately address the stated purpose? Yes.	The committee appreciates the court's comments.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-16

Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			• The proposed amendments would prohibit EFSPs and EFMs from charging for electronic filing services in criminal cases when an electronic filer is a prosecutor, indigent defendant, or counsel for an indigent defendant. Is this exemption from service charges appropriate? Should there be no service charges for the electronic filing in criminal cases? Yes and yes. • Would the proposal provide costs savings? If so, please quantify. Yes. If the court had a case management system that allowed for electronic filing, there would be long-term savings because it would require less processing time by court staff and overall savings in salaries. However, it should be noted that creating such a case management system would require initial time by staff to create, implement, and train, so the upstart costs would increase spending. • 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. It would require the court's Information Technology team to develop a case management	See the response to the issue of whether any service fees should be charged addressed in comment 1. The committee appreciates the feedback concerning cost savings and that there would be initial costs to update the case management system, but a reduction in costs for processing filings once such a thing was implemented. The committee will include this information in the report to the Judicial Council. The committee will include the information on implementation requirements and will include it in the report to the Judicial Council.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			system. In addition, the legal team would need to be involved, along with court operational staff. It is difficult to quantify, but developing such a system would take several months to develop. Once developed, business office staff and courtroom clerks would need to be trained. • How well would this proposal work in courts of different sizes? Depending on the size of the courts, the capabilities to develop such a system may differ. In addition, the time needed to implement will vary by court size. Cost savings would also vary proportionally based on size. In addition, whether or not such a system would be used may also depend on the resources available to justice partners in particular counties and some may not have the resources to develop a process for electronic filing.	
5.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by the TCPJAC/CEAC Joint Rules Subcommittee (JRS)	AM	The JRS notes that the proposal is required to conform to a change of law. The JRS notes the following impact to court operations: • Impact on existing automated systems -- Fee structure and consent requirements may require modification to existing case management systems (and possibly EFSP contracts). • Requires development of local rules and/or forms.	The committee appreciates this feedback on impacts to local courts and will include the information in the report to the Judicial Council. The committee agrees case management systems may need to be updated for criminal filing in criminal cases. See comment below on consent, which is applicable in electronic service rather than electronic filing. The committee agrees. Consistent with Penal Code section 690.5(a) and Code of Civil

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			-- Local rules/forms will likely need to be developed or amended to clarify county-specific efiling procedures. • Results in additional training, which requires the commitment of staff time and court resources. -- Additional staff training will be needed to implement the financial-, notice- and consent-related changes. • Impact on local or statewide justice partners. --Local justice partners may be impacted by any changes that differ from current local court filing operations. **Suggested modification(s):** • Need clarification as to whether consent and notice requirements can be governed by local rule. **Specific Comments:** **Does the proposal address the stated purpose?** • Yes.	Procedure section 1010.6(b), courts would need to adopt local rules for permissive electronic filing of criminal documents. The committee appreciates this feedback on impacts to local courts and will include the information in the report to the Judicial Council. Consent and notice requirements apply to electronic service and are governed by statutes and statewide rules of court. Penal Code section 690.5(a) applies subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 "pertaining to the *permissive* filing and service of documents." (Italics added.) It is not clear on its face whether "permissive" modifies "service" in addition to "filing," but it is evident in the Judicial Council's history of the legislation that permissive modifies both and permissive in the service context is synonymous with consent. Code of Civil Procedure section 1010.6(a)(2)(A)(ii) requires express consent and notice to be served on all parties unless electronic service is required. But electronic service cannot be required in criminal cases as Penal Code section 690.5 applies only to "permissive" electronic service. This is addressed

	Commenter	Position	Comment	Committee Response
				in the council report and the proposed amendment to rule 2.251(a) of the California Rules of Court. Rule 2.251(b) provides additional detail including how a person can consent by electronic means.
			Is the e-filing charge exemption appropriate? • Yes. Potentially consider amending language to refer to exemptions for "prosecutor, an indigent defendant, or *court appointed* counsel for an indigent defendant." Suggested addition of "court appointed" would clarify that those attorneys who are retained would not be exempt and would need to pay the filing fees.	The committee considered this recommendation and agrees that adding "court appointed" is clearer to keep the rule focused on those for whom payment of service fees would present an obstacle to electronic filing.
			Should there be no service charge for efiling in criminal cases? • This seems to be a policy question. One alternative would be to present an opportunity for retained counsel to request fee waivers. • Also, query whether filing fees should be waived for all government entities (e.g., County Counsel in *Pitchess* motions).	The committee agrees this could be an option. The committee considered the broader government filer issue raised in this comment. The statewide electronic filing master agreements (used or being implemented in 4 courts) exempt government filers so a broader scope beyond the prosecutor would be consistent with that. However, when developing the proposal, the committee did not see a need to expand the scope beyond prosecutors not address expanding the scope of government entities in the invitation to comment. Rather then re-circulate the proposal for further comment on this issue, the committee decided to keep the proposal limited to prosecutors at this time but will consider amending it in the future to expand the scope if needed.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Would the proposal provide cost savings for courts? • Potential costs savings for courts depends on (1) the existing efiling opportunities, and (2) costs associated with implementing the new consent-related requirements. If almost all parties moved to efiling, the filing process would be streamlined and would likely save staffing resources. (The blend of in person and efiling is very staff intensive.) **What would be the implementation requirements for the courts?** • Developing a notice and consent procedure to efiling and service would be the most intensive implementation requirement for the courts that would require development of related business processes, technological modifications, and court, attorney, and party training. • The opportunity to develop local rules concerning notice and consent would facilitate implementation of the proposed rules. **How well would the proposal work for courts of different sizes?**	The committee appreciates this feedback on implementation requirements and will include the information in the report to the Judicial Council. The need for training, updated processes, and updated technology is consistent with other commenters. Note, the legal requirements to permit electronic filing in criminal cases are not different than in civil cases. Both would be authorized by local rule if a court chose to permit electronic filing. If a court creates a local rule permitting electronic filing in certain case types then the party may choose to electronically file. "Notice and consent" are applicable to electronic service rather the electronic filing (see committee comment on electronic service on the prior two pages). The court would not have authority to develop a rule that presumed consent by parties for electronic service because local rules would not be consistent with the consent provisions of Civil Procedure section 1010.6, which requires express consent be indicated in specific ways and in a "specific action" rather than for all purposes. (§ 1010.6(a)(2)(A)(ii)

	Commenter	Position	Comment	Committee Response
			• Developing a case-by-case consent system would be challenging for different sized courts, depending on their available resources. • Question: Would courts enacting local rules to streamline the process be able to develop a rule that presumed consent but provided an opt-out option?	See response above. Presumed consent is not permitted under the statutory provisions.
6.	Kailin Wang San Francisco, CA	A	I absolutely agree with this proposal, but would add that this new feature should also be available to Pro Per litigants and well as fee-waived for litigants that qualify. This is especially for voluminous and complex cases this could make a world of different and significantly speech up the court process for almost everyone. Other possible options are Tru-filing for all Superior Courts. I find that system is most reliable and affordable compared to let's say "File and Serve" (San Francisco Superior Ct.), which can be costly as it charges $7 for filing, $8 for service, and another $10 to ensure the opposing party get it, which runs $25 per filing on top of $60 to file a request or order which can up very quickly, especially if the clerk reflects the filing for errors and you have to re-file several times and be charged each tie to get it correct. These days personal proof of service is a luxury to file and serve can run up to $500 each time, and the courts requirement of 3 to 4 copies is ridiculous and overwhelmingly a waste of our environment as well as takes up unnecessary space in our courts.	The committee appreciates the comments and support of the proposal. The committee notes that under Penal Code section 690.5 and the amended rules do apply to self-represented parties in criminal actions, and service charges would not be charged to them if the court has determined they are indigent. However local courts can determine what types of cases and matters they will for electronic filing. Where courts accept electronic filings from self-represented parties in civil cases, service charges are not applied to parties who have been granted fee waivers. Self-represented parties may accept electronic service under Penal Code section 690.5 so long as they expressly consent to such service. The committee has established a working group to examine statewide electronic filing including opportunities to expand electronic filing. However, the committee is unlikely to mandate use of a particular service provider, particularly as part of a statewide rule of court.

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SPR21-16

Rules: Electronic Filing and Service in Criminal Cases (Amend Cal. Rules of Court, rules 2.251, 2.252, 2.253, 2.255, 2.258, and 2.259)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Another benefit from offering this feature for all is in the COA they mandate bookmarks, page numbers but when you file a PDF to trial court the e-filing system could erase all those book marks, that does not happen with Trufiling. Inevitably I think ether a vendor that has a drive of the parties documents, or a Dropbox feature where litigants can up load their trial exhibits, increase use of Screen Sharing can also greatly benefit the back log of cases due to COVID-19, this move to Electronic everything will only increase efficiency of the Court.	
			The comment is for SPR21-16. I am referring to the proposed , Penal Code section 690.5, as the "new feature. " While file and serve is used by the San Francisco Criminal Court for attorneys only, it should be available for indigent Pro Per's as well. There is a Fee-Waiver option avl. in E-serve websites for litigants in San Mateo and Santa Clara, but not in San Francisco on File and Serve which is the only E-service used for the Criminal Court as of right now. While some indigent litigants would prefer filing by paper, most if not all believe that electronic filing is far more cost effective, the printing costs for 3 or 4 copies needed in the Criminal Courts alone is cost prohibitive, vs. the $7 for File and Serve to the Court only, but additional $8 for service to all the parties. And public defenders should not be charged for this type of filing.	Code of Civil Procedure section 1010.6 authorizes courts to permit electronic filing by local rule but does not require courts to make electronic filing available to all filers. Availability of electronic filing as an option will depend on local resources and needs. Under the amended rules, public defenders would not have to pay EFSP service fees for electronic filing. See proposed rule 2.255(h).

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

Item number: 16

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee action requested [Choose from drop down menu below]**:**
Submit to JC (without circulating for comment)

Rules Committee Meeting Date: August 19, 2021

Title of proposal: Rules and Forms: Miscellaneous Technical Changes

Proposed rules, forms, or standards *(include amend/revise/adopt/approve):*
Amend Cal. Rules of Court, rules 2.1032 and 2.1033; revise forms EJ-156 and SUM-130

Committee or other entity submitting the proposal:
Judicial Council Staff

Staff contact (name, phone and e-mail): Anne M Ronan, 415-865-8933, anne.ronan@jud.ca.go
v

Identify project(s) on the committee's annual agenda that is the basis for this item:
Approved by Rules Committee date: N/A
Project description from annual agenda: N/A

If requesting July 1 or out of cycle, explain:
This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Additional Information: (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

Information for JC Staff regarding form translations:

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 30–October 1, 2021

Title
Rules and Forms: Miscellaneous Technical Changes

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.1032 and 2.1033; revise forms EJ-156 and SUM-130

Recommended by
Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Agenda Item Type
Action Required

Effective Date
October 1, 2021 and January 1, 2022

Date of Report
July 21, 2021

Contact
Anne M. Ronan, 415-865-8933
anne.ronan@jud.ca.gov

Executive Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation, and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council:

1. Amend the comments to rules 2.1032 and 2.1033 of the California Rules of Court to update the citations to the 2021 edition of the *Bench Handbook: Jury Management*, effective October 1, 2021;

2. Revise form EJ-156, *Current Dollar Amounts of Exemptions from Enforcement of Judgments*, to reflect increases in the minimum basic standard of care for a family of four, effective October 1, 2021; and

DRAFT

3. Revise form SUM-130, *Summons–Unlawful Detainer–Eviction*, item 3, to correct an internal reference, effective January 1, 2022.

The text of the amended rule and the revised forms are attached at pages 3–7.

Relevant Previous Council Action

Although the Judicial Council has acted on these rules and forms, this proposal recommends only minor corrections unrelated to any prior action.

Analysis/Rationale

The changes to these rules and forms are technical in nature and necessary to correct inadvertent omissions and incorrect references as discussed more fully below.

Policy implications

There are no policy implications to this proposal.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

None.

Fiscal and Operational Impacts

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

Attachments and Links

1. Cal Rules of Court, rules 2.1032 and 2.1033, at page 3
2. Forms EJ-156 and SUM-130, at pages 4–7

DRAFT

Rules 2.1032 and 2.1033 of the California Rules of Court are amended, effective October 1, 2021, to read:

Rule 2.1032. Juror notebooks in complex civil cases

A trial judge should encourage counsel in complex civil cases to include key documents, exhibits, and other appropriate materials in notebooks for use by jurors during trial to assist them in performing their duties.

Rule 2.1032 adopted effective January 1, 2007.

Comment

While this rule is intended to apply to complex civil cases, there may be other types of civil cases in which notebooks may be appropriate or useful. Resources, including guidelines for use and recommended notebook contents, are available in *Bench Handbook: Jury Management* (CJER, rev. ~~2006~~ 2021, pp. ~~59~~ 68–69).

Rule 2.1033. Juror questions

A trial judge should allow jurors to submit written questions directed to witnesses. An opportunity must be given to counsel to object to such questions out of the presence of the jury.

Rule 2.1033 adopted effective January 1, 2007.

Comment

See CACI No. 112 and CALCRIM No. 106. Resources, including a model admonition and a sample form for jurors to use to submit questions to the court, are available in *Bench Handbook: Jury Management* (CJER, rev. ~~2006~~ 2021, pp. ~~60–62~~ 70–72).

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 703.140(b)

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b) used in a case under title 11 of the United States Code (bankruptcy).

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

Code Civ. Proc., § 703.140(b)	Type of Property	Amount of Exemption
(1)	The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence,	$ 29,275
(2)	The debtor's interest in one or more motor vehicles	$ 5,850
(3)	The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item)	$ 725
(4)	The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	$ 1,750
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	$ 1,550
(6)	The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	$ 8,725
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	$ 15,650
(11)(D)	The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	$ 29,275

Form Approved for Optional Use
Judicial Council of California
EJ-156 [Rev. October 1, 2021]

Code of Civil Procedure,
§§ 703.140, 703.150,
704.010 et seq.
www.courts.ca.gov

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 704.010 et seq.

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

The amount of the automatic exemption for a deposit account under section 704.220(a) is effective July 1, 2021, and unless otherwise provided by statute after that date, will be adjusted annually effective July 1 by the Department of Social Services under Welf. & Inst. Code, § 11453 to reflect the minimum basic standard of care for a family of four as established by § 11452.*

The other amounts are all effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest $25. (See Code Civ. Proc., § 703.150(d).)

Code Civ. Proc. Section	Type of Property	Amount of Exemption
704.010	Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction)	$ 3,325
704.030	Material to be applied to repair or maintenance of residence	$ 3,500
704.040	Jewelry, heirlooms, art	$ 8,725
704.060	Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed $4,850)	$ 8,725
704.060	Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed $9,700)	$ 17,450
704.220	Deposit account, generally (exemption without claim; amount per judgment debtor, section 704.220(a),(e))[1]	$ 1,826*
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b))[2]	
	• Public benefits, one depositor is designated payee	$ 1,750
	• Social security benefits, one depositor is designated payee	$ 3,500
	• Public benefits, two or more depositors are designated payees[3]	$ 2,600
	• Social security benefits, two or more depositors are designated payees[3]	$ 5,250
704.090	Inmate trust account	$ 1,750
	Inmate trust account (restitution fine or order)	$ 325[4]
704.100	Aggregate loan value of unmatured life insurance policies	$ 13,975

1 This exemption does not preclude or reduce other exemptions for deposit accounts. However, if the exemption amount for the deposit account applicable under other automatic exemptions—such as those applicable for direct deposit of social security benefits or public benefits—is greater under the other exemptions, then those apply instead of this one. (Code Civ. Proc., § 704.220(b).)

2 The amount of a deposit account with direct deposited funds that exceeds exemption amounts shown is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

3 If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

4 This amount is not subject to adjustments under Code Civ. Proc., § 703.150.

SUMMONS
(CITACIÓN JUDICIAL)
UNLAWFUL DETAINER—EVICTION
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DRAFT

July 30,2021

Not approved by Judicial Council

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, not counting Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courts.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (*www.lawhelpca.org*), the California Courts Online Self-Help Center (*www.courts.ca.gov/selfhelp*), or by contacting your local court or county bar association.	*¡AVISO! Usted ha sido demandado. Si no responde dentro de 5 días, el tribunal puede emitir un fallo en su contra sin una audiencia. Una vez que le entreguen esta citación y papeles legales, solo tiene 5 DÍAS, sin contar sábado y domingo y otros días feriados del tribunal, para presentar una respuesta por escrito en este tribunal y hacer que se entregue una copia al demandante.* *Una carta o una llamada telefónica no lo protege. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta su respuesta a tiempo, puede perder el caso por falta de comparecencia y se le podrá quitar su sueldo, dinero y bienes sin más advertencia.* *Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados local.*
FEE WAIVER: If you cannot pay the filing fee, ask the clerk for a fee waiver form**. NOTE**: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.	***EXENCIÓN DE CUOTAS:*** *Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas.* ***AVISO:*** *Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos con un gravamen sobre cualquier cantidad de $10,000 ó más recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desestimar el caso.*

1. The name and address of the court is:
   (El nombre y dirección de la corte es):

CASE NUMBER *(número del caso):*

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-130 [Rev. January 1, 2022]

Code of Civil Procedure, §§ 412.20, 415.456, 1167
www.courts.ca.gov

PLAINTIFF *(Name)*:	CASE NUMBER:
DEFENDANT *(Name)*:	

3. *(Must be answered in all cases)* An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)** ☐ did **not** ☐ did for compensation give advice or assistance with this form. *(If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 4 below.)*

4. **Unlawful detainer assistant** *(complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):*

   a. Assistant's name:

   b. Telephone no.:

   c. Street address, city, and zip:

   d. County of registration:

   e. Registration no.:

   f. Registration expires on *(date)* :

Date: *(Fecha)* Clerk, by *(Secretario)* , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons *(form POS-010).)*

[SEAL]

5. **NOTICE TO THE PERSON SERVED:** You are served
   a. ☐ as an individual defendant.
   b. ☐ as the person sued under the fictitious name of *(specify):*
   c. ☐ as an occupant.
   d. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation). ☐ CCP 416.60 (minor).
   ☐ CCP 416.20 (defunct corporation). ☐ CCP 416.70 (conservatee).
   ☐ CCP 416.40 (association or partnership). ☐ CCP 416.90 (authorized person).
   ☐ CCP 415.46 (occupant). ☐ other *(specify):*
   e. ☐ by personal delivery on *(date):*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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