



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Tuesday, August 22, 2023

12:10 p.m.- 1:40 p.m. and 4:30 – 6:00 p.m.

Rules Committee Members Present:	Hon. Carin Fujisaki, Hon Samuel Feng, Hon. Kimberly Merrifield, Hon. Glenn Mondo, and Hon. David Rosenberg.
Rules Committee Members Absent:	Hon. Kevin C. Brazile, Ms. Rachel W. Hill, Mr. Shawn Landry, and Mr. Maxwell Pritt.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Staff Present	Heather Anderson, James Barolo Kerry Doyle, Sarah Fleischer-Ihn, Ann Gilmour, Diana Glick, Jenny Grantz, Kendal Hannon, John Henzl, Frances Ho, Jason Mayo, Kara Portnow, Daniel Richardson, Leah Rose-Goodwin, Jamie Schechter, Gabrielle Selden, Marymichael Smrdeli, and Corby Sturges
Other JC Staff Present	Audrey Fancy, Michael Giden, Anna Maves, Christy Simons, Gregory Tanaka, Hisham Qutob, and Charina Zalzos.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call.

Approval of Minutes

The committee reviewed and approved the minutes of the March 29, April 5, April 13, June 2, June 29, July 31, and August 11, Rules Committee meetings with the following noted corrections:

- August 11, the minutes were not noted on the agenda provided to staff but were included in the binder.
- March 29, the title “Appellate Advisory Committee” was missing the letter “d” in word “advisory”.
- April 5, Anne’s sticky notes were removed from language in Item 11.

DISCUSSION AND ACTION ITEMS (ITEMS 01 – 34)

JUDICIAL BRANCH ADMINISTRATION

Item 01

Trial Courts: Exceptional Criminal Case Reporting

The committee reviewed a recommendation from the Court Executives Advisory Committee that the Judicial Council amend the standard of judicial administration that provides guidance on trial court case disposition time goals to repeal a subdivision that advises trial courts to report exceptional criminal case aging. This subdivision is confusing because there is no definition of exceptional criminal cases nor any specific time standards associated with these cases. Eliminating this subdivision is intended to clarify required data reporting.

Action: The committee unanimously approved the Court Executive Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

APPELLATE

Item 02

Appellate Procedure: Time for Electing and Filing an Appendix

The committee reviewed a recommendation from the Appellate Advisory Committee to amend two rules of court regarding appendixes to allow appellants to file an appendix before filing an opening brief and to allow respondents to elect an appendix when their other record designations are due. These amendments were intended to assist courts and litigants by permitting earlier filing of an appendix and to provide respondents the opportunity to elect an appendix after receiving notice that the appellant has designated a clerk's transcript. The committee also recommended revising four forms to reflect the rule changes and revoking two forms that would no longer be necessary.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 03

Appellate Procedure: Attachment of Trial Court's Order to Petition for Review of Summary Denial of Writ Petition

The committee reviewed a recommendation from the Appellate Advisory Committee to amend the rule of court governing petitions for review in the Supreme Court to provide for attachment of the entire trial court order when the petitioner seeks review of a Court of Appeal summary denial of a writ petition. This change would facilitate review on the merits and streamline procedures. When the Court

of Appeal summarily denies a writ petition, the underlying trial court order is necessary to identify the issues in dispute. Under the current rule, however, a petitioner cannot attach a trial court order that exceeds 10 pages to a petition for review without first requesting and obtaining the permission of the Chief Justice.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 04

Appellate Procedure: Forms for Extension of Time

The committee reviewed a recommendation from Appellate Advisory Committee for revising the forms used to request an extension of time to file a brief in the Court of Appeal and the appellate division of the superior court to ensure that courts receive sufficient information to determine whether good cause exists for an extension. The forms revisions would (1) add an item on the civil forms to indicate that the case is entitled to, or has been granted, calendar preference or priority; and (2) revise the item where the applicant explains why good cause exists for an extension to direct the applicant to address the relevant factors a court will use in ruling on the motion. Additionally, minor additions or corrections were recommended to each form.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 05

Appellate Procedure: Notice of Appeal Forms

The committee reviewed a recommendation from the Appellate Advisory Committee for revising Notice of Appeal/Cross-Appeal(Unlimited Civil Case) (form APP-002) and Notice of Appeal/Cross-Appeal (Limited Civil Case)(form APP-102) to (1) include an item by which an attorney can join the appeal to challenge an order directing payment of sanctions by the attorney; (2) add an optional item by which the appellant can attach a copy of the judgment or order being appealed; and (3) on form APP-002, reorganize item 1 to ensure that the item requesting the date of the judgment or order being appealed was entered is not overlooked.

Action: The committee unanimously approved the Appellate Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

CIVIL**Item 06****Rules and Forms: Opportunities for Settlement Before Trial in Unlawful Detainer Cases**

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee to adopt a new rule of court and a new form for optional use in unlawful detainer cases to promote settlement opportunities using alternative dispute resolution processes. The new rule states a policy favoring at least one opportunity for participation in some form of pretrial dispute resolution and would allow a court to shorten the existing deadline for submitting a mandatory settlement conference statement. The new form allows parties to submit to the court a settlement agreement and ask for either an order without judgment or a stipulated judgment. The new rule and optional form are intended to increase settlement opportunities in eviction cases and to promote consistency throughout the state.

Action: The committee unanimously approved the Civil and Small Claims Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 07**Civil Practice and Procedure: Form Revisions to Implement Senate Bill 1200**

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee for revising ten Judicial Council forms, and revocation of one form, to implement statutory changes made by Senate Bill 1200 (Stats. 2022, ch. 883), enacted September 30, 2022. SB 1200 limits the ability of a judgment creditor to renew or bring an action on a money judgment and lowers the applicable rate of postjudgment interest where the judgment and unsatisfied principal amount of the judgment meet certain criteria. The recommended revisions to the forms implemented the statutory changes.

Action: The committee unanimously approved the Civil and Small Claims Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 08**Unlawful Detainer: Forms to Reflect Existing Law and Implement Senate Bill 1017 and Assembly Bill 1726**

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee for the approval of one and revision of five unlawful detainer forms. These new and revised forms (1) implement the new law creating a new procedure for partial evictions, (2) implement the new law providing additional time for certain defendants to respond to a summons for unlawful detainer, and (3) updates the forms to reflect current law regarding COVID-19 rental protections.

Action: The committee unanimously approved the Civil and Small Claims Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

CENTER FOR JUDICIAL EDUCATION AND RESEARCH

Item 09

Judicial Branch Education: Delivery Methods Defined

The committee reviewed a recommendation from the Center for Judicial Education and Research Advisory Committee to amend rule 10.493 of the California Rules of Court to provide extended definitions to terms used in a slate of education rule amendments adopted by the Judicial Council effective January 1, 2023. This proposal was based on public comments received in 2022 on that slate of amendments.

Action: The committee unanimously approved the Center for Judicial Education and Research Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

CRIMINAL JURY INSTRUCTIONS (1)

Item 10

Criminal Jury Instructions: Revisions and Additions

The committee reviewed a recommendation from the Advisory Committee on Criminal Jury Instructions to approve for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. The proposed changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2023 supplement of Judicial Council of California Criminal Jury Instructions (CALCRIM).

Action: The committee unanimously approved the Advisory Committee on Criminal Jury Instructions recommendation, which is to go to the Judicial Council for action at the September council meeting.

CRIMINAL LAW

Item 11

Criminal Procedure: Appointment of Trial Counsel in Capital Cases

The committee reviewed a recommendation from the Criminal Law Advisory Committee to amend the rule governing qualifications for appointed trial counsel in capital cases. The amendment would clarify that the requirement for appointment of qualified counsel applies in all capital cases unless the district attorney affirmatively states on the record that the death penalty will not be sought.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 12

Criminal Law: Circumstances in Aggravation

The committee reviewed a recommendation from the Criminal Law Advisory Committee for revisions to the optional Judicial Council felony plea form to reflect statutory changes regarding the right to trial on aggravating circumstances in order to justify imposition of the upper term of a criminal offense or enhancement, and to improve consistency throughout the form.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 13

Criminal Procedure: Petition for Resentencing Based on Health Conditions due to Military Service

The committee reviewed a recommendation from the Criminal Law Advisory Committee to revise the optional Judicial Council petition for resentencing based on health conditions due to military service to reflect statutory changes expanding eligibility for relief and clarifying that relief is available for health conditions discovered after sentencing.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

Item 14**Criminal Procedure: Record Cleaning Forms**

The committee reviewed a recommendation from the Criminal Law Advisory Committee to revise optional criminal forms used to petition for dismissals and reductions of convictions and request sealing of arrest records. The proposed revisions reflected recent statutory changes that allow for automatic record relief, expand who is eligible for relief, and clarify the effect of relief granted.

Action: The committee unanimously approved the Criminal Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting.

FAMILY AND JUVENILE LAW**Item 15****Child Custody and Visitation Orders Involving Gender-Affirming Health Care**

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee to amend one rule of court, effective January 1, 2024, to implement Senate Bill 107 (Stats. 2022, ch. 810). Senate Bill 107 amends Family Code sections 3421 and 3424 and enacts a new public policy in Family Code section 3453.5 that supports a parent's ability to seek gender-affirming health care or gender affirming mental health care for a child in the state of California without penalty. The amendments to the rule would provide procedures for situations in which a parent seeks emergency child custody or visitation orders in family court because the laws of another state prohibit that parent from providing gender-affirming health care or gender-affirming mental health care for their child.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 16**Family Law: Summary Dissolution Forms**

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for revising two family law summary dissolution forms, which are mandated by Family Code section 2400, to reflect an increase in the California Consumer Price Index. The committee also recommended additional changes to the forms to respond to issues raised by court professionals that will help joint petitioners more accurately complete and file the forms needed to request a summary dissolution.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 17

Family and Juvenile Law Implementation of Assembly Bill 2495

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee to amend one rule of the California Rules of Court and revise five forms to conform with recent statutory changes enacted by Assembly Bill 2495 (Patterson; Stats. 2022, ch. 159) regarding various topics related to adoptions, including when to display a child's preadoption name on the adoption request and order forms, procedures for filing a post adoption contact order, and venue for adoption requests. The committee also recommended technical changes to the forms to correct errors and respond to partner and stakeholder feedback.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 18

Juvenile Law: Psychiatric Residential Treatment Facility Voluntary Admission

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for adoption of one rule of court and six forms to conform to recent statutory changes enacted by Assembly Bill 2317 (Ramos; Stats. 2022, ch. 589) regarding court oversight of the voluntary admission of a child, nonminor, or nonminor dependent to a psychiatric residential treatment facility.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 19

Juvenile Dependency Law: Counsel Collections Program Guidelines

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for amending Guidelines for the Juvenile Dependency Counsel Collections Program (Guidelines), Appendix F of the California Rules of Court, which addresses reimbursement to the court for the cost of appointed counsel in dependency matters, including setting an income level below which responsible persons are presumed unable to pay for this cost. The income level is based on the statute that addresses eligibility for a fee waiver, which was recently amended to increase the threshold income for a fee waiver from 125 percent of the federal poverty guidelines to 200 percent. Amending the Guidelines would maintain consistency with this statute.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 20

Child Support: Amendments to Family Code Section 4007.5

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee proposing revisions to several forms in order to provide court users and the public with updated information regarding relief available to incarcerated or involuntarily institutionalized child support obligors. The proposed revisions were necessary to reflect recent amendments made to Family Code section 4007.5.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 21

Juvenile Law: Family Finding & Engagement

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for amending four rules to conform to recent statutory changes clarifying the due diligence that must be used by a social services agency or probation department in performing its family finding obligation when a child is removed from the home. Senate Bill 384 (Stats. 2022, ch. 811) expands the obligation of the placing agency to engage in family finding in dependency and delinquency cases. In addition to the existing duty to ask the child in an age-appropriate manner about parents and adult relatives, due diligence now also requires a social worker or probation officer to use a computer-based search engine to identify relatives and kin to provide family support and possible placement for the child. In the case of an Indian child, the legislation clarifies that the placing agency must contact the child's tribe to help identify relatives and kin. The committee also recommended revising one form to include an item setting forth the court's findings as to whether the probation department exercised due diligence in family finding as required by provisions in Family Code section 7950.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

PROBATE AND MENTAL HEALTH

Item 22

Jointly with the Civil and Small Claims Advisory Committee and Family and Juvenile Law Advisory Committee

Civil Practice and Procedure: Appointment of Guardian ad Litem

The committee reviewed a joint recommendation from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee proposing adopting one form, revising two forms, revising and renumbering one form, and revoking one form to reflect a change in the law and to clarify and modernize the existing forms. The mandatory forms in the proposal are used to apply for and order the appointment of a guardian ad litem in a civil action or proceeding, including a family law proceeding, and in a proceeding under the Probate Code.

Action: The committee unanimously approved the joint recommendation from the Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees', which is to go to the Judicial Council for action at the September council meeting.

Item 23

Probate Conservatorship: Less Restrictive Alternatives

The committee reviewed a recommendation from the Probate and Mental Health Advisory Committee for amending three rules of court and revising one form in response to recent legislative changes to conservatorship law. The rule amendments implement legislation that requires education on alternatives to conservatorship for judicial officers assigned to probate, probate staff attorneys, probate examiners, court investigators, and counsel appointed in probate conservatorship proceedings. Revisions to the form implement legislation that requires supplemental information provided to the court by the petitioner or proposed conservator to specify clearly and discuss in detail the less restrictive alternatives to a conservatorship that were considered or tried before the filing of the petition. Additional revisions to the form would identify the person completing the form, divide the information to be provided about the reasons for conservatorship into more specific categories, and solicit information about the proposed conservatee's knowledge and opinion of the conservatorship.

Action: The committee unanimously approved the Probate and Mental Health Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 24

Jointly with the Criminal Law Advisory Committee

Trial Courts: Reports of Determinations Affecting Voting Rights (AB 2841)

The committee reviewed a joint recommendation from the Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee for amending one rule of court and revising two forms to implement Assembly Bill 2841, which requires the trial courts to report to the Secretary of State judicial determinations under Elections Code sections 2208–2211 disqualifying a person from voting or restoring a person’s right to register to vote. The legislation expressly required the Judicial Council to adopt rules and forms, including a mandatory form for the courts to use to furnish the required reports.

Action: The committee unanimously approved the joint recommendation from the Probate and Mental Health and Criminal Law Advisory Committees, which is to go to the Judicial Council for action at the September council meeting

Item 25

Probate Conservatorship and Guardianship: Eligibility for County Payment of Cost of Appointed Counsel

The committee reviewed a recommendation from the Probate and Mental Health Advisory Committee for amending the Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law (Guidelines), Appendix E of the California Rules of Court, to update the criteria for establishing presumptive eligibility for county payment of the cost of court-appointed counsel and to make a minor technical revision. The recommendation maintained the Judicial Council’s policy of basing the criteria for presumptive eligibility for county payment on the conditions for granting an initial court fee waiver under Government Code section 68632(a)–(c) by adjusting the criteria in the Guidelines to conform to recent amendments to that statute.

Action: The committee unanimously approved the Probate and Mental Health Advisory Committee’s recommendation, which is to go to the Judicial Council for action at the September council meeting

PROTECTIVE ORDER

Item 26

Jointly with the Civil and Small Claims Advisory

Protective Orders: Updated Law Enforcement Information Form and New Request Forms for Continuances

The committee reviewed a joint recommendation from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee for revising form CLETS-001 to make needed updates and adopting new forms to be used when a request to renew has been filed in a protective order proceeding, and the court or a party wishes to continue a hearing.

Action: The committee unanimously approved the joint recommendation from the Civil and Small Claims and Family and Juvenile Law Advisory Committees', which is to go to the Judicial Council for action at the September council meeting

Item 27

Protective Orders: Revisions to Gun Violence Restraining Order Forms

The committee reviewed a recommendation from the Civil and Small Claims Advisory Committee for the adoption and revision of numerous gun violence restraining order forms. These new and revised forms implement Assembly Bill 2870 (Stats. 2022, ch. 974) permitting additional categories of individuals to petition for gun violence restraining orders. The proposed forms also bring the language describing firearm parts on gun violence restraining order forms in line with other protective order forms, include new forms that can be used to request continuance of a hearing to renew a gun violence protective order, and clarify that no additional service is required for enforcement if the respondent attends the hearing where the order was issued, whether attending in person or remotely.

Action: The committee unanimously approved the Civil and Small Claims Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 28

Domestic Violence: Form Changes to Implement New Laws

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for revising 14 domestic violence restraining order forms to implement Assembly Bill 2369, Senate Bill 935, and Assembly Bill 1621. The committee also recommended adopting 2 new forms that would be used to continue a hearing on a request to renew a restraining order.

Action: The committee unanimously approved the Family and Juvenile Law Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 29

Jointly with the Civil and Small Claims Advisory Committee

Protective Orders: Service Requirements after Remote Appearances

The committee reviewed a joint recommendation from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee for adopting two California Rules of Court and revising 10 notice and order forms to clarify the service requirements for respondents who appear remotely in protective order proceedings. The committees made this recommendation because the statutory authority governing service of protective orders after hearing does not indicate the type of service required if the respondent appears remotely at the hearing.

Action: The committee unanimously approved the joint recommendation from the Civil and Small Claims and Family and Juvenile Law Advisory Committees', which is to go to the Judicial Council for action at the September council meeting

Item 30 (Pulled from the agenda)

TRAFFIC

Item 31

Traffic and Criminal Law: Notice to Appear Forms

The committee reviewed a recommendation from the Traffic Advisory Committee for amending a rule of court, revising the notice to appear form (commonly known as a "citation" or "traffic ticket") and revoking two redundant versions, revising the notice to correct violation, and revising the related instructions form. These changes were recommended to reflect recent statutory changes, improve litigants' understanding of the citation, and avoid redundant form requirements.

Action: The committee unanimously approved the Traffic Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

Item 32

Rules and Forms: Miscellaneous Technical Changes to Traffic Rules and Forms–

The committee reviewed a recommendation from the Traffic Advisory Committee for amending one rule of court and revising five traffic forms to incorporate changes resulting from legislation and correct a statutory reference. These changes were technical, minor, and noncontroversial. The

committee recommended making the necessary corrections to conform to statutes and avoid causing confusion for court users, clerks, and judicial officers.

Action: The committee unanimously approved the Traffic Advisory Committee's recommendation, which is to go to the Judicial Council for action at the September council meeting

TRIBAL COURT

Item 33

Indian Child Welfare Act (ICWA): Discretionary Tribal Participation (

The committee reviewed a joint recommendation from the Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee for amending two rules of court and approving a form to clarify the process and set standards consistent with California statutes for the court's exercise of discretion to permit the participation of a tribe in juvenile cases involving a child affiliated with the tribe, even when there is no express statutory right to participate or intervene under ICWA and Welfare and Institutions Code section 224.4.

Action: The committee unanimously approved the joint recommendation from Tribal Court–State Court Forum and the Family and Juvenile Law Advisory Committee, which is to go to the Judicial Council for action at the September council meeting.

MISCHELLANEOUS

Item 34

Rules and Forms: Miscellaneous Technical Amendment

The committee reviewed a recommendation from Judicial Council staff to correct errors identified in particular rules and forms resulting from input errors, and minor changes needed to conform to changes in law or previous council actions. These changes are technical in nature and necessary to avoid causing confusion for court users, clerks, and judicial officers.

Action: The committee unanimously approved the Judicial Council staff's recommendation, which is to go to the Judicial Council for action at the September council meeting

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 5:05 p.m.

Approved by the committee on



Judicial Council of California

Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Monday, August 28, 2023

Rules Committee Members Who Participated:	Hon. Carin T. Fujisaki, Hon. Kevin C. Brazile, Hon. Samuel K. Feng, Mr. Shawn C. Landry, Hon. Kimberly Merrifield, Hon. Glenn Mondo, Mr. Maxwell Pritt, and Hon. David Rosenberg.
Rules Committee Members Who Did Not Participate:	Ms. Rachel W. Hill
Rules Committee Staff:	Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Friday, August 25, 2023, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEMS (01)

Memorandum—Recommend Rules Committee Action Only

Item 01

Appellate Advisory Committee: Addition of Project to Annual Agenda

The committee reviewed a request from the Appellate Advisory Committee to add to its 2022-2023 annual agenda a joint proposal with the Criminal Law Advisory Committee to implement the Racial Justice Act.

Action: The committee unanimously approved the Appellate Advisory Committee's to add a joint proposal with the Criminal Law Advisory Committee.

CLOSURE OF ACTION

The action by e-mail concluded on Monday, August 28, 2023, at 5:00 p.m.

Approved by the committee on



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Wednesday, October 11, 2023

4:10 p.m. – 5:10 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Hon. Alin D. Cintean, Hon. Charles S. Crompton, Ms. Rachel W. Hill, and Mr. Charles Johnson.
Rules Committee Members Absent:	Ms. Kate Bieker, Hon. Maria D. Hernandez, Mr. Maxwell V. Pritt, and Hon. Erica R. Yew.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Staff Present	James Barolo, Kendal Hannon, Frances Ho, and Eric Long.
Other JC Staff Present	Audrey Fancy

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:10 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 01 – 04)

APPELLATE

Item 01

Jointly with the Civil and Small Claims Advisory Committees

CEQA: New Projects and Fees for Expedited Review

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending California Rules of Court for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act, to implement new legislation requiring inclusion of “infrastructure projects” for streamlined review as well as the requirement that applicants of certain infrastructure projects pay the costs of the trial and appellate courts in adjudicating challenges to those projects.

Action: The committee unanimously approved the joint recommendation from the Appellate Advisory Committee and Civil and Small Claims Advisory Committees’, which is to go to the Judicial Council for action at the November council meeting.

CIVIL JURY INSTRUCTIONS

Item 02

Jury Instructions: Civil Jury Instructions (Release 44)

The committee reviewed a recommendation from the Advisory Committee on Civil Jury Instructions for approval of new and revised civil jury instructions, verdict forms, and user guide content prepared by the committee. Among other things, these changes bring the instructions up to date with developments in the law over the previous six months and add new instructions on implicit or unconscious bias and reasonable accommodation for pregnancy, childbirth, and related conditions. Upon Judicial Council approval, the instructions will be published in the official 2024 edition of the Judicial Council of California Civil Jury Instructions (CACI).

Action: The committee unanimously approved the Advisory Committee on Civil Jury Instructions recommendation, which is to go to the Judicial Council for action at the November council meeting.

Item 03

Recommend Rules Committee Action Only

Civil Jury Instructions: Instructions With Minor or Nonsubstantive Revisions (Release 44)

The committee reviewed a recommendation from the Advisory Committee on Civil Jury Instructions for final action by the Rules Committee for minor or nonsubstantive revisions to the Civil Jury Instructions (CACI), which the council has delegated authority to the Rules Committee to approve.

Action: The committee took final action in approving the minor and nonsubstantive revisions to the civil jury instructions.

PROTECTIVE ORDER WORKING GROUP

Item 04 (deferred until October 13) Will now be an action by email to allow members of the public to comment.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 4:27 p.m.

Approved by the committee on



Judicial Council of California

Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF ACTION BY EMAIL

Friday, October 13, 2023

Rules Committee Members Who Participated:

Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Ms. Kate Bieker, Hon. Alin D. Cintean, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Ms. Rachel W. Hill, Mr. Charles Johnson, and Hon. Erica R. Yew.

Rules Committee Members Who Did Not Participate:

Mr. Maxwell V. Pritt

Rules Committee Staff:

Ms. Anne M. Ronan and Ms. Benita Downs

ACTION BY EMAIL

As provided in the California Rules of Court, rule 10.75 (o)(1)(B), the chair concluded that prompt action was needed. This action by e-mail concerned a matter that would otherwise be discussed in an open meeting; therefore, in accordance with rule 10.75(o)(2), public notice and the proposal were posted on Wednesday, October 11, 2023, to allow at least one complete business day for public comment before the committee took action. No public comments were received.

OPEN ACTION AND DISCUSSION ITEMS (01)

PROTECTIVE ORDER WORKING GROUP

Item 01 (deferred item 04 from the October 11 meeting)

Jointly with the Civil and Small Claims and Family and Juvenile Law Advisory Committees

Rules and Forms: Service Forms to Implement Assembly Bill 2791

The committee reviewed a joint recommendation from the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee for the adoption of two new forms, Request for Sheriff to Serve Court Papers (form SER-001) and an attachment to that form, Special Instructions to Serve Court Papers (form SER-001A). The proposed forms comply with the statutory mandate in Assembly Bill 2791 that the Judicial Council adopt a form or forms for civil litigants to request that a sheriff's office serve their court papers.

Action: The committee unanimously approved the joint recommendation from the Civil and Small Claims and the Family and Juvenile Law Advisory Committees', which is to go to the Judicial Council for action at the November council meeting.

CLOSURE OF ACTION

The action by e-mail concluded on Friday, October 13, 2023, at 5:00 p.m.

Approved by the committee on

DRAFT



RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Thursday, October 26, 2023

12:10 p.m. - 1:30 p.m.

Rules Committee Members Present: Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Ms. Kate Bieker, Hon. Charles S. Crompton, Hon. Maria D. Hernandez, Ms. Rachel W. Hill, Mr. Charles Johnson, and Maxwell V. Pritt.

Rules Committee Members Absent: Hon. Erica R. Yew

Rule Committee Staff Present Ms. Anne M. Ronan and Ms. Benita Downs

Advisory Bodies Chairs and Staff Present Hon. Maria Lucy Armendariz, Hon. Jayne Chong-Soon Lee, Hon. Adrienne M. Grover, Hon. Brian Hoffstadt, Hon. Stephanie E. Hulse, Hon. Louis R. Mauro, Hon. Amy M. Pellman, Hon. Donald J. Proietti, Hon. Jeffrey S. Ross, Mr. James Barolo, Mr. Kendall Hannon, Ms. Stephani Lacambra, Mr. Eric Long, Ms. Kara Portnow, Ms. Jamie Schechter, and Corby Sturges.

Other JC Staff Present Ms. Francine Byrne, Ms. Audrey Fancy, Ms. Christy Simons, and Hisham Qutob

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m. and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 01 – 08)

Item 01

Advisory Committee on Civil Jury Instructions (CACI) Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Advisory Committee on Civil Jury Instructions.

Action: *The committee unanimously approved the 2024 Advisory Committee on Civil Jury Instructions annual agenda.*

Item 02

Advisory Committee on Criminal Jury Instructions (CALCRIM) Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Advisory Committee on Criminal Jury Instructions.

Action: The committee unanimously approved the 2024 Advisory Committee on Criminal Jury Instructions annual agenda.

Item 03

Appellate Advisory Committee Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Appellate Advisory Committee

Action: The committee unanimously approved the 2024 Appellate Advisory Committee's annual agenda.

Item 06 (out of order)

Family and Juvenile Law Advisory Committee

The committee reviewed the proposed 2024 annual agenda of the Family and Juvenile Law Advisory Committee.

Action: The committee unanimously approved the 2024 Family and Juvenile Law Advisory Committee's annual agenda.

Item 04

Civil and Smalls Claims Advisory Committee Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Civil and Small Claims Advisory Committee.

Action: The committee unanimously approved the 2024 Civil and Small Claims Advisory Committee's annual agenda.

Item 05

Criminal Law Advisory Committee Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Criminal Law Advisory Committee.

Action: The committee unanimously approved the 2024 Criminal Law Advisory Committee's annual agenda.

Item 07

Probate and Mental Health Advisory Committee

The committee reviewed the proposed 2024 annual agenda of the Probate and Mental Health Advisory Committee.

Action: The committee unanimously approved the 2024 Probate and Mental Health Advisory Committee's annual agenda.

Item 08

Traffic Advisory Committee Annual Agenda

The committee reviewed the proposed 2024 annual agenda of the Traffic Advisory Committee.

Action: The committee unanimously approved the 2024 Traffic Advisory Committee's annual agenda.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:22 p.m.

Approved by the committee on



Judicial Council of California

Rules Committee

www.courts.ca.gov/rulescomm.htm
rulesmeetings@jud.ca.gov

RULES COMMITTEE

MINUTES OF OPEN VIDEOCONFERENCE MEETING

Thursday, December 7

12:10 p.m. - 1:10 p.m.

Rules Committee Members Present:	Hon. Carin T. Fujisaki, Hon. Michelle Williams Court, Ms. Kate Bieker, Hon. Charles S. Crompton, Ms. Rachel W. Hill, Mr. Charles Johnson, and Hon. Erica R. Yew.
Rules Committee Members Absent:	Hon. Maria D. Hernandez and Mr. Maxwell V. Pritt.
Rules Committee Staff Present:	Ms. Anne M. Ronan and Ms. Benita Downs
Advisory Bodies Chair(s) and Staff Present	Hon. Jayne Chong-Soon Lee, Theresa Chiong, Sarah Fleischer-Ihn, Jenny Grantz, Ann Maves, Jamie Schechter, and Corby Sturges.
Other JC Staff Present	James Barolo, Audrey Fancy, Michael Giden, Oliver Greene, Anne Hadreas, Kendall Hannon, Christy Simon, and Marina Soto.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m., and Ms. Downs took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 01-07)

APPELLATE

Judicial Council Report—Recommend Council Action

Item 01/ Circulating Order **CO-23-04**

Jointly with the Civil and Small Claims Advisory Committee.

Civil Practice and Procedure: Form Revisions to Implement Senate Bill 71

The committee reviewed a joint recommendation from the Civil and Small Claims Advisory Committee and the Appellate Advisory Committee to revise 26 Judicial Council forms to implement statutory changes made by Senate Bill 71 (Stats. 2023, ch. 861), enacted October 13, 2023. SB 71 raises the jurisdictional limits for small claims and limited civil cases. Action must be taken between the Judicial Council's regularly scheduled meetings to ensure that council forms do not contain inaccurate statements of law as of January 1, 2024, when the law takes effect.

Action: *The committee unanimously approved the joint recommendation from the Civil and Small Claims and the Appellate Law Advisory Committees in the circulating order memorandum, which was circulated to the Judicial Council for action.*

CRIMINAL

Invitation to Comment–Recommend Circulation for Comment

Item 02

Jointly with the Appellate Advisory Committee.

Criminal Procedure: Racial Justice Act

The committee reviewed a proposal from the Appellate Advisory Committee and the Criminal Law Advisory Committee proposing amending rules 4.551, 8.385, and 8.386 of the California Rules of Court and revising Petition for Writ of Habeas Corpus (form HC-001), Motion to Vacate Conviction or Sentence (form CR-187), and Order on Motion to Vacate Conviction or Sentence (form CR-188) to implement the Racial Justice Act, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin.

Action: *The committee unanimously approved the joint proposal for circulation on the regular winter cycle through January 19.*

Item 03

Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(f)

The committee reviewed a proposal from the Criminal Law Advisory Committee proposing a rule of court to implement legislation requiring the Judicial Council to develop qualifications for the appointment of counsel in superior court habeas corpus proceedings under Penal Code section 1473(f).¹ Section 1473(f) is part of the Racial Justice Act, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin and allows petitioners to make claims for relief based on violations of this Act.

Action: *The committee unanimously approved the proposal for circulation on the regular winter cycle through January 19.*

Judicial Council Report—Recommend Council Action

Item 04

Child Support: Revise Income Withholding for Support and Related Instructions

The committee reviewed a recommendation from the Family and Juvenile Law Advisory Committee for the Judicial Council approve revisions to Income Withholding for Support (form FL-195) and Income Withholding for Support—Instructions (form FL-196) as Family Code section 5208 and federal law require that all earning assignment orders for support be issued using the federal forms.

Action: The committee unanimously approved the Appellate Advisory Committee’s recommendation, which is to go to the Judicial Council for action at the January council meeting

PROBATE AND MENTAL HEALTH

Invitation to Comment—Recommend Circulation for Comment

Item 05

Mental Health Law: CARE Act Rule Amendments and Form Revisions

The committee reviewed a proposals from the Probate and Mental Health Advisory Committee to amend four rules of court and revise seven forms to implement Senate Bill 35 (Stats. 2023, ch. 283), which amended both substantive and procedural aspects of the Community Assistance, Recovery, and Empowerment (CARE) Act. In addition, the statute updated the Judicial Council mandate to adopt rules implementing the policies and provisions of the act to add a requirement that the rules include “communications between the CARE Act court and the juvenile court, if applicable,” and to remove the requirement that the rules include “the clerk’s review of the petition.” The Family and Juvenile Law Advisory Committee joined in proposing amending rule 7.2210 and the revising form CARE-100 to the extent of those proposed.

Action: The committee unanimously approved the proposal for circulation on the regular winter cycle through January 19.

Judicial Council Report—Recommend Council Action

Item 06

Jointly with the Criminal Law Advisory Committee.

Rules and Forms: Elections Code Reports

The committee reviewed a recommendation from the chairs of the Probate and Mental Health Advisory Committee and the Criminal Law Advisory Committee to adopt Chapter 15, Elections Code Reports, in Title 10, Division 4 of the California Rules of Court and placing rule 10.970 in the new chapter. The Judicial Council adopted rule 10.970, effective January 1, 2024, to implement Assembly Bill 2841, which added section 2211.5 to the Elections Code to require trial courts to report to the Secretary of State judicial determinations under Elections Code sections 2208–2211 disqualifying a person from voting or restoring a person’s right to register to vote. The legislation expressly required the Judicial Council to adopt rules and forms.

Action: The committee unanimously approved the joint recommendation from the chairs of the Probate and Mental Health and Criminal Law Advisory, which is to go to the Judicial Council for action at the January council meeting

TRAFFIC

Judicial Council Report—Recommend Council Action

Item 07/ Circulating Order CO-23-03

Uniform Bail and Penalty Schedules: 2024 Edition

The committee reviewed a recommendation from the Traffic Advisory Committee that the Judicial Council, effective January 1, 2024, adopt revisions to the Uniform Bail and Penalty Schedules, 2024 Edition: Traffic, Boating, Forestry, Fish and Game, Public Utilities, Parks and Recreation, Business Licensing (Uniform Bail and Penalty Schedules or UBPS). Action must be taken between the Judicial Council’s regularly scheduled meetings because the Judicial Council does not have a scheduled meeting in December, and as a result of the Governor’s signing deadline, revisions to the UBPS require approval via circulating order.

Action: The committee unanimously approved the recommendation from the Traffic Advisory Committee in the circulating order memorandum, which was circulated to the Judicial Council for action.

I. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Next Rules Committee Meeting: February 2024 (date to be determined)

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:45 p.m.

Approved by the committee on

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: 2/7/24

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

Title of proposal: Jury Instructions: Criminal Jury Instructions (2024 Edition)

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

User Guide; 240, 520, 571, 600, 968, 969, 1201, 1244, 1250, 1500, 1551, 1800, 1807, 2624, 2722, 3160, 3161, 3162, 3163, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3517, 3518, and 3519

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:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Maintenance—Case Law and Legislation; Maintenance—Comments from Users;

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

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

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-062

For business meeting on March 15, 2024

Title

Jury Instructions: Criminal Jury Instructions
(2024 Edition)

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

*Judicial Council of California Criminal Jury
Instructions*

Effective Date

March 15, 2024

Date of Report

January 19, 2024

Recommended by

Advisory Committee on Criminal Jury
Instructions
Hon. Jeffrey S. Ross, Chair

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 2024 edition of *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective March 15, 2024, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to the user guide;
2. Changes to the revision date format; and
3. Revisions to CALCRIM Nos. 240, 520, 571, 600, 968, 969, 1201, 1244, 1250, 1500, 1551, 1800, 1807, 2624, 2722, 3160, 3161, 3162, 3163, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3517, 3518, and 3519.

The proposed revised jury instructions are attached at pages 32–165.

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 other changes to *CALCRIM*. The council approved the last *CALCRIM* release at its September 2023 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.

User guide

A committee member suggested that the paragraph about personal pronouns in the user guide should be modified because, as currently written, it erroneously suggests that personal pronouns are a choice. The committee agreed with this suggestion. The committee proposes changing the phrase “preferred personal pronouns” to “an individual’s personal pronouns.”

Revision date format

A committee member suggested changing the format of the instructions’ revision dates to provide more information about what has been updated. The committee agreed with this suggestion. The committee added a new paragraph to the user guide about revision dates to explain that, beginning with the 2024 edition of *CALCRIM*, an asterisk next to a revision date indicates that only the bench notes and other commentaries, and not the instructional language itself, have changed. The committee also included explanatory language about the asterisk, wherever it appears with the revision date, directly in each instruction; on a separate line below the revision date, the note reads, “Denotes changes only to bench notes and other commentaries.”

CALCRIM No. 240, *Causation*, and No. 520, *First or Second Degree Murder With Malice Aforethought*

Two recent California Supreme Court decisions clarified important legal concepts related to homicide law. In *People v. Reyes* (2023) 14 Cal.5th 981, 989 [309 Cal.Rptr.3d 832, 531 P.3d 357], the court explained that “dangerous to human life” in the context of implied malice murder

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.”

“must not merely be dangerous to life in some vague or speculative sense; it must “involve[] a high degree of probability that it will result in death.”” Later, in *People v. Carney* (2023) 14 Cal.5th 1130, 1141–1144 [310 Cal.Rptr.3d 685, 532 P.3d 696], the court confirmed that substantial concurrent cause analysis extends to the conduct of a participant in a gun battle who did not fire the fatal shot.

In response to *Reyes*, the Office of the State Public Defender proposed that the committee insert language into No. 520 to further define terms. The committee reviewed the suggested language and agreed that defining the phrase “dangerous to human life” for the jury would be an important addition. In the *implied malice* element of No. 520, the committee added “in that the (act/[or] failure to act) involved a high degree of probability that it would result in death” after the phrase “dangerous to human life.” The committee also added *Carney* to the Bench Notes and both *Reyes* and *Carney* to the Authority section. Finally, the committee added *Carney* to the Authority section of No. 240.

A district attorney’s office submitted a public comment opposed to the added definition of “dangerous to human life” in No. 520, arguing that the references in *Reyes* to this standard were merely dicta. The committee disagreed with this analysis, finding instead that the California Supreme Court’s discussion about the meaning of “dangerous to human life” was an alternative basis for its holding.

CALCRIM No. 600, Attempted Murder

In *People v. Mumin* (2023) 15 Cal.5th 176, 203 [312 Cal.Rptr.3d 255, 534 P.3d 1], the California Supreme Court clarified the requirements to justify an instruction on concurrent intent:

Justification for instructing on concurrent intent requires substantial evidence that:

1. the defendant intended to kill a primary target; 2. he concurrently intended to achieve that goal by killing all others in the fatal zone he creates; and 3. the alleged attempted murder victim was in that zone. These requirements protect against an improper attempted murder conviction based only on a conscious disregard for life.

(*Ibid.*)

The committee added these three requirements to the Bench Notes and included the case to the Bench Notes and Authority sections. The committee also deleted the kill zone Related Issues paragraph, moving the quote from *Canizales* from this paragraph to the Bench Notes.

CALCRIM No. 968, Shooting From Motor Vehicle, and No. 969, Permitting Someone to Shoot From Vehicle

People v. Gaines (2023) 93 Cal.App.5th 91, 120 [310 Cal.Rptr.3d 203] examined a prosecution for violating Penal Code section 26100(c)² where the shooter, who had been a passenger in a

² Penal Code section 26100(c) defines a felony offense for “[a]ny person who willfully and maliciously discharges a firearm from a motor vehicle at another person other than an occupant of a motor vehicle.”

vehicle that had stopped suddenly in the middle of the street, fired a gun while standing at the open door and behind the vehicle. The court held that “[t]he legislative history, the purpose of the statute, general public policy concerns, and logic all favor an interpretation that would recognize a violation of section 26100” under these circumstances. The committee added this case to the Authority section of both instructions.

CALCRIM No. 1201, *Kidnapping: Child or Person Incapable of Consent*

In *People v. Lewis* (2023) 14 Cal.5th 876, 891 [309 Cal.Rptr.3d 699, 530 P.3d 1107], the California Supreme Court considered “the nature of the force or fear requirement for an intoxicated adult victim” in an aggravated kidnapping case. The court held:

In sum, a defendant acting with an illegal intent or purpose may be liable for kidnapping under section 207 if he or she uses physical force to take and carry away a person who, because of intoxication or other mental condition, is unable to consent to the movement. The quantum of force required is no greater than the amount of physical force required to take and carry the victim away a substantial distance, and there is no constitutional prohibition on applying that standard here.

(*Id.* at p. 899.)

The committee updated the Authority section of No. 1201, adding this case with the entry “Force Required to Kidnap Adult Unable to Consent Due to Intoxication or Other Mental Condition.” The committee also removed the existing cite to *People v. Daniels* (2009) 176 Cal.App.4th 304 [97 Cal.Rptr.3d 659] because *Daniels*’s holding about the required amount of force was limited to an unconscious intoxicated adult.

CALCRIM No. 1244, *Causing Minor to Engage in Commercial Sex Act*

This instruction sets forth the elements for a violation of Penal Code section 236.1(c), which includes *attempt* in the definition of human trafficking of a minor.³ Penal Code section 236.1(f) states, “Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.” *People v. Middleton* (2023) 91 Cal.App.5th 749, 766–768 [308 Cal.Rptr.3d 705] analyzed the effect of subdivision (f) on subdivision (c) and concluded that subdivision (f) “eliminates the specific intent element regarding age when a defendant attempts, but fails, to induce a person who is actually a minor to engage in commercial sex acts, even if the defendant believes the victim is an adult.” The committee added this case to the Authority section and expanded element 2 to clarify that the defendant intended the minor to commit or maintain one of the specified violations. A commenter pointed out that element 2 should refer to “person” instead of

³ Penal Code section 236.1(c) states, “A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking.”

“minor” because being a minor is an independent element. The committee readily agreed and changed the language.

CALCRIM No. 1500, *Aggravated Arson*

An arson investigator with a California fire department reached out to the committee to request that the aggravating factor in Penal Code section 451.5 of having a prior arson conviction within 10 years, which is currently referenced in the Bench Notes, be directly incorporated into the instructional text. Separately, Senate Bill 281 (Stats. 2023, ch. 706) increased the dollar amount of property damages and other losses under this statute to \$10,100,000; clarified that this amount is “exclusive of damage to, or destruction of, inhabited dwellings”; and replaced the word “structures” with “dwellings” (see Pen. Code, § 451.5(a)(2)(A), (a)(3)). The committee agreed with the investigator’s request and added the prior conviction factor as Alternative 3A. The committee also made conforming changes based on the statutory amendments. Finally, the committee updated the Bench Notes discussion about the three alternatives.

CALCRIM No. 1551, *Arson Enhancements*

In *People v. Johnson* (2022) 86 Cal.App.5th 258, 266 [301 Cal.Rptr.3d 814], the court analyzed the legislative history of Penal Code section 451.1(a)(5) and concluded that whiskey qualifies as an incendiary device under this statute. In reaching this conclusion, *Johnson* relied on the holding in *People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1278 [139 Cal.Rptr.3d 637] that determined that the defendant’s act of pouring gasoline in a structure to fuel an arson constituted the use of an incendiary device within the meaning of this statute. The committee added both *Johnson* and *Kurtenbach* to the Authority section. To conform with the changes made in No. 1500, the committee also added the prior conviction basis as Alternative A and created Alternative F for the fine enhancement under Penal Code section 456(b). Further, the committee included an explanation about Alternative F in the Bench Notes.

CALCRIM No. 1800, *Theft by Larceny*

In *People v. Myles* (2023) 89 Cal.App.5th 711, 725 [306 Cal.Rptr.3d 288], the court reviewed a modification of CALCRIM No. 1800 that added the following sentence to the pattern instruction: “The unauthorized use of utilities in a residence or consumption of property within the home is considered larceny for purposes of Burglary.” The court held that this statement to the jury was erroneous because it was “an alternate, incomplete definition of theft that omitted the required specific intent” (*id.* at p. 731). In response, the committee added this case to the Authority section and included in the instruction an optional sentence that reads, “The taking of property can include its consumption or the use of utilities.” The committee also updated the Related Issues paragraphs “Multiple or Single Conviction of Theft—Overall Plan or Scheme” to conform with related revisions to CALCRIM No. 1802, *Theft: As Part of Overall Plan*.⁴ One commenter disagreed with the new bracketed sentence, stating that it was incorrect and that its presence would unfairly “invite the jury to draw an inference to one party.” The committee disagreed,

⁴ In September 2023, the Judicial Council approved revisions to No. 1802 that reflected newly added subdivision (e) of Penal Code section 487, as amended by Assembly Bill 2356 (Stats. 2022, ch. 22).

noting that the proposed sentence is a correct statement of the law and would be helpful to trial courts should a jury need additional explanation on this particular issue.

CALCRIM No. 2624, *Threatening a Witness After Testimony or Information Given*

In *Counterman v. Colorado* (2023) 600 U.S. 66, 70–71 [143 S.Ct. 2106, 216 L.Ed.2d 775], the United States Supreme Court examined a Colorado stalking statute that used an objective standard that did not require proof that the defendant was aware of the threatening nature of his statements.⁵ The court held that the First Amendment requires proof that “the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence” (*id.* at p. 69).

In response to *Counterman*, the committee determined that No. 2624, which is based on Penal Code section 140,⁶ requires an update. Currently, element 2 of this instruction states that the defendant must have “willfully (used force/ [or] threatened to use force or violence ...) because [the witness] had given that (assistance/ [or] information)”; elements 3 and 4 then set forth a “reasonable listener” standard. Further, the Authority section and Commentary cite to *People v. McDaniel* (1994) 22 Cal.App.4th 278, 283 [27 Cal.Rptr.2d 306], which held that Penal Code section 140 is a general intent crime.

The committee changed element 3 to state, “The defendant consciously disregarded a substantial risk that (his/her) conduct would be understood as [a] threat[s]” and changed element 4 to refer to a reasonable person instead of a reasonable listener (because a threat can be communicated nonverbally). In the Authority section, the committee added *Counterman* and removed *McDaniel*. Finally, the committee deleted the Commentary section, which discusses *McDaniel*.

CALCRIM No. 3160, *Great Bodily Injury*; No. 3161, *Great Bodily Injury: Causing Victim to Become Comatose or Paralyzed*; No. 3162, *Great Bodily Injury: Age of Victim*; and No. 3163, *Great Bodily Injury: Domestic Violence*

In re Cabrera (2023) 14 Cal.5th 476, 484–485 [524 P.3d 784, 304 Cal.Rptr.3d 798] acknowledged that *great bodily injury* and *serious bodily injury* are similar terms but they “are not interchangeable in the context of the jury instructions on mayhem.” The court reasoned, “Even if it is sufficient for serious bodily injury and great bodily injury to be ‘*substantially* the same’ for purposes of applying Penal Code section 12022.7, more is required to satisfy

⁵ The Colorado statute made it unlawful to “[r]epeatedly ... make[] any form of communication with another person’ in ‘a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person ... to suffer serious emotional distress’” (*Counterman, supra*, 600 U.S. at p. 70).

⁶ This statute provides, “Except as provided in Section 139, every person who willfully uses force or threatens to use force or violence upon the person of a witness to, or a victim of, a crime or any other person, or to take, damage, or destroy any property of any witness, victim, or any other person, because the witness, victim, or other person has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.”

Apprendi's strict allocation of roles between judge and jury under the Sixth Amendment" (*id.* at p. 491 (internal citation omitted)).

These four instructions, which are all based on Penal Code section 12022.7, already contain a bench note that states, "The jury must determine whether an injury constitutes 'great bodily injury.'" After this sentence, the committee added, "A jury's finding of serious bodily injury is not equivalent to a finding of great bodily injury" and cited *Cabrera*. The committee also added *Cabrera* to the Authority sections.

CALCRIM Nos. 3224–3234 (aggravating sentencing factors)

Instructional Duty in the Bench Notes section of these instructions currently states, "The court must bifurcate the jury's determination of the aggravating factors on the defendant's request." A trial court judge alerted the committee that this statement omits an important statutory exception. Specifically, Penal Code section 1170(b)(2) requires bifurcation on the defendant's request "[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law" The committee updated the instructional duty in all aggravating factor instructions to include this exception.

One commenter pointed out a split in authority relating to the vulnerable-victim aggravating factor set forth in No. 3226. Specifically, in contrast to the holding in *People v. Piceno* (1987) 195 Cal.App.3d 1353, 1358–1359 [241 Cal.Rptr. 391], both *People v. Weaver* (2007) 149 Cal.App.4th 1301, 1315–1319 [58 Cal.Rptr.3d 18] and *People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1182 [214 Cal.Rptr.3d 467] held that the vulnerable-victim aggravating factor applied in vehicular manslaughter cases. In response to this comment, the committee added *Weaver* and *Nicolas* to the Authority section of No. 3226 alongside the existing citation to *Piceno* and included brief descriptions of their different holdings.

CALCRIM Nos. 3517–3519

An appellate defense attorney recommended further clarification based on *People v. Kurtzman* (1988) 46 Cal.3d 322 [250 Cal.Rptr. 244, 758 P.2d 572]. In *Kurtzman*, the court examined the holding of *Stone v. Superior Court* (1982) 31 Cal.3d 503 [183 Cal.Rptr. 647, 646 P.2d 809], finding that this opinion "properly interpreted, simply restricts a jury from *returning a verdict* on a lesser included offense before acquitting on a greater offense and does not preclude a jury from *considering* lesser offenses during its deliberations" (*Kurtzman, supra*, 46 Cal.3d at pp. 324–325). The attorney pointed out that the current instructional language simply tells jurors that the court "can accept a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime." The instruction does not explain that jurors are free to consider the lesser and greater offenses in any order they choose. The committee agreed with this suggestion and added the following sentence: "You do not have to unanimously agree on the greater crime before considering a lesser crime." A joint comment submitted by three judges of the Superior Court of San Francisco County opposed this change, noting that the proposed phrase "You do not have to unanimously agree" could create juror confusion. In response, the

committee changed this sentence to “You do not have to reach a verdict on the greater crime before considering a lesser crime.”

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 October 13 through November 27, 2023. The committee received responses from nine commenters, including judicial officers, a superior court, a county bar association, a district attorney’s office, and two members of the public.⁷ The text of all comments received and the committee’s responses are included in a chart of comments attached at pages 9–31.

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.

Attachments and Links

1. Chart of comments, at pages 9–31
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 32–165

⁷ The committee also received from individual members of the public two comments that seemed misdirected because they did not address jury instructions in any way.

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
	Judge George Abdallah, Superior Court of San Joaquin County.	A		No response necessary.
520, 571, 600, 968, 969, 1201, 1244, 1250, 1500, 1551, 1807, 2624, 2722, 3160, 3161, 3162, 3163, 3224 to 3234, 3517, 3518, 3519	Orange County Bar Association by Michael A. Gregg, President.	A		No response necessary.
240	Orange County Bar Association by Michael A. Gregg, President.	AM	Cal.5th 1130, to Authority Section. Note: The page, 856, cited for <i>People v. Cervantes</i> under the Authority Section, “Independent Intervening Cause” is incorrect. It should read as, “at pp. 866–874”.	The committee agrees and has changed the first page number in the range to 866.
240	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • The authority citation for Proximate Cause includes <i>People v. Carney</i> (2023) 14 Cal.5th 1130, 1137–1139. It could also properly include a citation to page 1143 where the court cites with approval the proximate cause language in CALCRIM 240. • The remaining citation modifications are nonsubstantive and all are correct. • No other comment is recommended. 	The committee agrees with this suggestion and has added the additional page number to the pincite.

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CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
510	Superior Court of San Diego County by Mike Roddy, Executive Officer.	AM	<p>Although this invite to comment does not include proposed revisions to CALCRIM 510 (excusable homicide: accident), the below is submitted for your consideration as part of this or future proposed revisions. It is premised on the research of a San Diego Superior Court staff attorney and does not purport to represent the opinion of the entire bench or court as a whole. It is submitted merely for your consideration and independent analysis.</p> <p>The current version of CALCRIM 510 separates “accident and misfortune” as an element from the more general category of “doing a lawful act in a lawful way.” Consider whether this contravenes a plain reading of Penal Code section 195(1) which states homicide is excusable “[w]hen committed by accident and misfortune, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.” (Emphasis added.) The words “any other” suggest that accident and misfortune is just a specific example of a lawful act by lawful means, not a separate undefined category.</p> <p>In addition, CALCRIM 510 as currently written would require acquittal if the killing occurred by accident and misfortune, without any determination of whether the defendant acted with usual and ordinary caution (i.e., without negligence). However, “[f]or a killing to be ‘accidental,’ a defendant must act without negligence.” (<i>People v. Mehserle</i> (2012) 206</p>	This proposal is outside the scope of the invitation to comment and will be considered by the committee at its next meeting.

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>Cal.App.4th 1125, 1138.) Similarly, in <i>People v. Villanueva</i>, the court held that “a homicide is excusable when a defendant accidentally kills while brandishing a weapon in self-defense, if the defendant acted with usual and ordinary caution.” (<i>People v. Villanueva</i> (2008) 169 Cal.App.4th 41, 54 [emphasis added].) These two cases recognize that the requirement of acting with usual and ordinary caution applies to accidents. CALCRIM No. 510, as revised in March 2022, eliminates this crucial requirement for killings “by accident and misfortune.”</p> <p>Finally, reconsider whether <i>People v. Garnett</i> (1908) 9 Cal.App. 194 (upon which it appears the last revision to CALCRIM 510 was based) really supports the current version of CALCRIM 510. The prior version of the instruction did not suffer from the same confusion as to causation that the <i>Garnett</i> court disapproved. <i>Garnett</i> simply does not support creating a separate category of “accident and misfortune” that eliminates the requirement the defendant acted with ordinary caution.</p> <p>Consider the following as the verbiage for the elements listed in CALCRIM 510:</p> <p>The defendant is not guilty of (murder/ [or] manslaughter) if (he/she) killed someone:</p> <p>1. By accident and misfortune, or in doing any other lawful act in a lawful way;</p>	

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			2. The defendant was acting with usual and ordinary caution; AND 3. The defendant was acting without an unlawful intent to commit (murder/ [or] manslaughter).	
520	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • Natural and probable consequences prong is modified to explain natural and probable consequences of act/omission were dangerous to human life “in that the (act/[or] failure to act) involved a high degree of probability that it would result in death.” (CALCRIM 2023-02 at p. 7.)¹ That language (modifying the word “will” to “would”) is verbatim the language used in <i>People v. Reyes</i> (2023) 14 Cal.5th 981, 989, quoting <i>People v. Knoller</i> (2007) 41 Cal.4th 139, 152. It is correct. • No other portion of CALCRIM No. 520 appears to require modification. • No comment is recommended. 	No response necessary.
520	San Diego County’s District Attorney Office by Linh Lam, Chief, Appellate & Training Division.	N	The San Diego County District Attorney’s Office recently reviewed proposed changes to CALCRIM 520 defining the elements of second-degree implied malice murder. We are concerned that the reliance on dicta from <i>People v. Reyes</i> (2023) 14 Cal.5th 981 (<i>Reyes</i>) for the proposed changes will lead to misinterpretation and improper application of implied malice. The Committee’s proposed	The committee disagrees that the language in <i>Reyes</i> is dicta. This language is an alternative holding. As modified, CALCRIM No. 520 accurately states the law.

¹ The PDF page numbers are different from the page numbers printed on the page. The citations in this document refer to the printed page numbers at the bottom of each page.

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Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>addition to the second element of implied malice is underlined and bolded below.</p> <p>The defendant had <i>implied malice</i> if:</p> <ol style="list-style-type: none"> 1. (He/She) intentionally (committed the act/[or] failed to act); 2. The natural and probable consequences of the (act/[or] failure to act) were dangerous to human life in that the (act/[or] failure to act) involved a high degree of probability that it would result in death; 3. At the time (he/she) (acted/[or] failed to act), (he/she) knew (his/her) (act/[or] failure to act) was dangerous to human life; AND 4. (He/She) deliberately (acted/[or] failed to act) with conscious disregard for (human/[or] fetal) life. <p>Our office believes that the proposed changes are unnecessary as they derive from dicta in <i>Reyes, supra</i>, 14 Cal.5th 981. As the California Supreme Court has stated, “A precedent cannot be overruled in dictum, of course, because only the ratio decidendi of an appellate opinion has precedential effect...; to hold otherwise [] would be to conclude that a statement by this court that is not a precedent can somehow abrogate an earlier statement by this court that is a precedent. This is not the law.” (<i>Trope v. Katz</i> (1995) 11 Cal.4th 274, 287.)</p> <p>In <i>Reyes</i>, the California Supreme Court evaluated the trial court’s Penal Code section 1172.6 finding</p>	

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Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>that petitioner was responsible for second-degree implied malice murder as a gang member who entered rival gang territory to back up a fellow gang member (Lopez), who shot and killed a motorist named Rosario. (<i>Reyes, supra</i>, 14 Cal.5th at pp. 985-986.)</p> <p>The California Supreme Court reversed the trial court on two points of law. The first was related to substantial evidence. The Court held that “[the trial court’s] conclusion that Reyes’s conviction was sustainable on a direct perpetrator theory was not supported by substantial evidence.” (<i>Reyes, supra</i>, 14 Cal.5th at p. 988.) Discussing the substantial evidence prong of its holding, the Court determined: “On this record, it cannot be said that Reyes committed an act that ‘proximately caused’ Rosario’s death.” (<i>Ibid.</i>)</p> <p>The second legal principle of the Court’s holding related to the trial court’s misunderstanding of the law. The Court held that “to the extent the trial court purported to uphold Reyes’s murder conviction on a direct aiding and abetting theory, the court misapprehended what is required as a matter of law to prove aiding and abetting implied malice murder.” (<i>Reyes, supra</i>, 14 Cal.5th at p. 988.) The Court highlighted the trial court’s misplaced reliance on CALCRIM 520 because it did not fully encompass implied malice aiding and abetting principles. It held “the trial court did not appear to recognize that implied malice murder requires, among other elements, proof of the aider</p>	

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Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>and abettor’s knowledge and intent with regard to the direct perpetrator’s life endangering act.” (<i>Id.</i> at p. 991, italics removed.) The Court further held, “[h]ere, assuming the life endangering act was the shooting, the trial court should have asked whether Reyes knew that Lopez intended to shoot at the victim, intended to aid him in the shooting, knew that the shooting was dangerous to human life, and acted in conscious disregard for life. [Citation.] Because the court did not do so, its decision was based on an error of law insofar as the court sustained Reyes’s murder conviction on a direct aiding and abetting theory.” (<i>Id.</i> at p. 992.) Significantly, the Court never stated that CALCRIM 520 was incorrect as written nor that it needed to be modified in any way; instead, the focus was on the trial court’s misapplication of that instruction to an aiding and abetting theory. Thus, it cannot be said that any ratio decidendi concerning CALCRIM 520 was reached in order to create the precedential effect necessary to amend the instruction.</p> <p>After discussing its holding as to the first point of law, the Court stated in self-admitted dicta: “Although lack of proximate causation suffices to establish that the trial court erred in denying Reyes’s resentencing petition on a direct perpetrator theory, we also take issue with the trial court’s conclusion that ‘the natural probable consequences’ of Reyes’s act of traveling to a rival gang territory with several other gang members,</p>	

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Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>one of whom was armed, ‘were dangerous to human life.’ To suffice for implied malice murder, the defendant’s act must not merely be dangerous to life in some vague or speculative sense; it must ‘ “involve a high degree of probability that the act in question will result in death.” ’ ”</p> <p>[Citations.]</p> <p>(<i>Reyes, supra</i>, 14 Cal.5th at p. 989, emphasis added.) In support of the “high degree of probability” language relative to implied malice, the Court cited <i>People v. Knoller</i> (2007) 41 Cal.4th 139, 152 (<i>Knoller</i>) and <i>People v. Cravens</i> (2012) 53 Cal.4th 500, 513 (conc. opn. of Liu, J.) (<i>Cravens</i>). Interestingly, neither <i>Knoller</i> nor <i>Cravens</i> remotely holds that juries should be instructed that implied malice requires an act that “involved a high degree of probability that it would result in death.” Moreover, neither opinion prompted a change to the elements of implied malice in CALCRIM 520. Rather, the cases are fairly read to stand for the opposite proposition that this heightened standard is <i>not</i> required.</p> <p><i>Knoller</i> discussed the definitional schism that was borne out of two implied malice line of cases. One was <i>People v. Phillips</i> (1966) 64 Cal.2d 574 (“the <i>Phillips</i> test”) and the other was <i>People v. Thomas</i> (1953) 41 Cal.2d 470, 480 (“the <i>Thomas</i> test”). Since 1989, the Court in <i>People v. Dellinger</i> (1989) 49 Cal.3d 1212, 1221, settled the matter by holding that “the ‘better practice in the future is to charge juries solely in the straightforward</p>	

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Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>language of the “conscious disregard for human life” definition of implied malice,’ ” set out in the <i>Phillips</i> test. (<i>Knoller, supra</i>, 41 Cal.4th at p. 152.) The Court held that the <i>Thomas</i> test—involving language related to “high degree of probability that [the act] will result in death”—was “ ‘obscure phraseology’ and had ‘become a superfluous charge,’ so that the ‘better practice in the future’ would be for trial courts to instruct juries in the ‘straightforward language’ of the <i>Phillips</i> test.” (<i>Id.</i> at pp. 156-157.) To reinforce its point, <i>Knoller</i> explained, “[f]or trial courts too, the better practice in the future would be to use the <i>Phillips</i> test, rather than the <i>Thomas</i> test, in ruling on motions for a new trial as well as other matters in which the definition of implied malice is in issue.” (<i>Id.</i> at p. 157, fn. 5, bold added.)</p> <p>In <i>Cravens</i>, the California Supreme Court reiterated the test for implied malice by citing <i>Knoller, supra</i>, 41 Cal.4th at p. 143. (<i>Cravens, supra</i>, 53 Cal.4th at p. 507.) The majority opinion explained that implied malice requires “ ‘an act, the natural consequences of which are dangerous to life, ...’ ” without reference to the <i>Thomas</i> “high degree of probability” test. (<i>Ibid.</i>, citations omitted.) While Justice Liu addressed in his <i>Cravens</i> concurring opinion the fact that the “high degree of probability” of death formulation has never been explicitly disavowed, he also acknowledged that the <i>Cravens</i> majority’s omission of the <i>Thomas</i> case in its opinion reflected the continued erosion of that test. (<i>Id.</i> at</p>	

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Revised Jury Instructions

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			<p>p. 513 (conc. opn. of Liu, J.) Here, in <i>Reyes</i>, Justice Liu’s passing reflection on the <i>Thomas</i> test does not elevate his commentary beyond dicta to ratio decidendi requiring amendments of CALCRIM 520. As currently written and unmodified, CALCRIM 520 correctly encompasses the elements of implied malice.</p> <p>Neither <i>Thomas</i> nor <i>Phillips</i> are cited once in <i>Reyes</i> and neither party raised these issues on appeal. The <i>Reyes</i> Court did not, as part of its holding, require that trial courts return to the <i>Thomas</i> test. Since 1989 when <i>Dellinger</i> sought to resolve the tension between the two tests by instructing that the <i>Phillips</i> test was the better formulation to explain implied malice, CALCRIM 520 (and previously in CALJIC 8.11) has correctly defined the standard. Until the California Supreme Court expressly and unequivocally holds that the “high degree of probability” language from <i>Thomas</i> must be incorporated into the implied malice instruction, we respectfully believe that CALCRIM 520 must remain unchanged.</p>	
571	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> The proposed modification to the imperfect self-defense authority makes the applicability of imperfect self-defense less clear: Availability of Imperfect Self-Defense May be Available When Defendant Set in Motion Chain of Events Leading to Victim’s Attack, but Not When Victim was Legally Justified in Resorting to Self-Defense. <i>People v. Enraca</i> (2012) 53 Cal.4th 735, 761 [137 Cal.Rptr.3d 117, 269 P.3d 	Although the commenter offers a more detailed summary of the holdings, the committee declines to make the suggested change. The authority section entries are intended to be brief descriptions.

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<p>543] [not available]; <i>People v. Vasquez</i> (2006) 136 Cal.App.4th 1176, 1179–1180 [39 Cal.Rptr.3d 433] [available].</p> <ul style="list-style-type: none"> ○ Suggested alternative: “Imperfect Self-Defense May Be Available When Defense Set in Motion Chain of Events Leading to Victim’s Attack (<i>People v. Vasquez</i> (2006) 136 Cal.App.4th 1176, 1179–1180 [39 Cal.Rptr.3d 433]), but Not When Victim was Legally Justified in Resorting to Self-Defense (<i>People v. Enraca</i> (2012) 53 Cal.4th 735, 761 [137 Cal.Rptr.3d 117, 269 P.3d 543]).” ○ No other comment is recommended. 	
600	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • The modified “kill zone” bench note better explains the applicability of the bracketed text for the kill zone theory. (CALCRIM 2023-02 at p. 19.) The bracketed kill zone theory language (unmodified) remains correct. The citations are accurate and up to date. • No comment is recommended. 	No response necessary.
960	Superior Court of San Diego County by Mike Roddy, Executive Officer.	AM	Although this invite to comment does not include proposed revisions to CALCRIM 960 (simple battery, PC 292), this is submitted for your consideration as part of this or future proposed revisions. In the “Related Issues” section of the instruction, it says “The committee could not locate any authority on whether it is sufficient to commit a battery if the defendant touches something attached to or closely connected with the person. Thus, the committee has not included this principle in the instruction.” Consider	This proposal is outside the scope of the invitation to comment and will be considered by the committee at its next meeting.

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			amending the instruction in light of <i>In re B.L.</i> (2015) 239 Cal.App.4th 1491, which held that knocking a walkie-talkie out of a person’s hand constituted a battery against that person.	
968 & 969	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • The modified instruction authority explains that shooting “from a vehicle” includes standing at an open door. (<i>People v. Gaines</i> (2023) 93 Cal.App.5th 91, 120; CALCRIM 2023-02 at p. 23) • It may be prudent to include bracketed language in the instruction providing the precise language for the added authority: “[Someone shoots from a vehicle when he or she shoots while inside a vehicle (while the vehicle is moving or stationary) or while standing behind the open door of a vehicle.]” (<i>People v. Gaines, supra</i>, 93 Cal.App.5th at p. 120.) No other comment is recommended. 	The committee declines to add the suggested language. Counsel can suggest a pinpoint instruction based on <i>Gaines</i> when the evidence warrants further elaboration.
1201	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • The modified instruction authority provides a different citation and more complete summary of authority for the force required to kidnap an adult unable to consent due to intoxication or other mental condition. The explanation of the authority is better and the updated authority provides both a better explanation of the required force and higher level authority (California Supreme Court rather than an appellate court). • No comment is recommended. 	No response necessary.
1244	James Mugridge, Lead Staff Attorney (Central Staff),	NI	<ul style="list-style-type: none"> • The instruction is modified to clarify that the defendant’s required intent is “(he/she) intended 	No response necessary.

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
	California Fifth District Court of Appeal.		<p>that the minor (commit/ [or] maintain) a [felony] violation of _____ <insert appropriate code section[s]>;” (CALCRIM 2023-02 at p. 31.)</p> <ul style="list-style-type: none"> ○ The modification is more consistent with the language of Penal Code section 236.1, subdivision (c): “A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking.” ● The authority portion of the instruction is also modified to add authority clarifying that to be convicted of the completed crime of inducing a minor to engage in a commercial sex act, the person induced must be a minor and the defendant must intend for the minor to commit a commercial sex act (regardless of whether or not the defendant knows the minor is a minor). (<i>People v. Moses</i> (2020) 10 Cal.5th 893, 912–913; <i>People v. Middleton</i> (2023) 91 Cal.App.5th 749, 767–768.) But to commit the crime of <i>attempting</i> to induce a minor when no actual minor victim is involved, the defendant must act with the specific intent to commit the completed crime, i.e., the intent to cause, induce, or persuade a minor to engage in a commercial sex act (even though the person is actually an adult). (<i>Moses</i>, at pp. 912–913.) 	

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CALCRIM 2023-02

Revised Jury Instructions

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Instruction No.	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> The modified instruction is complete and correct. No comment is recommended. 	
1244	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer.	AM	Pertaining to proposed revisions to CALCRIM 1244 (PC 236.1): the first and third elements refer to a “person” whereas the second element refers to a “minor,” even though it is an independent element to have to prove the person is a minor or the defendant believed the person to be a minor (element 3). Consider whether the second element should instead refer to a “person.”	The committee agrees and has changed “minor” to “the other person.”
1250	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> Adds a note explaining that “Penal Code section 278 does not require the prosecution to prove that a foreign court order or custody order had previously been registered in California pursuant to the UCCJEA. (<i>People v. Coulthard</i> (2023) 90 Cal.App.5th 743, 758 [307 Cal.Rptr.3d 383].)” (CALCRIM 2023-02 at p. 36) The summary is correct. The authority for the proposition is undisputed and based on long-established law. No comment is recommended. 	No response necessary.
1301	Kailin Wang	NI	When will Cal-Crim amendments for Stalking under Penal Code 646.9 be amended in order to align with the recent US Supreme Court decision in <i>Counterman v. Colorado</i> 2023 which mandated that Stalking Laws change the objective reasonable person standard to the subjective of the speaker to a reckless standard.	In <i>Counterman v. Colorado</i> (2023) 600 U.S. 66, 69 [143 S.Ct. 2106, 216 L.Ed.2d 775], the United States Supreme Court examined a Colorado stalking statute and held that the First Amendment requires “that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening

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CALCRIM 2023-02

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			<p>Note the California Court of Appeals recently cited to <i>Counterman v. Colorado</i> to overturn a Stalking Case based on violation of the First Amendment, however they still cited the "reasonable person" standard in <i>People v. Peterson</i>, No. A163458 (Cal. Ct. App. Sep. 26, 2023).</p> <p>Stalking another by following or engaging in a course of conduct directed at a specific person with no legitimate purpose that puts another person reasonably in fear for one's safety or knowing or consciously disregarding a substantial and unjustifiable risk that the course of conduct would cause a reasonable person to under the circumstances be frightened, intimidated or emotionally distressed - (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.</p> <p>Threats, defined as communication of a serious expression of intent to commit an act of unlawful violence against an individual or identifiable group, such that the individual or group would reasonably fear violence, regardless of whether the communicating individual actually intends to carry out the threat, and in which the person engaging in the communication knew or consciously disregarded a substantial and unjustifiable risk that it would have such an effect on the individual or identifiable group.</p>	<p>violence.” In response to <i>Counterman</i>, the committee reviewed several CALCRIM instructions including No. 1301, <i>Stalking</i>. The committee determined that the holding does not impact No. 1301 because this instruction already requires that the defendant intend to place the victim in reasonable fear.</p> <p><i>People v. Peterson</i> (2023) 95 Cal.App.5th 1061 [314 Cal.Rptr.3d 137] was recently decided and addressed a different issue: the nature of true threats in a stalking case. The committee will consider this case at its next meeting in the spring.</p>
1500 & 1551	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> Senate Bill No. 821 (Reg. Sess. 2023–2024) modified the amount of property damage required to be convicted of aggravated arson and modified the alternative condition that defendant have damaged or destroyed five or more “inhabited structures” to “inhabited dwellings.” (Stats. 2023, ch. 706, § 1, subd. (a)(2)(A) & (a)(3).) The modified instruction for CALCRIM No. 1500 makes conforming changes. CALCRIM Nos. 1500 and 1551 also incorporate into the body of the instructions the alternative element/factor that defendant has been convicted of arson in the past 10 years. Previously, that alternative element was satisfied by giving 	No response necessary.

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CALCRIM 2023-02

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			<p>separate instruction on defendant’s prior arson conviction (CALCRIM Nos. 3100 and 3101). (CALCRIM 2023-02 at pp. 39, 43–44.)</p> <ul style="list-style-type: none"> • The bench notes and authority on CALCRIM No. 1551 were also supplemented to advise the court on when to instruct on arson for monetary gain (only when monetary gain is alleged in the charging document pursuant to Penal Code section 456, subdivision (b) for purposes of additional punishment; it is not required if the trial court intends to rely on arson for monetary gain to impose a larger fine within the statutorily permitted range). (CALCRIM 2023-02 at p. 45.) • Modified CALCRIM No. 1551 also provides additional authority defining a device designed to accelerate a fire. (CALCRIM 2023-02 at p. 45.) It provides useful additional authority regarding alcohol as a fire accelerant. • Modified CALCRIM No. 1500 correctly makes changes required by Senate Bill No. 821 and modified CALCRIM Nos. 1500 and 1551 correctly incorporate an alternative element/factor that previously required giving a separate instruction. • No comment is recommended. 	
1800	Orange County Bar Association by Michael A. Gregg, President.	AM	Adds bracketed language to theft instructions that says “The taking of property can include its consumption or the use of utilities.” Citing to <i>People v. Myles</i> (2023) 89 Cal.App.5th 711. But <i>Myles</i> itself cautions: “We agree with Myles his case presents an example of the danger of relying on appellate opinions to ‘embellish’ on	The committee disagrees. The proposed language about theft of utilities correctly states the case law.

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

Instruction No.	Commenter	Position	Comment	Committee Response
			<p>standard jury instructions... The discussion in an appellate decision is directed to the issue presented. The reviewing court generally does not contemplate a subsequent transmutation of its words into jury instructions and hence does not choose them with that end in mind.” (p. 731). The instruction already says “the property can be of any value, no matter how slight.”</p> <p>“Not only was the modification erroneous as a matter of law, but it was also impermissibly argumentative. An argumentative instruction is one that invites the jury to draw an inference favorable to one party from specified items of evidence on a disputed question of fact... Although the modification here did not go so far as to specify items of evidence, it defined the offense in terms of basic facts (use of utilities, consumption of property).” (<i>Myles</i> at 732.)</p> <p><i>Myles</i> says “The phrases ‘use of utilities’ and ‘consumption of property’ described acts which, in an appropriate case, may constitute a taking of property.” (at p. 731.) However, by specifying types of property the proposed language will invite the jury to draw an inference to one party.</p> <p><u>A better approach would be either:</u></p> <ul style="list-style-type: none"> a) Keep the reference to “consumption or use of utilities” in the use notes only, but remove the bracketed language; or b) Change the bracketed language to “The taking of property could include its consumption or 	

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

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
			use of utilities if the other elements of the offense are met.”	
1800	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • Adds a bracketed optional language explaining that “[The taking of property can include its consumption or the use of utilities.]” (<i>People v. Myles</i> (2023) 89 Cal.App.5th 711, 731.) <ul style="list-style-type: none"> ○ The bracketed optional language correctly summarizes the authority it relies upon. The authority appears to be undisputed. • Nonsubstantively modifies the “Related Issues” section by referring the court to CALCRIM No. 1802 when a defendant is charged with stealing multiple items over time rather than including a brief summary of the issue in CALCRIM No. 1800. The modification trims CALCRIM No. 1800 and avoids repeating the same idea in CALCRIM Nos. 1800 and 1802 for the more specialized situation set out in CALCRIM No. 1802. • No comment is recommended. 	No response necessary.
1807	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • Penal Code section 368, subdivision (d) provides: “A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:” as a wobbler if the 	No response necessary.

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

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
			<p>amount stole is above \$950 or as a misdemeanor if the amount is \$950 or less.</p> <ul style="list-style-type: none"> • Adds a note to the “Authority” section explaining that noncaretaker status is not an element of the offense under Penal Code section 368, subdivision (d). (<i>People v. Marquez</i> (2023) 89 Cal.App.5th 1212, 1221–1222.) No other court appears to have addressed the issue. The <i>Marquez</i> court reasoned that section 368 is designed to protected elders and dependent adults from being taken advantage of. Subdivision (e) provides a specific offense for those who are caretakers and no proof of knowledge of elder/dependent status is required; subdivision (d) requires the additional element that the defendant know of the elder/dependent status of the victim, but noncaretaker status is not an essential element of the crime. (<i>Marquez</i>, at p. 1221–1222.) <i>Marquez</i> relies on other established authority that has concluded that section 368 creates offenses for those who are caretakers and other offenses for <i>any person</i> who commits the offense. • No comment is recommended. 	
2624	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	<ul style="list-style-type: none"> • Adds the element that the “defendant consciously disregarded a substantial risk that (his/her) conduct would be understood as [a] threat[s].” (CALCRIM 2023-02 at p. 54; <i>Counterman v. Colorado</i> (2023) 600 U.S. 66, 69.) The modification was made in response to <i>Counterman</i> which held that the First Amendment requires recklessness as to a threat 	No response necessary.

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

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
			for a crime to be committed. (<i>Counterman</i> , at p. 69.) • No comment is recommended.	
2722	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	• Adds a comment to the “Authority” section that an employee of a local detention facility (against whom the offense may be committed) includes an employee assigned to work in a county jail. (CALCRIM 2023-02 at p. 58; <i>People v. Tice</i> (2023) 89 Cal.App.5th 246, 255.) The comment correctly summarizes the holding in <i>Tice</i> . No other case disagrees with the holding. • No comment is recommended.	No response necessary.
3160, 3161, 3162, 3163	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	• Adds bench notes explaining that a “jury’s finding of serious bodily injury is not equivalent to a finding of great bodily injury. (<i>In re Cabrera</i> (2023) 14 Cal.5th 476, 491 [304 Cal.Rptr.3d 798, 524 P.3d 784].)” (CALCRIM 2023-02 at pp. 62, 68, 73–74, 78–79, 116.) The bench notes provide a correct (albeit simplified) summary of the holding in <i>Cabrera</i> in this context. • No comment is recommended.	No response necessary.
3224–3234	James Mugridge, Lead Staff Attorney (Central Staff), California Fifth District Court of Appeal.	NI	• Adds a bench note explaining that a jury trial on aggravating circumstances must be bifurcated if the defendant so requests “except where the evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or is otherwise authorized by law. (Pen. Code, § 1170(b)(2).)” (CALCRIM 2023-02 at pp. 83, 86, 89.)	The committee agrees with the suggestion about No. 3226 and has updated the authority section entry about vehicular manslaughter to include <i>People v. Weaver</i> and <i>People v. Nicolas</i> .

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

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • The additional language draws verbatim from Penal Code section 1170, subdivision (b)(2). No comment is recommended as to the added portion of the instruction. • As to CALCRIM No. 3226, the Authority portion notes that the factor does not apply in vehicular manslaughter cases. (<i>People v. Piceno</i> (1987) 195 Cal.App.3d 1353, 1358–1359; CALCRIM 2023-02 at p. 90.) That proposition is not well-established. (See <i>People v. Weaver</i> (2007) 149 Cal.App.4th 1301, 1315–1319 [drunk driving victim can be particularly vulnerable], disapproved on another ground in <i>People v. Cook</i> (2015) 60 Cal.4th 922; <i>People v. Nicolas</i> (2017) 8 Cal.App.5th 1165, 1182 [vehicular manslaughter victim was particularly vulnerable].) <ul style="list-style-type: none"> ○ Recommended comment: Remove the authority definitively stating that this factor does not apply in vehicular manslaughter cases or note the split of authority. ○ No other comment is recommended. 	
3517, 3518, and 3519	Judge Christopher C. Hite, Judge Christine Van Aken, and Judge Brian Ferrall, Superior Court of San Francisco County.	NI	<p>This letter serves as a public comment to the proposed changes to CALCRIM Jury Instructions 3517, 3518, and 3519. The Committee proposes to add the following language to the instruction:</p> <p>It is up to you to decide the order in which you consider the greater and lesser each crimes and the relevant evidence. but You do not have to unanimously agree on the greater crime before considering a lesser crime. However, I can accept</p>	The committee agrees with the concern about the use of the phrase “You do not have to unanimously agree on the greater crime.” In response, the committee changed this phrase to “You do not have to reach a verdict on the greater crime.”

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

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
			<p>a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime.</p> <p>While we understand the impetus for this change, we are concerned that the use of the phrase, “You do not have to unanimously agree on the greater crime”, could result in greater confusion for the jurors. We believe that the problem can better be addressed by the judge when explaining the verdict forms to the jurors and/or putting instructive language on the top of each verdict form. We do not have concerns with the first sentence changes but think the instruction should simply read:</p> <p>It is up to you to decide the order in which you consider the greater and lesser crimes and the relevant evidence. However, I can accept a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime.</p> <p>Again, we understand this issue arises at times during cases with lesser included offenses, but think the attempt to address it with the proposed phrase could create significant issues on appeal. We appreciate your review of this comment and your hard work and dedication to developing the Instructions in an efficient and equitable manner.</p>	
3517, 3518, and 3519	James Mugridge, Lead Staff Attorney (Central Staff),	NI	<ul style="list-style-type: none"> • Nonsubstantively modifies the instruction to better advise the jury that it is not required to 	No response necessary.

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

CALCRIM 2023-02

Revised Jury Instructions

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

Instruction No.	Commenter	Position	Comment	Committee Response
	California Fifth District Court of Appeal.		<p>consider the great offense before the lesser offense, but the court cannot accept a guilty verdict on the lesser offense unless the jury has also found the defendant not guilty on the greater crime. (CALCRIM 2023-02 at pp. 118, 124, 129.)</p> <ul style="list-style-type: none"> ○ It is up to you to decide the order in which you consider <u>the greater and lesser each-crimes</u> and the relevant evidence., but You do not have to unanimously agree on the greater crime before considering a lesser crime. However, I can accept a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime. ● The modified instruction is clearer. ● No comment is recommended. 	

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

CALCRIM Proposed Changes

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N/A	User Guide
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1201	Kidnapping: Child or Person Incapable of Consent
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1250	Child Abduction: No Right to Custody
1500	Aggravated Arson
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2722	Battery by Gassing
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3224–3234	Aggravating Factor Instructions
3517, 3518, 3519	Deliberations and Completion of Verdict Forms

Guide for Using Judicial Council of California Criminal Jury Instructions (CALCRIM)

The Judicial Council jury instructions are accurate, designed to be easy to understand, and easy to use. This guide provides an introduction to the instructions and explains conventions and features that will assist in their use.

In order to fulfill its mandate pursuant to rule 10.59 of the California Rules of Court¹ to maintain the criminal jury instructions, members of the advisory committee meet several times a year to consider changes in statutes, appellate opinions, and suggestions from practitioners. *It bears emphasis that when the committee proposes changing a jury instruction, that does not necessarily mean the previous version of the instruction was incorrect.* Often the committee proposes changes for reasons of style, consistency among similar instructions, and to improve clarity.

Judicial Council Instructions Endorsed by Rule of Court

Rule 2.1050 of the California Rules of Court provides:

The California jury instructions approved by the Judicial Council are the official instructions for use in the state of California ... [¶] The Judicial Council endorses these instructions for use and makes every effort to ensure that they accurately state existing law ... [¶] Use of the Judicial Council instructions is strongly encouraged.

The California Supreme Court acknowledged CALCRIM's status as the state's official pattern jury instructions in *People v. Ramirez* (2021) 10 Cal.5th 983, 1008, fn.5 [274 Cal.Rptr.3d 309, 479 P.3d 797].

Using the Instructions

Bench Notes

The text of each instruction is followed by a section in the Bench Notes titled “Instructional Duty,” which alerts the user to any *sua sponte* duties to instruct and special circumstances raised by the instruction. It may also include references to other instructions that should or should not be used. In some instances, the directions include suggestions for modification. In the “Authority” section, all of the pertinent sources for the instruction are listed. Some of the instructions also have sections containing “Related Issues” and “Commentary.” The Bench Notes also refer to any relevant lesser included offenses. Secondary sources appear at the end of instructions. The official publisher, and not the Judicial Council, is responsible for updating the citations for secondary sources. Users should consult the Bench Notes before using an instruction. Italicized notes between angle brackets in the language of the instruction itself signal important issues or choices. For example, in instruction 1750, Receiving Stolen Property, optional element 3 is introduced thus: *<Give element 3 when instructing on knowledge of presence of property; see Bench Notes>*.

Multiple-Defendant and Multiple-Count Cases

These instructions were drafted for the common case in which a single defendant is on trial. The HotDocs document assembly program from the Judicial Council’s official publisher, LexisNexis, will modify the instructions for use in multi-defendant cases. It will also allow the user to name the defendants charged in a particular instruction if the instruction applies only to some of the defendants on trial in the case. It is impossible to predict the possible fact combinations that may be present when a crime is charged multiple times or committed by different defendants against different victims involving different facts.

¹Rule 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.”

Thus, when an instruction is being used for more than one count and the factual basis for the instruction is different for the different counts, the user will need to modify the instruction as appropriate.

Related California Jury Instructions, Criminal (CALJIC)

The CALJIC and CALCRIM instructions should *never* be used together. While the legal principles are obviously the same, the organization of concepts is approached differently. Mixing the two sets of instructions into a unified whole cannot be done and may result in omissions or confusion that could severely compromise clarity and accuracy. Nevertheless, for convenient reference this publication includes tables of related CALJIC instructions.

Titles and Definitions

The titles of the instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. The title is not a part of the instruction. The titles may be removed before presentation to the jury.

The instructions avoid separate definitions of legal terms whenever possible. Instead, definitions have been incorporated into the language of the instructions in which the terms appear. When a definition is lengthy, a cross-reference to that definition is provided.

Defined terms are printed in italics in the text of the definition.

Alternatives vs. Options

When the user must choose one of two or more options in order to complete the instruction, the choice of necessary alternatives is presented in parentheses thus: *When the defendant acted, George Jones was performing (his/her) duties as a school employee.*

The instructions use brackets to provide optional choices that may be necessary or appropriate, depending on the individual circumstances of the case: *[If you find that George Jones threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]*

Finally, both parentheses and brackets may appear in the same sentence to indicate options that arise depending on which necessary alternatives are selected: *[It is not required that the person killed be the (victim/intended victim) of the (felony/ [or] felonies).]*

General and Specific Intent

The instructions do not use the terms general and specific intent because while these terms are very familiar to judges and lawyers, they are novel and often confusing to many jurors. Instead, if the defendant must specifically intend to commit an act, the particular intent required is expressed without using the term of art “specific intent.” Instructions 250–254 provide jurors with additional guidance on specific vs. general intent crimes and the union of act and intent.

Organization of the Instructions

The instructions are organized into 24 series, which reflect broad categories of crime (e.g., Homicide) and other components of the trial (e.g., Evidence). The series, and the instructions within each series, are presented in the order in which they are likely to be given in an actual trial. As a result, greater offenses (like DUI with injury) come before lesser offenses (DUI). All of the defenses are grouped together at the end of the instructions, rather than dispersed throughout. The misdemeanors are placed within the category of instructions to which they belong, so simple battery is found with the other battery instructions rather than in a stand-alone misdemeanor section.

Lesser Included Offenses

Users may wish to modify instructions used to explain lesser included offenses by replacing the standard introductory sentence, “**The defendant is charged with _____**” with “**The crime of _____ (e.g., false imprisonment) is a lesser offense than the crime of _____ (e.g., kidnapping)**” to amplify the explanation provided in instructions 3517–3519: “_____ *<insert crime>* **is a lesser crime of _____ *<insert crime>* [charged in Count _____].**”

When giving the lesser included offense instructions 640 and 641 (homicide) or instructions 3517–3519 (non-homicide), no further modification of the corresponding instructions on lesser crimes is necessary to comply with the requirements of *People v. Dewberry* (1959) 51 Cal.2d 548.

Burden of Production/Burden of Proof

The instructions never refer to the “burden of producing evidence.” The drafters concluded that it is the court’s decision whether the party has met the burden of production. If the burden is not met, no further instruction is necessary. The question for the jury is whether a party has met its properly allocated burden based on the evidence received.

Instruction 103 on Reasonable Doubt states, “Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].” Thus, when the concept of reasonable doubt is explained and defined, the jury is told that it is the standard that applies to every issue the People must prove, unless the court specifically informs the jury otherwise.

Sentencing Factors and Enhancements

Because the law is rapidly evolving regarding when sentencing factors and enhancements must be submitted to the jury, we have provided “template” instructions 3250 and 3251 so that the court may tailor an appropriate instruction that corresponds to this emerging body of law.

Personal Pronouns

Many instructions include an option to insert the personal pronouns "he/she," "his/her," or "him/her." The committee does not intend these options to be limiting. It is the policy of the State of California that nonbinary people are entitled to full legal recognition and equal treatment under the law. In accordance with this policy, attorneys and courts should ensure that they are using ~~preferred~~ an individual’s personal pronouns.

Revision Dates

In previous editions, the revision dates listed underneath the instructional language indicated when any text in the instruction had been updated, whether related to the instructional language or the bench notes and other commentaries. Beginning with the 2024 edition, an asterisk at the end of the revision date signifies that only the bench notes and other commentaries were updated during that publication cycle. A revision date without an asterisk indicates that the instructional text (as well as the bench notes and other commentaries, if applicable) were revised.

240. Causation

An act [or omission] causes (injury/ _____ <insert other description>) if the (injury/ _____ <insert other description>) is the direct, natural, and probable consequence of the act [or omission] and the (injury/ _____ <insert other description>) would not have happened without the act [or omission]. 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.

<Give if multiple potential causes.>

[There may be more than one cause of (injury/ _____ <insert other description>). An act [or omission] causes (injury/ _____ <insert other description>), only if it is a substantial factor in causing the (injury/ _____ <insert other description>). A *substantial factor* is more than a trivial or remote factor. However, it does not have to be the only factor that causes the (injury/ _____ <insert other description>).]

*New January 2006; Revised February 2012, March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

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, 866–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) The committee has addressed causation in those instructions where the issue is most likely to arise. If the particular facts of the case raise a causation issue and other instructions do not adequately cover the point, give this instruction.

If there is evidence of multiple potential causes, the court should also give the bracketed paragraph. (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

AUTHORITY

- Proximate Cause. *People v. Carney* (2023) 14 Cal.5th 1130, 1137–1139, 1143 [310 Cal.Rptr.3d 685, 532 P.3d 696]; *People v. Cervantes, supra, (2001)* 26 Cal.4th at pp.860, 866–874 [111 Cal.Rptr.2d 148, 29 P.3d 225]; *People v. Roberts* (1992) 2 Cal.4th 271, 315–322 [6 Cal.Rptr.2d 276, 826 P.2d 274].
- Substantial Factor. *People v. Sanchez, supra, (2001)* 26 Cal.4th at pp.834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry, supra, (1995)* 37 Cal.App.4th at p.351, 363 [43 Cal.Rptr.2d 135].
- Independent Intervening Cause. *People v. Cervantes, supra, (2001)* 26 Cal.4th 860, at pp. 856–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].
- Causation Instructions. *People v. Sanchez, supra, (2001)* 26 Cal.4th at pp.834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Roberts, supra, (1992)* 2 Cal.4th at pp.271, 311–322 [6 Cal.Rptr.2d 276, 826 P.2d 274]; *People v. Autry, supra, (1995)* 37 Cal.App.4th 351, at p. 363 [43 Cal.Rptr.2d 135].
- Instructional Duty. *People v. Bernhardt, supra, (1963)* 222 Cal.App.2d at pp.567, 590–591 [35 Cal.Rptr. 401].
- “Natural and Probable Consequences” Defined. 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.).
- Act or Omission. *People v. Cervantes, supra, (2001)* 26 Cal.4th at p.860, 866 [111 Cal.Rptr.2d 148, 29 P.3d 225].

SECONDARY SOURCES

- 1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 37–46.
- 1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 99.
- 4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[1A][a] (Matthew Bender).
- 6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.04 (Matthew Bender).

241–249. Reserved for Future Use

520. First or Second Degree Murder With Malice Aforethought (Pen. Code, § 187)

The defendant is charged [in Count __] with murder [in violation of Penal Code section 187].

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

[1A. The defendant committed an act that caused the death of (another person/ [or] a fetus);]

[OR]

[1B. The defendant had a legal duty to (help/care for/rescue/warn/maintain the property of/ _____ <insert other required action[s]>) _____ <insert description of decedent/person to whom duty is owed> and the defendant failed to perform that duty and that failure caused the death of (another person/ [or] a fetus);]

[AND]

2. When the defendant (acted/_[or] failed to act), (he/she) had a state of mind called malice aforethought(;/.)

<Give element 3 when instructing on justifiable or excusable homicide.>

[AND]

3. (He/She) killed without lawful (excuse/_[or] justification).]

There are two kinds of malice aforethought, express malice and implied malice. Proof of either is sufficient to establish the state of mind required for murder.

The defendant had *express malice* if (he/she) unlawfully intended to kill.

The defendant had *implied malice* if:

1. (He/She) intentionally (committed the act/_[or] failed to act);

2. The natural and probable consequences of the (act/_[or] failure to act) were dangerous to human life in that the (act/_[or] failure to act) involved a high degree of probability that it would result in death;
3. At the time (he/she) (acted/_[or] failed to act), (he/she) knew (his/her) (act/_[or] failure to act) was dangerous to human life;

AND

4. (He/She) deliberately (acted/_[or] failed to act) with conscious disregard for (human/_[or] fetal) life.

Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

[It is not necessary that the defendant be aware of the existence of a fetus to be guilty of murdering that fetus.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

[(An act/_[or] (A/a) failure to act) causes death if the death is the direct, natural, and probable consequence of the (act/_[or] failure to act) and the death would not have happened without the (act/_[or] failure to 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/_[or] (A/a) failure to 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.]

[(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/person to whom duty is owed>.]

<Give the following bracketed paragraph if the second degree is the only possible degree of the crime for which the jury may return a verdict>

[If you find the defendant guilty of murder, it is murder of the second degree.]

<Give the following bracketed paragraph if there is substantial evidence of first degree murder>

[If you decide that the defendant committed murder, it is murder of the second degree, unless the People have proved beyond a reasonable doubt that it is murder of the first degree as defined in CALCRIM No. ___ <insert number of appropriate first degree murder instruction>.]

New January 2006; Revised August 2009, October 2010, February 2013, August 2013, September 2017, March 2019, September 2019, March 2021, March 2024

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the first two elements of the crime. If there is sufficient evidence of excuse or justification, the court has a **sua sponte** duty to include the third, bracketed element in the instruction. (*People v. Frye* (1992) 7 Cal.App.4th 1148, 1155–1156 [10 Cal.Rptr.2d 217].) The court also has a **sua sponte** duty to give any other appropriate defense instructions. (See CALCRIM Nos. 505–627, and 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].) If the evidence indicates that there was only one cause of death, the court should give the “direct, natural, and probable” language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the “substantial factor” instruction and definition in the second bracketed causation paragraph. (See *People v. Carney* (2023) 14 Cal.5th 1130, 1138–1139 [310 Cal.Rptr.3d 685, 532 P.3d 696]; *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].) If there is an issue regarding a superseding or intervening cause, give the appropriate portion of CALCRIM No. 620, *Causation: Special Issues*.

If the prosecution’s theory of the case is that the defendant committed murder based on his or her failure to perform a legal duty, the court may give element 1B.

Review the Bench Notes to CALCRIM No. 582, *Involuntary Manslaughter: Failure to Perform Legal Duty—Murder Not Charged*.

If the defendant is charged with first degree murder, give this instruction and CALCRIM No. 521, *First Degree Murder*. If the defendant is charged with second degree murder, no other instruction need be given.

If the defendant is also charged with first degree felony murder, instruct on that crime and give CALCRIM No. 548, *Murder: Alternative Theories*.

AUTHORITY

- Elements. Pen. Code, § 187.
- Malice. Pen. Code, § 188; *People v. Dellinger* (1989) 49 Cal.3d 1212, 1217–1222 [264 Cal.Rptr. 841, 783 P.2d 200]; *People v. Nieto Benitez* (1992) 4 Cal.4th 91, 103–105 [13 Cal.Rptr.2d 864, 840 P.2d 969]; *People v. Blakeley* (2000) 23 Cal.4th 82, 87 [96 Cal.Rptr.2d 451, 999 P.2d 675].
- “Dangerous to Human Life” Defined. *People v. Reyes* (2023) 14 Cal.5th 981, 989 [309 Cal.Rptr.3d 832, 531 P.3d 357].
- Causation. *People v. Carney* (2023) 14 Cal.5th 1130, 1137–1139 [310 Cal.Rptr.3d 685, 532 P.3d 696] [concurrent causation]; *People v. Roberts* (1992) 2 Cal.4th 271, 315–321 [6 Cal.Rptr.2d 276, 826 P.2d 274] [successive causation].
- “Fetus” Defined. *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Ill Will Not Required for Malice. *People v. Sedeno* (1974) 10 Cal.3d 703, 722 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Breverman* (1998) 19 Cal.4th 142, 163 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Prior Version of This Instruction Upheld. *People v. Genovese* (2008) 168 Cal.App.4th 817, 831 [85 Cal.Rptr.3d 664].

LESSER INCLUDED OFFENSES

- Voluntary Manslaughter. Pen. Code, § 192(a).
- Involuntary Manslaughter. Pen. Code, § 192(b).
- Attempted Murder. Pen. Code, §§ 663, 189.

- Sentence Enhancements and Special Circumstances Not Considered in Lesser Included Offense Analysis. *People v. Boswell* (2016) 4 Cal.App.5th 55, 59-60 [208 Cal.Rptr.3d 244].

Gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5(a)) and vehicular manslaughter (Pen. Code, § 192(c)) are not lesser included offenses of murder. (*People v. Sanchez* (2001) 24 Cal.4th 983, 988–992 [103 Cal.Rptr.2d 698, 16 P.3d 118]; *People v. Bettasso* (2020) 49 Cal.App.5th 1050, 1059 [263 Cal.Rptr.3d 563].) Similarly, child abuse homicide (Pen. Code, § 273ab) is not a necessarily included offense of murder. (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 744 [125 Cal.Rptr.2d 618].)

RELATED ISSUES

Causation—Foreseeability

Authority is divided on whether a causation instruction should include the concept of foreseeability. (See *People v. Aury*, *supra*, ~~(1995)~~ 37 Cal.App.4th ~~at pp.351,~~ 362–363 ~~[43 Cal.Rptr.2d 135]~~; *People v. Temple* (1993) 19 Cal.App.4th 1750, 1756 [24 Cal.Rptr.2d 228] [refusing defense-requested instruction on foreseeability in favor of standard causation instruction]; but see *People v. Gardner* (1995) 37 Cal.App.4th 473, 483 [43 Cal.Rptr.2d 603] [suggesting the following language be used in a causation instruction: “[t]he death of another person must be foreseeable in order to be the natural and probable consequence of the defendant’s act”].) It is clear, however, that it is error to instruct a jury that foreseeability is immaterial to causation. (*People v. Roberts*, *supra*, ~~(1992)~~ 2 Cal.4th ~~at p.271,~~ 315 ~~[6 Cal.Rptr.2d 276, 826 P.2d 274]~~ [error to instruct a jury that when deciding causation it “[w]as immaterial that the defendant could not reasonably have foreseen the harmful result”].)

Second Degree Murder of a Fetus

The defendant does not need to know a woman is pregnant to be convicted of second degree murder of her fetus. (*People v. Taylor* (2004) 32 Cal.4th 863, 868 [11 Cal.Rptr.3d 510, 86 P.3d 881] [“[t]here is no requirement that the defendant specifically know of the existence of each victim.”].) “[B]y engaging in the conduct he did, the defendant demonstrated a conscious disregard for all life, fetal or otherwise, and hence is liable for all deaths caused by his conduct.” (*Id.* at p. 870.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 96-101, 112-113.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 140, *Challenges to Crimes*, § 140.04;²⁵ Ch. 142, *Crimes Against the Person*, § 142.01 (Matthew Bender).

571. Voluntary Manslaughter: Imperfect Self-Defense or Imperfect Defense of Another—Lesser Included Offense (Pen. Code, § 192)

A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because (he/she) acted in (imperfect self-defense/ [or] imperfect defense of another).

If you conclude the defendant acted in complete (self-defense/ [or] defense of another), (his/her) action was lawful and you must find (him/her) not guilty of any crime. The difference between complete (self-defense/ [or] defense of another) and (imperfect self-defense/ [or] imperfect defense of another) depends on whether the defendant's belief in the need to use deadly force was reasonable.

The defendant acted in (imperfect self-defense/ [or] imperfect defense of another) if:

1. The defendant actually believed that (he/she/ [or] someone else/ _____ <insert name of third party>) was in imminent danger of being killed or suffering great bodily injury;

AND

2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger;

BUT

3. At least one of those beliefs was unreasonable.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

<The following definition may be given if requested>

[A danger is *imminent* if, when the fatal wound occurred, the danger actually existed or the defendant believed it existed. The danger must seem immediate and present, so that it must be instantly dealt with. It may not be merely prospective or in the near future.]

[Imperfect self-defense does not apply when the defendant, through (his/her) own wrongful conduct, has created circumstances that justify (his/her) adversary's use of force.]

[If you find that _____ <insert name of decedent/victim> threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]

[If you find that the defendant knew that _____ <insert name of decedent/victim> had threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs.]

[If you find that the defendant received a threat from someone else that (he/she) associated with _____ <insert name of decedent/victim>, you may consider that threat in evaluating the defendant's beliefs.]

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

The People have the burden of proving beyond a reasonable doubt that the defendant was not acting in (imperfect self-defense/ [or] imperfect defense of another). If the People have not met this burden, you must find the defendant not guilty of murder.

*New January 2006; Revised August 2012, February 2015, September 2020, March 2022, September 2022, March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is “substantial enough to merit consideration” by the jury. (*People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531].)

See discussion of imperfect self-defense in Related Issues section of CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

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].)

Related Instructions

CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

CALCRIM No. 3470, *Right to Self-Defense or Defense of Another (Non-Homicide)*.

CALCRIM No. 3471, *Right to Self-Defense: Mutual Combat or Initial Aggressor*.

CALCRIM No. 3472, *Right to Self-Defense: May Not Be Contrived*.

AUTHORITY

- Elements. Pen. Code, § 192(a).
- “Imperfect Self-Defense” Defined. *People v. Flannel* (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton, supra*, 12 Cal.4th at p. 201; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693] [insufficient evidence to support defense of another person].
- Imperfect Defense of Others. *People v. Randle* (2005) 35 Cal.4th 987, 995–1000 [28 Cal.Rptr.3d 725, 111 P.3d 987], overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172 [91 Cal.Rptr.3d 106, 203 P.3d 425].
- ~~Availability of Imperfect Self-Defense May be Available When Defendant Set in Motion Chain of Events Leading to Victim’s Attack, but Not When Victim was Legally Justified in Resorting to Self-Defense.~~ *People v. Enraca* (2012) 53 Cal.4th 735, 761 [137 Cal.Rptr.3d 117, 269 P.3d 543] [[not available](#)]; *People v. Vasquez* (2006) 136 Cal.App.4th 1176, 1179–1180 [39 Cal.Rptr.3d 433] [[available](#)].
- Imperfect Self-Defense Does Not Apply When Defendant’s Belief in Need for Self-Defense is Entirely Delusional. *People v. Elmore* (2014) 59 Cal.4th 121, 145 [172 Cal.Rptr.3d 413, 325 P.3d 951].
- This Instruction Upheld. *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1306 [132 Cal.Rptr.3d 248]; *People v. Genovese* (2008) 168 Cal.App.4th 817, 832 [85 Cal.Rptr.3d 664].
- Defendant Relying on Imperfect Self-Defense Must Actually, Although Not Reasonably, Associate Threat With Victim. *People v. Minifie* (1996) 13 Cal.4th 1055, 1069 [56 Cal.Rptr.2d 133, 920 P.2d 1337] [in dicta].

LESSER INCLUDED OFFENSES

- Attempted Voluntary Manslaughter. *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 822 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].

Involuntary manslaughter is *not* a lesser included offense of voluntary manslaughter. (*People v. Orr* (1994) 22 Cal.App.4th 780, 784 [27 Cal.Rptr.2d 553].)

RELATED ISSUES

Intimate Partner Battering and Its Effects

Evidence relating to intimate partner battering (formerly “battered women’s syndrome”) and its effects may be considered by the jury when deciding if the defendant actually feared the batterer and if that fear was reasonable. (See *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082–1089 [56 Cal.Rptr.2d 142, 921 P.2d 1]; see also *In re Walker* (2007) 147 Cal.App.4th 533, 536, fn.1 [54 Cal.Rptr.3d 411].)

Blakeley Not Retroactive

The decision in *Blakeley*—that one who, acting with conscious disregard for life, unintentionally kills in imperfect self-defense is guilty of voluntary manslaughter—may not be applied to defendants whose offense occurred prior to *Blakeley*’s June 2, 2000, date of decision. (*People v. Blakeley* (2000) 23 Cal.4th 82, 91–93 [96 Cal.Rptr.2d 451, 999 P.2d 675].) If a defendant asserts a killing was done in an honest but mistaken belief in the need to act in self-defense and the offense occurred prior to June 2, 2000, the jury must be instructed that an unintentional killing in imperfect self-defense is involuntary manslaughter. (*People v. Johnson* (2002) 98 Cal.App.4th 566, 576–577 [119 Cal.Rptr.2d 802]; *People v. Blakeley, supra*, 23 Cal.4th at p. 93.)

Inapplicable to Felony Murder

Imperfect self-defense does not apply to felony murder. “Because malice is irrelevant in first and second degree felony murder prosecutions, a claim of imperfect self-defense, offered to negate malice, is likewise irrelevant.” (See *People v. Tabios* (1998) 67 Cal.App.4th 1, 6–9 [78 Cal.Rptr.2d 753]; see also *People v. Anderson* (1991) 233 Cal.App.3d 1646, 1666 [285 Cal.Rptr. 523]; *People v. Loustounau* (1986) 181 Cal.App.3d 163, 170 [226 Cal.Rptr. 216].)

Fetus

Manslaughter does not apply to the death of a fetus. (*People v. Carlson* (1974) 37 Cal.App.3d 349, 355 [112 Cal.Rptr. 321].) While the Legislature has included the

killing of a fetus, as well as a human being, within the definition of murder under Penal Code section 187, it has “left untouched the provisions of section 192, defining manslaughter [as] the ‘unlawful killing of a human being.’” (*Ibid.*)

See also the Related Issues section to CALCRIM No. 505, *Justifiable Homicide: Self-Defense or Defense of Another*.

Reasonable Person Standard Not Modified by Evidence of Mental Impairment

In *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519 [14 Cal.Rptr.3d 473], the court rejected the argument that the reasonable person standard for self-defense should be the standard of a mentally ill person like the defendant. “The common law does not take account of a person’s mental capacity when determining whether he has acted as the reasonable person would have acted. The law holds ‘the mentally deranged or insane defendant accountable for his negligence as if the person were a normal, prudent person.’ (Prosser & Keeton, Torts (5th ed. 1984) § 32, p. 177.)” (*Ibid.*; see also Rest.2d Torts, § 283B.)

Reasonable Person Standard and Physical Limitations

A defendant’s physical limitations are relevant when deciding the reasonable person standard for self-defense. (*People v. Horn* (2021) 63 Cal.App.5th 672, 686 [277 Cal.Rptr.3d 901].) See also CALCRIM No. 3429, *Reasonable Person Standard for Physically Disabled Person*.

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 242–244.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.11[1][c], [2][a] (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.03[2][g], 85.04[1][c] (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][a], [e], [f], [2][a], [3][c] (Matthew Bender).

600. Attempted Murder (Pen. Code, §§ 21a, 663, 664)

The defendant is charged [in Count __] with attempted murder.

To prove that the defendant is guilty of attempted murder, the People must prove that:

1. The defendant took at least one direct but ineffective step toward killing (another person/ [or] a fetus);

AND

2. The defendant intended to kill (that/a) (person/ [or] fetus).

A *direct step* requires more than merely planning or preparing to commit murder or obtaining or arranging for something needed to commit murder. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to kill. It is a direct movement toward the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

[A person who attempts to commit murder is guilty of attempted murder even if, after taking a direct step toward killing, he or she abandons further efforts to complete the crime, or his or her attempt fails or is interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing the murder, then that person is not guilty of attempted murder.]

[The defendant may be guilty of attempted murder even if you conclude that murder was actually completed.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

<Give when kill zone theory applies>

[A person may intend to kill a primary target and also [a] secondary target[s] within a zone of fatal harm or “kill zone.” A “kill zone” is an area in which

the defendant used lethal force that was designed and intended to kill everyone in the area around the primary target.

In order to convict the defendant of the attempted murder of _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>, the People must prove that the defendant not only intended to kill _____ <insert name of primary target alleged> but also either intended to kill _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>, or intended to kill everyone within the kill zone.

In determining whether the defendant intended to kill _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>, the People must prove that (1) the only reasonable conclusion from the defendant’s use of lethal force, is that the defendant intended to create a kill zone; and (2) _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory> was located within the kill zone.

In determining whether the defendant intended to create a “kill zone” and the scope of such a zone, you should consider all of the circumstances including, but not limited to, the following:

- [• The type of weapon used(;/.)]**
- [• The number of shots fired(;/.)]**
- [• The distance between the defendant and _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>(;/.)]**
- [• The distance between _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory> and the primary target.]**

If you have a reasonable doubt whether the defendant intended to kill _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory> or intended to kill _____ <insert name or description of primary target alleged> by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>.]

*New January 2006; Revised December 2008, August 2009, April 2011, August 2013, September 2019, April 2020, September 2023, March 2024**

* Denotes changes only to bench notes and other commentaries.

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the crime of attempted murder when charged, or if not charged, when the evidence raises a question whether all the elements of the charged offense are present. (See *People v. Breverman* (1998) 19 Cal.4th 142, 154 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing duty to instruct on lesser included offenses in homicide generally].)

The second bracketed paragraph is provided for cases in which the prosecution theory is that the defendant created a “kill zone,” harboring the specific and concurrent intent to kill others in the zone. (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) “The conclusion that transferred intent does not apply to attempted murder still permits a person who shoots at a group of people to be punished for the actions towards everyone in the group even if that person primarily targeted only one of them.” (*Id.* at p. 329.)

The *Bland* court stated that a special instruction on this issue was not required. (*Id.* at p. 331, fn.6.) The bracketed language is provided for the court to use ~~at its discretion~~ when substantial evidence exists that the defendant intended to kill a primary target; the defendant concurrently intended to achieve that goal by killing all others in the fatal zone created by the defendant; and the alleged attempted murder victim was in that zone. (See *People v. Mumin* (2023) 15 Cal.5th 176, 203 [312 Cal.Rptr.3d 255, 534 P.3d 1].) “The use or attempted use of force that merely endangered everyone in the area is insufficient to support a kill zone instruction.” (*People v. Canizales* (2019) 7 Cal.5th 591, 608 [248 Cal.Rptr.3d 370, 442 P.3d 686], original italics.)

Give the next-to-last bracketed paragraph when the defendant has been charged only with attempt to commit murder, but the evidence at trial reveals that the murder was actually completed. (See Pen. Code, § 663.)

A verdict of attempted murder may not be based on the natural and probable consequences doctrine. (Pen. Code, § 188(a)(3); *People v. Sanchez* (2022) 75 Cal.App.5th 191, 196 [290 Cal.Rptr.3d 390].)

Related Instructions

CALCRIM Nos. 3470–3477, Defense Instructions.

CALCRIM No. 601, *Attempted Murder: Deliberation and Premeditation*.

CALCRIM No. 602, *Attempted Murder: Peace Officer, Firefighter, Custodial Officer, or Custody Assistant*.

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

CALCRIM No. 604, *Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

AUTHORITY

- “Attempt” Defined. Pen. Code, §§ 21a, 663, 664.
- “Murder” Defined. Pen. Code, § 187.
- Specific Intent to Kill Required. *People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].
- “Fetus” Defined. *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- Kill Zone Explained. *People v. Mumin, supra*, 15 Cal.5th at p. 193; *People v. Canizales, supra*, (2019) 7 Cal.5th at pp. 591, 607-608 [~~248 Cal.Rptr.3d 370, 442 P.3d 686~~]; *People v. Stone* (2009) 46 Cal.4th 131, 137–138 [92 Cal.Rptr.3d 362, 205 P.3d 272].
- This Instruction Correctly States the Law of Attempted Murder. *People v. Lawrence* (2009) 177 Cal.App.4th 547, 556-557 [99 Cal.Rptr.3d 324].

LESSER INCLUDED OFFENSES

Attempted voluntary manslaughter is a lesser included offense. (*People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].)

RELATED ISSUES

Specific Intent Required

“[T]he crime of attempted murder requires a specific intent to kill” (*People v. Guerra, supra*, 40 Cal.3d at p. 386.)

In instructing upon the crime of attempt to commit murder, there should never be any reference whatsoever to implied malice. Nothing less than a specific intent to kill must be found before a defendant can be convicted of attempt to commit murder, and the instructions in this respect should be lean and unequivocal in explaining to the jury that only a specific intent to kill will do.

(*People v. Santascoy* (1984) 153 Cal.App.3d 909, 918 [200 Cal.Rptr. 709].)

Solicitation

Attempted solicitation of murder is a crime. (*People v. Saepanh* (2000) 80 Cal.App.4th 451, 460 [94 Cal.Rptr.2d 910].)

Single Bullet, Two Victims

A shooter who fires a single bullet at two victims who are both in his line of fire can be found to have acted with express malice toward both victims. (*People v. Smith*) (2005) 37 Cal.4th 733, 744 [37 Cal.Rptr.3d 163, 124 P.3d 730]. See also *People v. Perez* (2010) 50 Cal.4th 222, 225 [112 Cal.Rptr.3d 310, 234 P.3d 557].)

No Attempted Involuntary Manslaughter

“[T]here is no such crime as attempted involuntary manslaughter.” (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

Transferred and Concurrent Intent

“[T]he doctrine of transferred intent does not apply to attempted murder.” (*People v. Bland, supra*, 28 Cal.4th at p. 331.) “[T]he defendant may be convicted of the attempted murders of any[one] within the kill zone, although on a concurrent, not transferred, intent theory.” (*Ibid.*)

Kill-Zone Theory

~~Give the kill zone instruction “only in those cases where the court concludes there is sufficient evidence to support a jury determination that the *only* reasonable inference from the circumstances of the offense is that a defendant intended to kill everyone in the zone of fatal harm. The use or attempted use of force that merely endangered everyone in the area is insufficient to support a kill zone instruction.” (*People v. Canizales, supra*, 7 Cal.5th at p. 608.)~~

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 56–71.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.02[3]; Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.20; Ch. 142, *Crimes Against the Person*, § 142.01[3][e] (Matthew Bender).

968. Shooting From Motor Vehicle (Pen. Code, § 26100(c) & (d))

The defendant is charged [in Count __] with shooting from a motor vehicle [at another person] [in violation of Penal Code section 26100].

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

1. The defendant willfully and maliciously shot a firearm from a motor vehicle(;/.)

<Give element 2 when defendant charged with Pen. Code, § 26100(c).>
[AND]

2. The defendant shot the firearm at another person who was not in a motor vehicle(;/.)

<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.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

[A *motor vehicle* includes a (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/ _____ <insert other type of motor vehicle>).]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[The term[s] (*firearm*/ _____ <insert other term>) (is/are) defined in another instruction to which you should refer.]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this 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.)

Give the bracketed phrase “at another person” in the first sentence plus bracketed element 2 if the defendant is charged with shooting at someone who was not in a motor vehicle. (See Pen. Code, § 26100(c).) If the defendant is only charged with shooting from a motor vehicle (see Pen. Code, § 26100(d)), give element 1 but not element 2.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Related Instructions

CALCRIM No. 969, *Permitting Someone to Shoot From Vehicle*.

AUTHORITY

- Elements. Pen. Code, § 26100(c) & (d).
- “Firearm” Defined. Pen. Code, § 16520.
- “Malicious” Defined. Pen. Code, § 7(4).
- “Willful” Defined. Pen. Code, § 7(1); *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438 [35 Cal.Rptr.2d 155] [in context of Pen. Code, § 246].
- General Intent Crime. *People v. Laster* (1997) 52 Cal.App.4th 1450, 1468 [61 Cal.Rptr.2d 680] [dictum].
- Assault With a Firearm is not a Lesser Included Offense. *People v. Licas* (2007) 41 Cal.4th 362 [60 Cal.Rptr.3d 31].
- “From a Vehicle” Includes Standing at Open Door. *People v. Gaines* (2023) 93 Cal.App.5th 91, 120 [310 Cal.Rptr.3d 203].

RELATED ISSUES

Shooting at Animal

It is a separate crime to shoot from a motor vehicle at any game bird or mammal.
(See Fish & G. Code, § 3002.)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 51.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, §§ 144.01[1][i], 144.03[2], [4] (Matthew Bender).

969. Permitting Someone to Shoot From Vehicle (Pen. Code, § 26100(b))

The defendant is charged [in Count __] with permitting someone to shoot from a vehicle [in violation of Penal Code section 26100(b)].

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

1. The defendant was the (driver/ [or] owner) of a vehicle;
2. The defendant permitted someone to shoot a firearm from the vehicle;
3. The defendant knew that (he/she) was permitting someone to shoot a firearm from the vehicle;

AND

4. The other person shot the firearm from the vehicle.

[A vehicle owner who permits someone else to shoot a firearm from the vehicle is guilty even if the owner is not in the vehicle when the shooting happens.]

[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.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[The term[s] (*firearm*/ _____ <insert other term>) (is/are) defined in another instruction to which you should refer.]

*New January 2006; Revised February 2012, March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

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

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Related Instructions

CALCRIM No. 968, *Shooting From Motor Vehicle*.

AUTHORITY

- Elements. Pen. Code, § 26100(b).
- “Firearm” Defined. Pen. Code, § 16520.
- General Intent Crime. *People v. Laster* (1997) 52 Cal.App.4th 1450, 1468 [61 Cal.Rptr.2d 680].
- “Vehicle” Defined. Veh. Code, § 670.
- “From a Vehicle” Includes Standing at Open Door. *People v. Gaines* (2023) 93 Cal.App.5th 91, 120 [310 Cal.Rptr.3d 203].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 51.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, §§ 144.01[1][i], 144.03[2] (Matthew Bender).

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/fear) 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.]

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

[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, March 2022, March 2024**

** Denotes changes only to bench notes and other commentaries.*

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.

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].)

There is no sua sponte duty to define “illegal intent” or “illegal purpose.” (*People v. Singh* (2019) 42 Cal.App.5th 175, 181-183 [254 Cal.Rptr.3d 871].)

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 Unable to Consent Due to Intoxication or Other Mental Condition. *People v. Lewis* (2023) 14 Cal.5th 876, 899 [309 Cal.Rptr.3d 699, 530 P.3d 1107] ~~*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, 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 Alone Does Not Substitute for Force. *People v. Nieto* (2021) 62 Cal.App.5th 188, 195 [276 Cal.Rptr.3d 379].

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, but the jury may be instructed on attempted kidnapping if supported by the evidence. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252] [discussing Pen. Code, § 1159].)

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).

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 **that the other person** ~~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, March 2024

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.

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. *People v. Moses* (2020) 10 Cal.5th 893, 912–913 [272 Cal.Rptr.3d 862, 477 P.3d 579].
- Specific Intent for Attempt. *People v. Moses, supra*, 10 Cal.5th at pp. 912–913 [adult posing as minor]; *People v. Middleton* (2023) 91 Cal.App.5th 749, 767–768 [308 Cal.Rptr.3d 705] [actual minor].

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).

1250. Child Abduction: No Right to Custody (Pen. Code, §§ 277, 278)

The defendant is charged [in Count __] with child abduction without a right of custody [in violation of Penal Code section 278].

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

1. The defendant maliciously (took[,]/ [or] enticed away[,]/ [or] kept[,]/ [or] withheld[,]/ [or] concealed) a child from (his/her) lawful custodian;
2. The child was under the age of 18;
3. When the defendant acted, (he/she) did not have a right to custody of that child;

AND

4. When the defendant acted, (he/she) intended to detain or conceal the child from the child's lawful custodian.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

A *lawful custodian* is a person, guardian, or public agency having a right to custody of the child. The *right to custody* means the right to physical care, custody, and control of the child according to the law or because of a court order. [A public agency has the right to custody if it has been given protective custody or jurisdiction of the care, custody, control, or conduct of the child by statute or court order.]

[*Intending to detain* includes delaying or hindering. A person can detain someone without using force.]

[To *entice away* means to lure away by creating hope or desire.]

[The defendant can be guilty of child abduction whether or not the child resisted or objected, and even if the child consented to go with the defendant.]

[A parent has no right to physical custody if his or her parental rights were terminated by court order.]

[A parent loses his or her right to custody if he or she (is unable to take custody of the child[,]/ [or] refuses to take custody of the child[,]/ [or] abandons his or her family).]

[A parent *abandons* a child by actually deserting the child with the intent to cut off the relationship with the child and end all parental obligations. Intent to abandon can be shown in many ways, including, but not limited to:

1. Leaving the child without providing a way for the child to be identified;
2. Leaving the child with the other parent for at least one year without communicating with or supporting the child;

OR

3. Leaving the child with someone other than a parent for at least six months without communicating with or supporting the child.]

[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 March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

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

If requested, give the final bracketed sentence at the end of the paragraph defining “lawful custodian” if a public agency was the lawful custodian at the time of the alleged abduction. (See Pen. Code, § 277(e).)

If requested, give the bracketed sentences defining “intending to detain” (see *People v. Moore* (1945) 67 Cal.App.2d 789, 791 [155 P.2d 403]) or “entice away” (see *People v. Torres* (1920) 48 Cal.App. 606, 609 [192 P. 175]) depending on the evidence in the case.

If requested, give the bracketed paragraph about the child’s consent or lack of resistance if there is evidence the child did not resist or consented to go with the defendant. (*People v. Moore, supra*, 67 Cal.App.2d at p. 792 [child’s consent irrelevant]; *People v. Grever* (1989) 211 Cal.App.3d Supp. 1, 7 [259 Cal.Rptr. 469].)

Give on request the bracketed paragraph that begins with “A parent loses his or her right to custody . . .” if there is evidence the defendant lost his or her right to custody by being unable or refusing to take custody, or by abandoning his or her family. (See Pen. Code, § 277(f).)

If there is evidence of abandonment, give the bracketed paragraphs defining when a parent “abandons” a child. The trial court must define abandonment **sua sponte** when it is closely connected to the evidence presented on the right to custody. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1319 [76 Cal.Rptr.2d 160].) If an Indian parent is involved, see Fam. Code, § 7822(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].)

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. 1215, *Kidnapping*.

AUTHORITY

- Elements. Pen. Code, §§ 277, 278.
- “Abandonment” Defined. Fam. Code, § 7822(a), (b); *People v. Ryan, supra*, (1999) 76 Cal.App.4th at pp.1304, 1315–1316, 1320 [~~76 Cal.Rptr.2d 160~~].
- “Court Order” or “Custody Order” Defined. Pen. Code, § 277(b).
- “Custody Proceeding” Defined. Pen. Code, § 277(c).
- “Maliciously” Defined. Pen. Code, § 7(4).
- “Person” Defined. Pen. Code, § 277(i) [includes parent or parent’s agent].
- Child’s Consent Irrelevant. *People v. Moore, supra*, (1945) 67 Cal.App.2d at pp.789, 791–792 [~~155 P.2d 403~~] [crime against parent]; *People v. Grever, supra*, (1989) 211 Cal.App.3d Supp. at p.1, 7 [~~259 Cal.Rptr. 469~~].

- “Detain” Defined. *People v. Moore*, ~~*supra*, (1945)~~ 67 Cal.App.2d at p.789, 791 ~~[155 P.2d 403]~~ [includes delaying, hindering, or retarding but not necessarily the use of force].
- “Entice” Defined. *People v. Torres* (1920) 48 Cal.App. 606, 609 [192 P. 175].

LESSER INCLUDED OFFENSES

- Attempted Child Abduction. Pen. Code, §§ 664, 278.

RELATED ISSUES

Custody Placed With Other Parent

Penal Code section 278 applies to a parent of a minor child whose custody has been placed with the other parent by court order. (*People v. Hyatt* (1971) 18 Cal.App.3d 618, 622 [96 Cal.Rptr. 156].) A parent with bare legal custody does not have a “right of custody” under the statute. (*People v. Irwin* (1984) 155 Cal.App.3d 891, 897 [202 Cal.Rptr. 475] [father only had joint legal custody; physical custody was awarded to the mother].)

Intent to Detain or Conceal Not Required

Proof of violation of section 278 does not require the intent to detain or conceal the child in California. Proof of detention or concealment, however, supports an inference of an intention to detain or conceal. (*People v. Hyatt*, ~~*supra*, (1971)~~ 18 Cal.App.3d at p.618, 623 ~~[96 Cal.Rptr. 156]~~ [construing former section 278 that required intent to detain “and” conceal].)

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Penal Code section 278 does not require the prosecution to prove that a foreign court order or custody order had previously been registered in California pursuant to the UCCJEA. (*People v. Coulthard* (2023) 90 Cal.App.5th 743, 758 [307 Cal.Rptr.3d 383].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 318–327.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14[2][b], [c], [3] (Matthew Bender).

1500. Aggravated Arson (Pen. Code, § 451.5)

If you find the defendant guilty of arson [as charged in Count[s] __], you must then decide whether[, for each crime of arson,] the People have proved the additional allegation that the arson was aggravated. [You must decide whether the People have proved this allegation for each crime of arson and return a separate finding for each crime of arson.]

To prove this allegation, the People must prove that:

1. The defendant acted willfully, maliciously, deliberately, and with premeditation;

~~[AND]~~

2. The defendant acted with intent to injure one or more persons, or to damage property under circumstances likely to injure one or more persons, or to damage one or more structures or inhabited dwellings(;/.)

~~[AND]~~

~~<Alternative 3A—prior arson conviction(s) within 10 years>~~

~~[3A. The defendant was convicted of arson on <insert date of conviction>. <Repeat for each prior conviction alleged>.]~~

~~[OR]~~

~~<Alternative 3BA—loss exceeding \$10.18.3 million>~~

~~[3BA. The fire caused property damage and other losses exceeding \$10.18.3 million **not including damage to, or destruction of, inhabited dwellings**[, including the cost of fire suppression].]~~

~~[OR]~~

~~<Alternative 3CB—destroyed five or more inhabited structures>~~

~~[3CB. The fire damaged or destroyed five or more inhabited **structuresdwellings**.]~~

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

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the consequences, decided to commit the arson. The defendant acted with *premeditation* if (he/she) decided to commit the arson before committing the act that caused the arson.

[The length of time the person spends considering whether to commit arson does not alone determine whether the arson is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to commit arson made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to commit arson can be reached quickly. The test is the extent of the reflection, not the length of time.]

[A (dwelling/ [or] structure) is *inhabited* if someone lives there and either is present or has left but intends to return.]

[A (dwelling/ [or] structure) is *inhabited* if someone used it as a dwelling and left only because a natural or other disaster caused him or her to leave.]

[A (dwelling/ [or] structure) is not *inhabited* if the former residents have moved out and do not intend to return, even if some personal property remains inside.]

[A *dwelling* includes any (structure/garage/office/ _____) that is attached to the house and functionally connected with it.]

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 January 2006; Revised August 2015, April 2020, March 2024

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the sentencing factor if the defendant is charged with aggravated arson.

If the prosecution alleges that the defendant was previously convicted of arson within ten years of the current offense, give alternative A in element 3. If the prosecution alleges that the fire caused more than 10.18.3 million dollars in damage exclusive of damage to, or destruction of, inhabited dwellings, give alternative BA in element 3. If the prosecution alleges that the fire damaged five or more inhabited dwellingsstructures, give alternative CB in element 3.

~~If the prosecution alleges that the defendant was previously convicted of arson within ten years of the current offense, give elements 1 and 2 only. The court must also give either CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.~~

The definitions of “deliberation” and “premeditation” and the bracketed paragraph that begins with “The length of time” are derived from the first degree murder instruction because no recorded case construes their meaning in the context of Penal Code section 451.5. (See CALCRIM No. 521, *Murder: Degrees*.)

Give the bracketed definitions of inhabited dwelling or structure if relevant.

If there is an issue as to whether the fire *caused* the property damage, give CALCRIM No. 240, *Causation*.

AUTHORITY

- Enhancement. Pen. Code, § 451.5.
- “Inhabitation” Defined. Pen. Code, § 459.
- House Not Inhabited Means Former Residents Not Returning. *People v. Cardona* (1983) 142 Cal.App.3d 481, 483 [191 Cal.Rptr. 109].

LESSER INCLUDED OFFENSES

Arson under section 451 is not a lesser included offense of aggravated arson. (*People v. Shiga* (2019) 34 Cal.App.5th 466, 483 [246 Cal.Rptr.3d 198].)

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1515, *Arson*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) *Crimes Against Property* §§ 268-273.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1551. Arson Enhancements (Pen. Code, §§ 451.1, 456(b))

If you find the defendant guilty of arson [as charged in Count[s] __], you must then decide whether[, for each crime of arson,] the People have proved (the additional allegation that/one or more of the following additional allegations):

<Alternative A—prior felony violation(s) of Pen. Code, § 451 or § 452 monetary gain>

- [The defendant **was convicted of (felony arson/ [(and/or)] felony unlawfully causing a fire) on** _____ *<insert date of conviction>*. *<Repeat for each prior felony conviction alleged.>* **intended to obtain monetary gain when (he/she) committed the arson.**]

<Alternative B—*injury to firefighter, peace officer, or EMT*>

- [(A/An) (firefighter[,/ peace officer[,/ [or] emergency worker) suffered great bodily injury as a result of the arson.]

<Alternative C—*great bodily injury to more than one person*>

- [The defendant caused great bodily injury to more than one person during the commission of the arson.]

<Alternative D—*multiple structures burned*>

- [The defendant caused multiple structures to burn during the commission of the arson.]

<Alternative E—*device designed to accelerate fire*>

- [The arson (caused great bodily injury[,/ [or] caused an inhabited structure or inhabited property to burn[,/ [or] burned a structure or forest land), and was caused by use of a device designed to accelerate the fire or delay ignition.]

<Alternative F—monetary gain, Pen. Code, § 456(b)>

- [**The defendant committed the arson for monetary gain.**]

[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”>.]

[A **firefighter** includes anyone who is an officer, employee, or member of a (governmentally operated (fire department/fire protection or firefighting agency) in this state/federal fire department/federal fire protection or firefighting agency), whether or not he or she is paid for his or her services.]

[An **emergency worker** includes an emergency medical technician. An **emergency medical technician** is someone who holds a valid certificate under the Health and Safety Code as an emergency medical technician.]

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

[A (structure/ [or] property) is **inhabited** if someone lives there and either is present or has left but intends to return.]

[A (structure/ [or] property) is **inhabited** if someone used it as a dwelling and left only because a natural or other disaster caused him or her to leave.]

[A (structure/ [or] property) is **not inhabited** if the former residents have moved out and do not intend to return, even if some personal property remains inside.]

[A **device designed to accelerate the fire** means a piece of equipment or a mechanism intended, or devised, to hasten or increase the fire’s progress.]

[In order to prove that the defendant **caused** (great bodily injury to more than one person/ [or] more than one structure to burn), the People must prove that:

1. A reasonable person in the defendant’s position would have foreseen that committing arson could begin a chain of events likely to result in (great bodily injury to more than one person/ [or] the burning of more than one structure);
2. The commission of arson was a direct and substantial factor in causing (great bodily injury to more than one person/ [or] the burning of more than one structure);

AND

3. The (great bodily injury to more than one person/ [or the] burning of more than one structure) would not have happened if the defendant had not committed arson.]

[You must decide whether the People have proved this allegation for each crime of arson and return a separate finding for each crime of arson.]

The People have the burden of proving (this/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 January 2006; Revised September 2020, March 2024

BENCH NOTES

Instructional Duty

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

The reference to “arson” in the first paragraph refers to all crimes charged under Penal Code section 451, including arson of a structure, forest land, or property (see CALCRIM No. 1515), arson causing great bodily injury (see CALCRIM No. 1501), and arson of an inhabited structure (see CALCRIM No. 1502). It does not refer to aggravated arson under Penal Code section 451.5 (see CALCRIM No. 1500).

Give one of the bracketed alternatives, A through–E, depending on the enhancement alleged. Give all relevant bracketed definitions based on the enhancement alleged.

Give alternative F if monetary gain is alleged under Penal Code section 456(b). (See *Southern Union Co. v. U.S.* (2012) 567 U.S. 343 [132 S.Ct. 2344, 183 L.Ed.2d 318] [holding that the jury trial right prescribed by *Apprendi v. New Jersey* (2000) 530 U.S. 466 [120 S.Ct. 2348, 147 L.Ed.2d 435] applies to the imposition of criminal fines not statutorily authorized by the elements of the crime]; cf. *People v. Kramis* (2012) 209 Cal.App.4th 346, 351–352 [147 Cal.Rptr.3d 84] [*Apprendi* not implicated when trial court exercised discretion to impose fine within statutory range that did not require additional factual findings].)

~~If the defendant is charged with a qualifying prior conviction under Penal Code section 451.1(a)(1), give either CALCRIM No. 3100, *Prior Conviction*, or~~

~~CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.
Give all relevant bracketed definitions, based on the enhancement alleged.~~

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.”

Give the bracketed paragraph that begins with “In order to prove that the defendant *caused*” if the prosecution alleges that the defendant caused great bodily injury to multiple people or caused multiple structures to burn. (Pen. Code, § 451.1(a)(5); see Pen. Code, § 451(a)–(c).)

Give the bracketed sentence that begins with “You must decide whether the People have proved” if the same enhancement is alleged for multiple counts of arson.

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].)

AUTHORITY

- Enhancements. Pen. Code, §§ 451.1, 456(b).
- “Device Designed to Accelerate Fire” Defined. *People v. Johnson* (2022) 86 Cal.App.5th 258, 266–267 [301 Cal.Rptr.3d 814]; *People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1278–1280 [139 Cal.Rptr.3d 637]; *People v. Andrade* (2000) 85 Cal.App.4th 579, 587 [102 Cal.Rptr.2d 254].
- “Peace Officer” Defined. Pen. Code, § 830 et seq.
- “Firefighter” Defined. Pen. Code, § 245.1.

- “Emergency Medical Technician” Defined. Health & Saf. Code, §§ 1797.80–1797.84.
- Duty to Define Proximate Cause. See *People v. Bland* (2002) 28 Cal.4th 313, 334–335 [121 Cal.Rptr.2d 546, 48 P.3d 1107] [in context of firearm enhancement].

RELATED ISSUES

Discretion to Strike Enhancement

The trial court retains discretion under Penal Code section 1385 to strike an arson sentence enhancement. (*People v. Wilson* (2002) 95 Cal.App.4th 198, 203 [115 Cal.Rptr.2d 355] [enhancement for use of an accelerant under Pen. Code, § 451.1(a)(5)].)

SECONDARY SOURCES

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, § 372.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.47 (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.11[3] (Matthew Bender).

1552–1599. Reserved for Future Use

1800. Theft by Larceny (Pen. Code, § 484)

The defendant is charged [in Count __] with [grand/petty] theft [by larceny] [in violation of Penal Code section 484].

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

1. The defendant took possession of property owned by someone else;
2. The defendant took the property without the owner's [or owner's agent's] consent;
3. When the defendant took the property (he/she) intended (to deprive the owner of it permanently/ [or] to remove it from the owner's [or owner's agent's] possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property);

AND

4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

[The taking of property can include its consumption or the use of utilities.]

[An *agent* is someone to whom the owner has given complete or partial authority and control over the owner's property.]

[For petty theft, the property taken can be of any value, no matter how slight.]

New January 2006; Revised August 2016, March 2024

BENCH NOTES

Instructional Duty

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

To have the requisite intent for theft, the defendant must either intend to deprive the owner permanently or to deprive the owner of a major portion of the property's value or enjoyment. (See *People v. Avery* (2002) 27 Cal.4th 49, 57–58 [115 Cal.Rptr.2d 403, 38 P.3d 1].) Select the appropriate language in element 3.

Related Instructions

If the defendant is also charged with grand theft, give CALCRIM No. 1801, *Theft: Degrees*. If the defendant is charged with petty theft, no other instruction is required, and the jury should receive a petty theft verdict form.

If the defendant is charged with petty theft with a prior conviction, give CALCRIM No. 1850, *Petty Theft With Prior Conviction*.

If a different theory of theft is presented, see CALCRIM No. 1804, *Theft by False Pretense*, CALCRIM No. 1805, *Theft by Trick*, CALCRIM No. 1806, *Theft by Embezzlement*. See also CALCRIM No. 1861, *Jury Does Not Need to Agree on Form of Theft*. The court may also wish to instruct with the bracketed “[by larceny]” in the first sentence to distinguish this theory of theft from the others.

For theft of real property, use CALCRIM No. 1804, *Theft by False Pretense*. (See *People v. Sanders* (1998) 67 Cal.App.4th 1403, 1413–1417 [79 Cal.Rptr.2d 806].)

AUTHORITY

- Elements. Pen. Code, § 484; *People v. Williams* (1946) 73 Cal.App.2d 154, 157 [166 P.2d 63]; *People v. Edwards* (1925) 72 Cal.App. 102, 112–117 [236 P. 944], disapproved on other grounds in *In re Estrada* (1965) 63 Cal.2d 740, 748 [48 Cal.Rptr. 172, 408 P.2d 948].
- Intent to Deprive Owner of Main Value. *People v. Avery*, *supra*, (2002) 27 Cal.4th at pp.49, 57–59 [115 Cal.Rptr.2d 403, 38 P.3d 1], disapproving, to extent it is inconsistent, People v. Marquez (1993) 16 Cal.App.4th 115, 123 [20 Cal.Rptr.2d 365]; People v. Zangari (2001) 89 Cal.App.4th 1436, 1447 [108 Cal.Rptr.2d 250].
- Unauthorized Use of Utilities. *People v. Myles (2023) 89 Cal.App.5th 711, 731 [306 Cal.Rptr.3d 288].*

COMMENTARY

Asportation

To constitute a completed theft, the property must be asported or carried away. (*People v. Shannon* (1998) 66 Cal.App.4th 649, 654 [78 Cal.Rptr.2d 177].)

Asportation requires three things: (1) the goods are severed from the possession or custody of the owner, (2) the goods are in the complete possession of the thief or

thieves, and (3) the property is moved, however slightly. (*Ibid.*; *People v. Edwards* (1925) 72 Cal.App. 102, 114–115 [236 P. 944], disapproved on other grounds in *In re Estrada* (1965) 63 Cal.2d 740 [48 Cal.Rptr. 172, 408 P.2d 948]; *People v. Collins* (1959) 172 Cal.App.2d 295, 299 [342 P.2d 370] [joint possession of property by more than one thief].) Asportation is fulfilled by wrongful removal of property from the owner or possessor, against his or her will with the intent to steal it, even though the property is retained by the thief but a moment. (*People v. Quiel* (1945) 68 Cal.App.2d 674, 679 [157 P.2d 446].) Paragraph 4 sets forth the asportation element.

Value

The property taken must have some intrinsic value, however slight. (*People v. Franco* (1970) 4 Cal.App.3d 535, 542 [84 Cal.Rptr. 513]; *People v. Martinez* (2002) 95 Cal.App.4th 581, 585 [115 Cal.Rptr.2d 574].) The final bracketed paragraph may be given on request if the property in question was of slight value.

LESSER INCLUDED OFFENSES

- Petty Theft. Pen. Code, § 486.
- Attempted Theft. Pen. Code, §§ 664, 484.
- Taking an Automobile Without Consent. Veh. Code, § 10851; *People v. Pater* (1968) 267 Cal.App.2d 921, 926 [73 Cal.Rptr. 823].
- Auto Tampering. Veh. Code, § 10852; *People v. Anderson* (1975) 15 Cal.3d 806, 810–811 [126 Cal.Rptr. 235, 543 P.2d 603].
- Misdemeanor Joyriding. Pen. Code, § 499b [of bicycle, motorboat, or vessel].

Petty theft is a not lesser-included offense of grand theft when the charge of grand theft is based on the type of property taken. (*People v. Thomas* (1974) 43 Cal.App.3d 862, 870 [118 Cal.Rptr. 226].)

RELATED ISSUES

Claim of Right

If a person actually believes that he or she has a right to the property even if that belief is mistaken or unreasonable, such belief is a defense to theft. (*People v. Romo* (1990) 220 Cal.App.3d 514, 518 [269 Cal.Rptr. 440]; see also *People v. Devine* (1892) 95 Cal. 227, 229 [30 P. 378] [“[i]t is clear that a charge of larceny, which requires an intent to steal, could not be founded on a mere careless taking away of another’s goods”]; *In re Bayles* (1920) 47 Cal.App. 517, 519–521 [190 P. 1034] [larceny conviction reversed where landlady actually believed she was entitled to take tenant’s property for cleaning fees incurred even if her belief was

unreasonable]; *People v. Navarro* (1979) 99 Cal.App.3d Supp. 1, 4–6, 10–11 [160 Cal.Rptr. 692]; see CALCRIM No. 1863, *Defense to Theft or Robbery: Claim of Right*.)

Community Property

A person may be found guilty of theft of community property, but only if he or she has the intent to deprive the other owner of the property permanently. (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1738–1740 [60 Cal.Rptr.2d 357].)

Fraudulent Refunds

A person who takes property while in a store and presents it for a refund is guilty of theft. (*People v. Davis* (1998) 19 Cal.4th 301 [79 Cal.Rptr.2d 295, 965 P.2d 1165].) The Supreme Court held that taking with the intent to fraudulently obtain a refund constitutes both an intent to permanently deprive the store of property and a trespassory taking within the meaning of larceny. (*Id.* at pp. 317–318; see also *People v. Shannon* (1998) 66 Cal.App.4th 649 [78 Cal.Rptr.2d 177].)

Multiple or Single Conviction of Theft—Overall Plan or Scheme

If multiple items are stolen ~~from a single victim~~ over a period of time and the takings are part of one intention, one general impulse, and one plan~~one intent, plan, or impulse, only one theft occurs and the value of the items is aggregated when determining the degree of theft.~~ (*People v. Bailey* (1961) 55 Cal.2d 514, 518–519 [11 Cal.Rptr. 543, 360 P.2d 39]; accord *People v. Sullivan* (1978) 80 Cal.App.3d 16, 19–21 [145 Cal.Rptr. 313]; see CALCRIM No. 1802, *Theft: As Part of Overall Plan*.)

~~A serial thief “may be convicted of multiple counts of grand theft based on separate and distinct acts of theft, even if committed pursuant to a single overarching scheme.” [disapproving any interpretation of *People v. Bailey* (1961) 55 Cal.2d 514 [11 Cal.Rptr. 543, 360 P.2d 39] inconsistent with this conclusion.] *People v. Whitmer* (2014) 59 Cal.4th 733, 740–741 [174 Cal.Rptr.3d 594, 329 P.3d 154].~~

No Need to Use or Benefit From the Property Taken

It does not matter that the person taking the property does not intend to use the property or benefit from it; he or she is guilty of theft if there is intent to permanently deprive the other person of the property. (*People v. Kunkin* (1973) 9 Cal.3d 245, 251 [107 Cal.Rptr. 184, 507 P.2d 1392]; *People v. Green* (1980) 27 Cal.3d 1, 57–58 [164 Cal.Rptr. 1, 609 P.2d 468] [defendant intended to destroy the property], disapproved on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99]; *People v. Pierce* (1952) 110 Cal.App.2d 598, 609 [243 P.2d 585] [irrelevant that defendant did not personally benefit from embezzled funds]; see also *People v. Avery* (2002) 27 Cal.4th 49, 57–

58 [115 Cal.Rptr.2d 403, 38 P.3d 1] [intent to deprive owner of major value or enjoyment].)

Possession

The victim of a theft does not have to be the owner of property, only in possession of it. (*People v. Edwards* (1925) 72 Cal.App. 102, 116 [236 P. 944], disapproved on other grounds in *In re Estrada* (1965) 63 Cal.2d 740, 748 [48 Cal.Rptr. 172, 408 P.2d 948].) “Considered as an element of larceny, ‘ownership’ and ‘possession’ may be regarded as synonymous terms; for one who has the right of possession as against the thief is, so far as the latter is concerned, the owner.” (*Ibid*; see also *People v. Davis* (1893) 97 Cal. 194, 195 [31 P. 1109] [fact that property in possession of victim sufficient to show ownership].)

Unanimity of Theft Theory Not Required

If multiple theories of theft have been presented, the jury does not need to agree on which form of theft was committed. All the jury must agree on is that an unlawful taking of property occurred. (*People v. Counts* (1995) 31 Cal.App.4th 785, 792–793 [37 Cal.Rptr.2d 425]; *People v. Failla* (1966) 64 Cal.2d 560, 567–569 [51 Cal.Rptr. 103, 414 P.2d 39] [burglary case]; *People v. Nor Woods* (1951) 37 Cal.2d 584, 586 [233 P.2d 897] [addressing the issue for theft].) See CALCRIM No. 1861, *Jury Does Not Need to Agree on Form of Theft*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Property, §§ 14-17.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

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

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. 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, March 2024**

** Denotes changes only to bench notes and other commentaries.*

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].)

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].
- *Noncaretaker Status Not an Element of Pen. Code, § 368(d). People v. Marquez* (2023) 89 Cal.App.5th 1212, 1221–1222 [306 Cal.Rptr.3d 664].

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

**2624. Threatening a Witness After Testimony or Information Given
(Pen. Code, § 140(a))**

The defendant is charged [in Count __] with (using force/ [or] threatening to use force) against a witness [in violation of Penal Code section 140(a)].

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

1. _____ <insert name/description of person allegedly targeted> gave (assistance/ [or] information) to a (law enforcement officer/public prosecutor) in a (criminal case/juvenile court case);

[AND]

2. The defendant willfully (used force/ [or] threatened to use force or violence against _____ <insert name/description of person allegedly targeted>/ [or] threatened to take, damage, or destroy the property of _____ <insert name/description of person allegedly targeted>) because (he/she) had given that (assistance/[or] information)(;/.)

<Give the following language if the violation is based on a threat.>

~~[AND]~~

~~[3. The defendant consciously disregarded a substantial risk that (his/her) conduct would be understood as [a] threat[s]A reasonable listener in a similar situation with similar knowledge would interpret the threat, in light of the context and surrounding circumstances, as a serious expression of intent to commit an act of unlawful force or violence(;/.)]~~

~~[AND/OR]~~

~~[(3./4.) A reasonable personlistener in a similar situation with similar knowledge would interpret the threat, in light of the context and surrounding circumstances, as a serious expression of intent to commit an act of unlawful (force or violence/taking, damage or destruction of property).]~~

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

[An officer or employee of (a/an) (local police department[,]/ [or] sheriff's office[,]/ [or] _____ <insert title of agency of peace officer enumerated in Pen. Code, § 13519(b)>) is a *law enforcement officer*.]

[A lawyer employed by (a/an/the) (district attorney's office[,]/ [or] Attorney General's office[,]/ [or] city (prosecutor's/attorney's) office) to prosecute cases is a *public prosecutor*.]

[The People do not need to prove that the threat was communicated to _____ <insert name/description of person allegedly targeted> or that (he/she) was aware of the threat.]

New January 2006; Revised August 2012, March 2021, March 2024

BENCH NOTES

Instructional Duty

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

AUTHORITY

- Elements. Pen. Code, § 140(a).
- “Witness” Defined. Pen. Code, § 136(2).
- “Victim” Defined. Pen. Code, § 136(3).
- “Public Prosecutor” Defined. Gov. Code, §§ 26500, 12550, 41803.
- “Law Enforcement Officer” Defined. Pen. Code, § 13519(b).
- ~~General Intent Offense. *People v. McDaniel* (1994) 22 Cal.App.4th 278, 283 [27 Cal.Rptr.2d 306].~~
- Threat Need Not Be Communicated to Target. *People v. McLaughlin* (1996) 46 Cal.App.4th 836, 842 [54 Cal.Rptr.2d 4].
- Reasonable Person~~Listener~~ Standard. *People v. Lowery* (2011) 52 Cal.4th 419, 422~~7~~ [128 Cal.Rptr.3d 648, 257 P.3d 72].
- First Amendment Requires Recklessness as to Threat. *Counterman v. Colorado* (2023) 600 U.S. 66, 69 [143 S.Ct. 2106, 216 L.Ed.2d 775].

COMMENTARY

~~Penal Code section 140 does not define “threat.” (Cf. Pen. Code, §§ 137(b), 76 [both statutes containing definition of threat].) In *People v. McDaniel* (1994) 22 Cal.App.4th 278, 283 [27 Cal.Rptr.2d 306], the Court of Appeal held that threatening a witness under Penal Code section 140 is a general intent crime. According to the holding of *People v. McDaniel, supra*, 22 Cal.App.4th at p. 284, there is no requirement that the defendant intend to cause fear to the victim or intend to affect the victim’s conduct in any manner. In *People v. McLaughlin* (1996) 46 Cal.App.4th 836, 842 [54 Cal.Rptr.2d 4], the court held that the threat does not need to be communicated to the intended target in any manner. The committee has drafted this instruction in accordance with these holdings. However, the court may wish to consider whether the facts in the case before it demonstrate a sufficiently “genuine threat” to withstand First Amendment scrutiny. (See *In re George T.* (2004) 33 Cal.4th 620, 637–638 [16 Cal.Rptr.3d 61, 93 P.3d 1007]; *People v. Gudger* (1994) 29 Cal.App.4th 310, 320–321 [34 Cal.Rptr.2d 510]; *Watts v. United States* (1969) 394 U.S. 705, 707 [89 S.Ct. 1399, 22 L.Ed.2d 664]; *United States v. Kelner* (2d Cir. 1976) 534 F.2d 1020, 1027.)~~

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Governmental Authority, § 9.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.02; Ch. 142, *Crimes Against the Person*, § 142.11A[1][a] (Matthew Bender).

2625–2629. Reserved for Future Use

2722. Battery by Gassing (Pen. Code, §§ 243.9, 4501.1)

The defendant is charged [in Count __] with battery by gassing [in violation of _____ <insert appropriate code section[s]>].

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

1. The defendant was (serving a sentence in a [California] state prison/confined in a local detention facility);
2. While so confined, the defendant intentionally committed an act of gassing, that is, (he/she) (placed[,]/ [or] threw[,]/ [or] caused to be placed or thrown) (human excrement/human urine/human bodily fluids or substances/a mixture containing human bodily substances) on the body of (a peace officer/an employee of a (state prison/local detention facility));

AND

3. The (excrement/urine/bodily fluids or substances/mixture) actually made contact with the skin [or membranes] of (a peace officer/an employee of a (state prison/local detention facility)).

[A person is *serving a sentence in a state prison* if he or she is (confined in _____ <insert name of institution from Pen. Code, § 5003>/committed to the Department of Corrections and Rehabilitation[, Division of Juvenile Justice,]) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the (confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *serving a sentence in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is not *serving a sentence in a state prison*.]

[A (county jail/city jail/_____ <insert description>) is a *local detention facility*.]

[A sworn member of _____ <insert name of agency that employs peace officer>, authorized by _____ <insert appropriate section from Pen. Code, § 830 et seq.> to _____ <describe statutory authority>, is a peace officer.]

New January 2006; Revised August 2016, March 2017, March 2024*

* Denotes changes only to bench notes and other commentaries.

BENCH NOTES

Instructional Duty

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

If the battery is charged under Penal Code section 4501.1, in element 1, use the phrase “serving a sentence in state prison” and the bracketed definition of this phrase. If the battery is charged under Penal Code section 243.9, in element 1, give the language referencing a “local detention facility” and the bracketed definition of local detention facility.

When giving the definition of “serving a sentence in a state prison,” give the bracketed portion that begins “regardless of the purpose,” or the bracketed second or third sentence, if requested and relevant based on the evidence.

The jury must determine whether the alleged victim was a peace officer. (*People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].) The court must instruct the jury in the appropriate definition of “peace officer” from the statute. (*Ibid.*) It is error for the court to instruct that the witness is a peace officer as a matter of law. (*Ibid.* [instruction that “Officer Bridgeman and Officer Gurney are peace officers” was error].)

AUTHORITY

- Elements. Pen. Code, §§ 242, 243.9, 4501.1.
- “Confined in State Prison” Defined. Pen. Code, § 4504.
- “Local Detention Facility” Defined. Pen. Code, § 6031.4.
- Employee of Local Detention Facility Includes County Employee Assigned to Work in County Jail. *People v. Tice* (2023) 89 Cal.App.5th 246, 255 [305 Cal.Rptr.3d 794].

LESSER INCLUDED OFFENSES

- Battery by Prisoner on Non-Prisoner. *People v. Flores* (2009) 176 Cal.App.4th 924, 929 [97 Cal.Rptr.3d 924].

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 13-15, 62.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.12 (Matthew Bender).

**3160. Great Bodily Injury (Pen. Code, §§ 667.5(c)(8), 667.61(d)(6),
1192.7(c)(8), 12022.7, 12022.8)**

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]] [or the lesser crime[s] of _____ <insert name[s] of alleged lesser offense[s]>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on _____ <insert name of injured person> during the commission [or attempted commission] of that crime. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

[The People must also prove that _____ <insert name of injured person> was not an accomplice to the crime.]

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

[Committing the crime of _____ <insert sexual offense charged> is not by itself the infliction of great bodily injury.]

<Group Assault>

[If you conclude that more than one person assaulted _____ <insert name of injured person> and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily injury on _____ <insert name of injured person> if the People have proved that:

1. Two or more people, acting at the same time, assaulted _____ <insert name of injured person> and inflicted great bodily injury on (him/her);
2. The defendant personally used physical force on _____ <insert name of injured person> during the group assault;

AND

[3A. The amount or type of physical force the defendant used on _____ <insert name of injured person> was enough that it alone

could have caused _____ <insert name of injured person> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <insert name of injured person> was sufficient in combination with the force used by the others to cause _____ <insert name of injured person> to suffer great bodily injury.]

The defendant must have applied substantial force to _____ <insert name of injured person>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. He or she knew of the criminal purpose of the person who committed the crime;

AND

2. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]

<If there is an issue in the case over whether the defendant inflicted the injury “during the commission of” the offense, see Bench Notes.>

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 January 2006; Revised June 2007, February 2015, September 2020, March 2022, March 2024*

* Denotes changes only to bench notes and other commentaries.

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with “Committing the crime of” if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading “Group Assault” is designed to be used in cases where the evidence shows a group assault.

If the court gives the bracketed sentence instructing that the People must prove that the person assaulted “was not an accomplice to the crime,” the court should also give the bracketed definition of “accomplice.” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of “accomplice” are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The jury must determine whether an injury constitutes “great bodily injury.” (*People v. Escobar*, *supra*, (1992) 3 Cal.4th at p.740, 750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].) A jury’s finding of serious bodily injury is not equivalent to a finding of great bodily injury. (*In re Cabrera* (2023) 14 Cal.5th 476, 491 [304 Cal.Rptr.3d 798, 524 P.3d 784].)

If there is an issue in the case over whether the defendant inflicted the injury “during the commission of” the offense, the court may give CALCRIM No. 3261, *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

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].)

AUTHORITY

- Enhancements. Pen. Code, §§ 667.5(c)(8), 667.61(d)(6), 12022.7, 12022.8.
- Great Bodily Injury Enhancements Do Not Apply to Conviction for Murder or Manslaughter. *People v. Cook* (2015) 60 Cal.4th 922, 924 [183 Cal.Rptr.3d 502].
- “Great Bodily Injury” Defined. Pen. Code, § 12022.7(f); *In re Cabrera, supra*, 14 Cal.5th at p. 484 [not equivalent to serious bodily injury]; *People v. Escobar, supra*, (1992) 3 Cal.4th at pp.740, 749–750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~] [greater than minor or moderate harm].
- Great Bodily Injury May Be Established by Pregnancy or Abortion. *People v. Cross* (2008) 45 Cal.4th 58, 68 [82 Cal.Rptr.3d 373, 190 P.3d 706].
- Must Personally Inflict Injury. *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Sex Offenses—Injury Must Be More Than Incidental to Offense. *People v. Escobar, supra*, (1992) 3 Cal.4th at p.740, 746 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~].
- Group Beating Instruction. *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762, 139 P.3d 136].
- This Instruction Is Correct In Defining Group Beating. *People v. Dunkerson* (2007) 155 Cal.App.4th 1413, 1418 [66 Cal.Rptr.3d 795].
- “Accomplice” Defined. See Pen. Code, § 1111; *People v. Verlinde, supra*, (2002) 100 Cal.App.4th at pp.1146, 1167–1168 [~~123 Cal.Rptr.2d 322~~]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- “During Commission of” Felony. *People v. Jones, supra*, (2001) 25 Cal.4th at pp.98, 109–110 [~~104 Cal.Rptr.2d 753, 18 P.3d 674~~]; *People v. Masbruch, supra*, (1996) 13 Cal.4th at p.1001, 1014 [~~55 Cal.Rptr.2d 760, 920 P.2d 705~~]; *People v. Taylor, supra*, (1995) 32 Cal.App.4th at p.578, 582 [~~38 Cal.Rptr.2d 127~~].
- This Instruction Correctly Omits Requirement ~~O~~of Intent to Inflict GBI. *People v. Poroj* (2010) 190 Cal.App.4th 165, 176 [117 Cal.Rptr.3d 884].

RELATED ISSUES

Specific Intent Not Required

Penal Code section 12022.7 was amended in 1995, deleting the requirement that the defendant act with “the intent to inflict such injury.” (Stats. 1995, ch. 341, § 1; see also *People v. Carter* (1998) 60 Cal.App.4th 752, 756 [70 Cal.Rptr.2d 569] [noting amendment].)

Instructions on Aiding and Abetting

In *People v. Magana* (1993) 17 Cal.App.4th 1371, 1378–1379 [22 Cal.Rptr.2d 59], the evidence indicated that the defendant and another person both shot at the victims. The jury asked for clarification of whether the evidence must establish that the bullet from the defendant’s gun struck the victim in order to find the enhancement for personally inflicting great bodily injury true. (*Id.* at p. 1379.) The trial court responded by giving the instructions on aiding and abetting. (*Ibid.*) The Court of Appeal reversed, finding the instructions erroneous in light of the requirement that the defendant must personally inflict the injury for the enhancement to be found true. (*Id.* at p. 1381.)

Sex Offenses—Examples of Great Bodily Injury

The following have been held to be sufficient to support a finding of great bodily injury: transmission of a venereal disease (*People v. Johnson* (1986) 181 Cal.App.3d 1137, 1140 [225 Cal.Rptr. 251]); pregnancy (*People v. Sargent* (1978) 86 Cal.App.3d 148, 151 [150 Cal.Rptr. 113]); and a torn hymen (*People v. Williams* (1981) 115 Cal.App.3d 446, 454 [171 Cal.Rptr. 401]).

Enhancement May ~~h~~Be Applied Once Per Victim

The court may impose one enhancement under Penal Code section 12022.7 for each injured victim. (Pen. Code, § 12022.7(h); *People v. Ausbie* (2004) 123 Cal.App.4th 855, 864 [20 Cal.Rptr.3d 371].)

Furnishing Drugs

In *People v. Ollo* (2021) 11 Cal.5th 682 [279 Cal.Rptr.3d 668, 487 P.3d 981], the defendant was charged with personally inflicting great bodily injury on a victim who had voluntarily ingested the drugs furnished by the defendant. The court held: “[T]he act of furnishing is not by itself sufficient to establish personal infliction. Whether a defendant who furnishes drugs personally inflicts such injury depends on the facts of the particular case. To determine whether a defendant personally inflicts such injury, fact finders and courts must examine the circumstances of the underlying offense and the defendant’s role in causing the injury that followed.” (11 Cal.5th at p. 685.)

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350-351.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.35 (Matthew Bender).

3161. Great Bodily Injury: Causing Victim to Become Comatose or Paralyzed (Pen. Code, § 12022.7(b))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]] [or the lesser crime[s] of _____ <insert name[s] of alleged lesser offense[s]>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury that caused _____ <insert name of injured person> to become (comatose/ [or] permanently paralyzed). [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

1. The defendant personally inflicted great bodily injury on _____ <insert name of injured person> during the commission [or attempted commission] of the crime;

[AND]

2. The defendant's acts caused _____ <insert name of injured person> to (become comatose due to brain injury/ [or] suffer permanent paralysis)(./;)

<Give element 3 when instructing on whether injured person was an accomplice.>

[AND]

3. _____ <insert name of injured person> was not an accomplice to the crime.]

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

[**Paralysis** is a major or complete loss of motor function resulting from injury to the nervous system or to a muscular mechanism.]

<Group Assault>

[If you conclude that more than one person assaulted _____ <insert name of injured person> and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily

injury on _____ <insert name of injured person> if the People have proved that:

- 1. Two or more people, acting at the same time, assaulted _____ <insert name of injured person> and inflicted great bodily injury on (him/her);**
- 2. The defendant personally used physical force on _____ <insert name of injured person> during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ <insert name of injured person> was enough that it alone could have caused _____ <insert name of injured person> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <insert name of injured person> was sufficient in combination with the force used by the others to cause _____ <insert name of injured person> to suffer great bodily injury.]

The defendant must have applied substantial force to _____ <insert name of injured person>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

- 1. He or she knew of the criminal purpose of the person who committed the crime;**

AND

- 2. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

<If there is an issue in the case over whether the defendant inflicted the injury “during the commission of” the offense, see Bench Notes.>

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 January 2006; Revised June 2007, December 2008, September 2020, March 2024*

* Denotes changes only to bench notes and other commentaries.

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

The bracketed section beneath the heading “Group Assault” is designed to be used in cases where the evidence shows a group assault.

If the court gives bracketed element 3 instructing that the People must prove that the person assaulted “was not an accomplice to the crime,” the court should also give the bracketed definition of “accomplice.” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of “accomplice” are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

The jury must determine whether an injury constitutes “great bodily injury.” (*People v. Escobar* (1992) 3 Cal.4th 740, 750 [12 Cal.Rptr.2d 586, 837 P.2d 1100]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].) A jury’s finding of serious bodily injury is not equivalent to a finding of great bodily injury. (*In re Cabrera* (2023) 14 Cal.5th 476, 491 [304 Cal.Rptr.3d 798, 524 P.3d 784].)

If the case involves an issue of whether the defendant inflicted the injury “during the commission of” the offense, the court may give CALCRIM No. 3261, *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

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].)

AUTHORITY

- Enhancement. Pen. Code, § 12022.7(b).
- “Great Bodily Injury” Defined. Pen. Code, § 12022.7(f); *In re Cabrera, supra*, 14 Cal.5th at p. 484 [not equivalent to serious bodily injury]; *People v. Escobar, supra*, (1992) 3 Cal.4th at pp.740, 749–750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~] [greater than minor or moderate harm].
- Must Personally Inflict Injury. *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Group Beating Instruction. *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- “Accomplice” Defined. See Pen. Code, § 1111; *People v. Verlinde, supra*, (2002) 100 Cal.App.4th at pp.1146, 1167–1168 [~~123 Cal.Rptr.2d 322~~]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- “During Commission of” Felony. *People v. Jones, supra*, (2001) 25 Cal.4th at pp.98, 109–110 [~~104 Cal.Rptr.2d 753, 18 P.3d 674~~]; *People v. Masbruch, supra*, (1996) 13 Cal.4th at p.1001, 1014 [~~55 Cal.Rptr.2d 760, 920 P.2d 705~~]; *People v. Taylor, supra*, (1995) 32 Cal.App.4th at p.578, 582 [~~38 Cal.Rptr.2d 127~~].

RELATED ISSUES

Coma Need Not Be Permanent

In *People v. Tokash* (2000) 79 Cal.App.4th 1373, 1378 [94 Cal.Rptr. 2d 814], the court held that an enhancement under Penal Code section 12022.7(b) was proper where the victim was maintained in a medically induced coma for two months following brain surgery necessitated by the assault.

See the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.35 (Matthew Bender).

3162. Great Bodily Injury: Age of Victim (Pen. Code, § 12022.7(c) & (d))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]] [or the lesser crime[s] of _____ <insert name[s] of alleged lesser offense[s]>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on someone who was (under the age of 5 years/70 years of age or older). [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation, the People must prove that:

1. The defendant personally inflicted great bodily injury on _____ <insert name of injured person> during the commission [or attempted commission] of the crime;

[AND]

2. At that time, _____ <insert name of injured person> was (under the age of 5 years/70 years of age or older)(./;)

<Give element 3 when instructing on whether injured person was an accomplice.>

[AND]

3. _____ <insert name of injured person> was not an accomplice to the crime.]

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

[Committing the crime of _____ <insert sexual offense charged> is not by itself the infliction of great bodily injury.]

<Group Assault>

[If you conclude that more than one person assaulted _____ <insert name of injured person> and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily

injury on _____ <insert name of injured person> if the People have proved that:

- 1. Two or more people, acting at the same time, assaulted _____ <insert name of injured person> and inflicted great bodily injury on (him/her);**
- 2. The defendant personally used physical force on _____ <insert name of injured person> during the group assault;**

AND

[3A. The amount or type of physical force the defendant used on _____ <insert name of injured person> was enough that it alone could have caused _____ <insert name of injured person> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <insert name of injured person> was sufficient in combination with the force used by the others to cause _____ <insert name of injured person> to suffer great bodily injury.

The defendant must have applied substantial force to _____ <insert name of injured person>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

- 1. He or she knew of the criminal purpose of the person who committed the crime;**

AND

- 2. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]**

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

<If there is an issue in the case over whether the defendant inflicted the injury “during the commission of” the offense, see Bench Notes.>

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 January 2006; Revised June 2007, December 2008, September 2020, March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with “Committing the crime of” if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading “Group Assault” is designed to be used in cases where the evidence shows a group assault. If the court gives bracketed element 3 instructing that the People must prove that the person assaulted “was not an accomplice to the crime,” the court should also give the bracketed definition of “accomplice.” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1167–1168 [123 Cal.Rptr.2d 322].) Additional paragraphs providing further explanation of the definition of “accomplice” are contained in CALCRIM No. 334, *Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice*. The court should review that instruction and determine whether any of these additional paragraphs should be given.

Give the 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].)

The jury must determine whether an injury constitutes “great bodily injury.” (*People v. Escobar*, *supra*, ~~(1992)~~ 3 Cal.4th at p.740, 750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].) A jury’s finding of serious bodily injury is not equivalent to a finding of

great bodily injury. (*In re Cabrera* (2023) 14 Cal.5th 476, 491 [304 Cal.Rptr.3d 798, 524 P.3d 784].)

If the case involves an issue of whether the defendant inflicted the injury “during the commission of” the offense, the court may give CALCRIM No. 3261, *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

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].)

AUTHORITY

- Enhancements. Pen. Code, § 12022.7(c) & (d).
- “Great Bodily Injury” Defined. Pen. Code, § 12022.7(f); *In re Cabrera, supra*, 14 Cal.5th at p. 484 [not equivalent to serious bodily injury]; *People v. Escobar, supra*, (1992) 3 Cal.4th at pp.740, 749–750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~] [greater than minor or moderate harm].
- Must Personally Inflict Injury. *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- Sex Offenses—Injury Must Be More Than Incidental to Offense. *People v. Escobar, supra*, (1992) 3 Cal.4th at p.740, 746 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~].
- Group Beating Instruction. *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- “Accomplice” Defined. See Pen. Code, § 1111; *People v. Verlinde, supra*, (2002) 100 Cal.App.4th at pp.1146, 1167–1168 [~~123 Cal.Rptr.2d 322~~]; *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- “During Commission of” Felony. *People v. Jones, supra*, (2001) 25 Cal.4th at pp.98, 109–110 [~~104 Cal.Rptr.2d 753, 18 P.3d 674~~]; *People v. Masbruch, supra*, (1996) 13 Cal.4th at p.1001, 1014 [~~55 Cal.Rptr.2d 760, 920 P.2d 705~~];

People v. Taylor, *supra*, ~~(1995)~~ 32 Cal.App.4th at p.578, 582 [~~38 Cal.Rptr.2d 127~~].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.35 (Matthew Bender).

3163. Great Bodily Injury: Domestic Violence (Pen. Code, § 12022.7(e))

If you find the defendant guilty of the crime[s] charged in Count[s] __[,] [or of attempting to commit (that/those) crime[s]] [or the lesser crime[s] of _____ <insert name[s] of alleged lesser offense[s]>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant personally inflicted great bodily injury on _____ <insert name of injured person> during the commission [or attempted commission] of that crime, under circumstances involving domestic violence. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

[The People must also prove that _____ <insert name of injured person> was not an accomplice to the crime.]

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

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 with whom the defendant is having or has had a dating relationship[,]/ [or] person who was or is engaged to the defendant).

Abuse means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable fear of imminent serious bodily injury to himself or herself or to someone else.

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

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

[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.]

[Committing the crime of _____ <insert sexual offense charged> is not by itself the infliction of great bodily injury.]

<Group Assault>

[If you conclude that more than one person assaulted _____ <insert name of injured person> and you cannot decide which person caused which injury, you may conclude that the defendant personally inflicted great bodily injury on _____ <insert name of injured person> if the People have proved that:

1. Two or more people, acting at the same time, assaulted _____ <insert name of injured person> and inflicted great bodily injury on (him/her);
2. The defendant personally used physical force on _____ <insert name of injured person> during the group assault;

AND

[3A. The amount or type of physical force the defendant used on _____ <insert name of injured person> was enough that it alone could have caused _____ <insert name of injured person> to suffer great bodily injury(;/.)]

[OR]

[3B. The physical force that the defendant used on _____ <insert name of injured person> was sufficient in combination with the force used by the others to cause _____ <insert name of injured person> to suffer great bodily injury.]

The defendant must have applied substantial force to _____ <insert name of injured person>. If that force could not have caused or contributed to the great bodily injury, then it was not substantial.]

[A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if he or she personally committed the crime or if:

1. He or she knew of the criminal purpose of the person who committed the crime;

AND

2. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime/ [or] participate in a criminal conspiracy to commit the crime).]

<If there is an issue in the case over whether the defendant inflicted the injury “during the commission of” the offense, see Bench Notes.>

[The person who was injured does not have to be a person with whom the defendant had a relationship.]

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 January 2006; Revised June 2007, December 2008, September 2020, March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction on the enhancement when charged. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

Give the bracketed sentence that begins with “Committing the crime of” if the defendant is charged with a sexual offense. (*People v. Escobar* (1992) 3 Cal.4th 740, 746 [12 Cal.Rptr.2d 586, 837 P.2d 1100] [injury must be more than that which is present in every offense of rape].)

The bracketed section beneath the heading “Group Assault” is designed to be used in cases where the evidence shows a group assault.

The jury must determine whether an injury constitutes “great bodily injury.” (*People v. Escobar, supra, (1992)* 3 Cal.4th at p.740, 750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~]; *People v. Nava* (1989) 207 Cal.App.3d 1490, 1498 [255 Cal.Rptr. 903] [reversible error to instruct that a bone fracture is a significant or substantial injury].) A jury’s finding of serious bodily injury is not equivalent to a finding of

great bodily injury. (*In re Cabrera* (2023) 14 Cal.5th 476, 491 [304 Cal.Rptr.3d 798, 524 P.3d 784].)

If the case involves an issue of whether the defendant inflicted the injury “during the commission of” the offense, the court may give CALCRIM No. 3261, *While Committing a Felony: Defined—Escape Rule*. (See *People v. Jones* (2001) 25 Cal.4th 98, 109 [104 Cal.Rptr.2d 753, 18 P.3d 674]; *People v. Masbruch* (1996) 13 Cal.4th 1001, 1014 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *People v. Taylor* (1995) 32 Cal.App.4th 578, 582 [38 Cal.Rptr.2d 127].)

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].)

AUTHORITY

- Enhancement. Pen. Code, § 12022.7(e).
- “Great Bodily Injury” Defined. Pen. Code, § 12022.7(f); *In re Cabrera, supra*, 14 Cal.5th at p. 484 [not equivalent to serious bodily injury]; *People v. Escobar, supra*, (1992) 3 Cal.4th at pp.740, 749–750 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~] [greater than minor or moderate harm].
- “Dating Relationship” Defined. Fam. Code, § 6210; Pen. Code, § 243(f)(10).
- Must Personally Inflict Injury. *People v. Lee* (2003) 31 Cal.4th 613, 631 [3 Cal.Rptr.3d 402, 74 P.3d 176]; *People v. Cole* (1982) 31 Cal.3d 568, 571 [183 Cal.Rptr. 350, 645 P.2d 1182]; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 627 [236 Cal.Rptr. 404] [Pen. Code, § 12022.8].
- General Intent Only Required. *People v. Carter* (1998) 60 Cal.App.4th 752, 755–756 [70 Cal.Rptr.2d 569].
- Sex Offenses—Injury Must Be More Than Incidental to Offense. *People v. Escobar, supra*, (1992) 3 Cal.4th at p.740, 746 [~~12 Cal.Rptr.2d 586, 837 P.2d 1100~~].
- Group Beating Instruction. *People v. Modiri* (2006) 39 Cal.4th 481, 500–501 [46 Cal.Rptr.3d 762].
- “During Commission of” Felony. *People v. Jones, supra*, (2001) 25 Cal.4th at pp.98, 109–110 [~~104 Cal.Rptr.2d 753, 18 P.3d 674~~]; *People v. Masbruch, supra*, (1996) 13 Cal.4th at p.1001, 1014 [~~55 Cal.Rptr.2d 760, 920 P.2d 705~~];

People v. Taylor, ~~*supra*, (1995)~~ 32 Cal.App.4th at p.578, 582 [~~38 Cal.Rptr.2d 127~~].

RELATED ISSUES

Person Who Suffers Injury Need Not Be “Victim” of Domestic Abuse

Penal Code section 12022.7(e) does not require that the injury be inflicted on the “victim” of the domestic violence. (*People v. Truong* (2001) 90 Cal.App.4th 887, 899 [108 Cal.Rptr.2d 904].) Thus, the enhancement may be applied where “an angry husband physically abuses his wife and, as part of the same incident, inflicts great bodily injury upon the man with whom she is having an affair.” (*Id.* at p. 900.)

See also the Related Issues section of CALCRIM No. 3160, *Great Bodily Injury*.

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 350–354.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.35 (Matthew Bender).

3164–3174. Reserved for Future Use

3224. Aggravating Factor: Great Violence, Great Bodily Harm, or High Degree of Cruelty, Viciousness, or Callousness

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged [in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*, you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the crime[s] in Count[s] __ involved (great violence[,/ or]great bodily harm[,/ or]threat[s] of great bodily harm[,/ or][(other/an)] act[s] revealing a high degree of cruelty, viciousness, or callousness).]

<Introductory paragraph for bifurcated trial>

[The People have alleged that the crime[s] in Count[s] __ involved (great violence[,/ or]great bodily harm[,/ or]threat[s] of great bodily harm[,/ or][(other/an)] act[s] revealing a high degree of cruelty, viciousness, or callousness).]

To prove this allegation, the People must prove that:

- 1. During the commission of the crime[s], the defendant (used great violence[,/ or]inflicted great bodily harm[,/ or]threatened to inflict great bodily harm[,/ or]committed (other/an) act[s] showing a high degree of cruelty, viciousness, or callousness);**

AND

- 2. The (type/level) of (violence[,/ or]bodily harm[,/ or]threat of bodily harm[,/ or]cruelty, viciousness, or callousness) was distinctively worse than what was necessary to commit the crime[s].**

[For the crime to have been committed with (great violence[,/ or]cruelty[,/ or]viciousness[,/ or]callousness), no one needs to actually have been injured by the defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed the crime with (great violence[,/ or]cruelty[,/ or]viciousness[,/ or]callousness).]

[*Great bodily harm* means significant or substantial physical injury, as opposed to minor or moderate harm.]

[*Threat of great bodily harm* means the threat of significant or substantial physical injury. It is a threatened injury that would result in greater than minor or moderate harm.]

[*Viciousness* means dangerously aggressive or marked by violence or ferocity. *Viciousness* is not the same as violence. For example, some acts which may be described as vicious do not involve violence at all, but rather involve acts such as deceit and slander. On the other hand, many violent acts do not indicate viciousness, but instead show frustration, justifiable rage, or self-defense.]

[An act discloses *cruelty* when it demonstrates the deliberate infliction of physical or mental suffering.]

[An act discloses *callousness* when it demonstrates a lack of sympathy for the suffering of, or harm to, the victim[s].]

You may not find the allegation true unless all of you agree that the People have proved at least one of the following: that the defendant (used great violence[,]/ [or]inflicted great bodily harm[,]/ [or]threatened to inflict great bodily harm[,]/ [or]committed[other] acts showing a high degree of cruelty, viciousness, or callousness). However, you need not all agree on the act[s] or conduct that [constitutes the (use of great violence[,]/ [or]infliction of great bodily harm[,]/ [or]threat to inflict great bodily harm)][or][show a high degree of cruelty, viciousness, or callousness.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury's determination of the aggravating factors on the defendant's request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(1).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- Force, Violence, or Threat Beyond What is Necessary to Accomplish Criminal Purpose. *People v. Karsai* (1982) 131 Cal.App.3d 224, 239 [182 Cal.Rptr. 406]; see also *People v. Cortez* (1980) 103 Cal.App.3d 491, 496 [163 Cal.Rptr. 1]; *People v. Harvey* (1984) 163 Cal.App.3d 90, 116 [208 Cal.Rptr. 910]; *People v. Garcia* (1989) 209 Cal.App.3d 790, 793–794 [257 Cal.Rptr. 495].
- Viciousness Not Equivalent To Violence. *People v. Reed* (1984) 157 Cal.App.3d 489, 492 [203 Cal.Rptr. 659].
- Actual Bodily Harm Not Required. *People v. Duran* (1982) 130 Cal.App.3d 987, 990 [182 Cal.Rptr. 17].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3225. Aggravating Factor: Armed or Used Weapon

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged [in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*, you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the defendant was armed with or used a weapon, to wit: _____ *<insert description of weapon>*, during commission of the crime[s] in Count[s] _____.]

<Introductory paragraph for bifurcated trial>

[The People have alleged that the defendant was armed with or used a weapon, to wit: _____ *<insert description of weapon>*, during commission of the crime[s] in Count[s] _____.]

To prove this allegation, the People must prove that the defendant, while committing the crime[s] in Count[s] __ (knowingly carried a weapon[,/ [or]knowingly had a weapon available for use[,/ [or]intentionally displayed a weapon in a menacing manner[,/ [or]intentionally (fired/ [or]attempted to fire) a weapon[,/ [or]intentionally (struck[,/ [or]stabbed[,/ [or]slashed[,/ [or]hit)[,/ [or]attempted to (strike[,/ [or]stab[,/ [or]slash[,/ [or]hit) another person with a weapon).]

[A device, instrument, or object that is capable of being used to inflict injury or death may be a *weapon*. In determining whether _____ *<insert description>* was a *weapon*, you may consider the totality of circumstances, including the manner in which it was used or possessed.]

You may not find the allegation true unless all of you agree that the People have proved that the defendant was either armed or used a weapon. However, all of you do not need to agree on which act[s] or conduct constitutes the arming or use of a weapon.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S.270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

Give the bracketed portion that defines weapon if the object is not a weapon as a matter of law and is capable of innocent uses.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(2).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- Arming Includes Available for Use. *People v. Garcia* (1986) 183 Cal.App.3d 335, 350 [228 Cal.Rptr. 87].

COMMENTARY

Distinctively Worse Than ~~F~~the Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

Penal Code section 12022

Consistent with the language of rule 4.421(a)(2), the instruction has been drafted with the assumption that the defendant is personally armed. The armed enhancement contained in Penal Code section 12022(a)(1) provides: “This additional term shall apply to a person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.” Whether there is a relationship between the rule of court and Penal Code section 12022(a)(1) has not been addressed by case law.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3226. Aggravating Factor: Particularly Vulnerable Victim

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*, you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that _____ *<insert name of victim>* was a particularly vulnerable victim.]

<Introductory paragraph for bifurcated trial>

[The People have alleged[in Count[s] __] that _____ *<insert name of victim>* was a particularly vulnerable victim.]

To prove this allegation, the People must prove that:

1. _____ *<insert name of victim>* suffered/ [or]was threatened with suffering) a loss, injury, or harm as the result of the crime[s];

AND

2. _____ *<insert name of victim>* was particularly vulnerable.

***Particularly vulnerable* includes being defenseless, unguarded, unprotected, or otherwise susceptible to the defendant's criminal act to a special or unusual degree.**

In determining whether _____ *<insert name of victim>* was *particularly vulnerable*, you should consider all of the circumstances surrounding the commission of the crime, including the characteristics of _____ *<insert name of victim>* and the manner and setting in which the crime was committed.

[You may not find vulnerability based solely on _____ *<insert element of the offense>*, which is an element of _____ *<insert offense>*.]

You may not find the allegation true unless all of you agree that the People have proved that the victim was particularly vulnerable. However, you do not have to agree on which facts show that the victim was particularly vulnerable.

You may not find the allegation true unless all of you agree that the People have proved that the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime[and for each victim].

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Pen. Code section 1170.85(b) states: “Upon conviction of any felony it shall be considered a circumstance in aggravation in imposing a term under subdivision (b) of Section 1170 if the victim of an offense is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability.” If this section is applicable, the instruction should be modified to reflect the victim’s alleged inability to defend himself or herself based on age or significant disability.

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crime and victim the aggravating factor pertains to if it applies to one or more specific counts or victims.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(3).

- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- “Victim” Defined. *People v. Simon* (1983) 144 Cal.App.3d 761, 765 [193 Cal.Rptr. 28].
- “Particularly Vulnerable” Defined. *People v. DeHoyos* (2013) 57 Cal.4th 79, 154–155 [158 Cal.Rptr.3d 797, 303 P.3d 1]; *People v. Spencer* (1996) 51 Cal.App.4th 1208, 1223 [59 Cal.Rptr.2d 627]; *People v. Price* (1984) 151 Cal.App.3d 803, 814 [199 Cal.Rptr. 99]; *People v. Ramos* (1980) 106 Cal.App.3d 591, 607 [165 Cal.Rptr. 179]; *People v. Smith* (1979) 94 Cal.App.3d 433, 436 [156 Cal.Rptr. 502].
- Vulnerability Cannot Be Based Solely on Age if Age Is Element of Offense. *People v. Dancer* (1996) 45 Cal.App.4th 1677, 1693–1694 [53 Cal.Rptr.2d 282], disapproved on other grounds in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123 [65 Cal.Rptr.2d 1, 938 P.2d 986]; *People v. Quinones* (1988) 202 Cal.App.3d 1154, 1159 [249 Cal.Rptr. 435], disapproved on other grounds in *People v. Soto* (2011) 51 Cal.4th 229, 244–245 [119 Cal.Rptr.3d 775, 245 P.3d 410]; *People v. Ginese* (1981) 121 Cal.App.3d 468, 476–477 [175 Cal.Rptr. 383]; *People v. Flores* (1981) 115 Cal.App.3d 924, 927 [171 Cal.Rptr. 777].
- Factor ~~Did Not Apply~~ in Vehicular Manslaughter. *People v. Piceno* (1987) 195 Cal.App.3d 1353, 1358–1359 [241 Cal.Rptr. 391] [vehicular manslaughter victim cannot be particularly vulnerable]; *People v. Weaver* (2007) 149 Cal.App.4th 1301, 1315–1319 [58 Cal.Rptr.3d 18] [vehicular manslaughter victim can be particularly vulnerable], disapproved on another ground in *People v. Cook* (2015) 60 Cal.4th 922 [183 Cal.Rptr.3d 502, 342 P.3d 404]; *People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1182 [214 Cal.Rptr.3d 467] [vehicular manslaughter victim can be particularly vulnerable].

COMMENTARY

Distinctively Worse Than ~~F~~the Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court

held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3227. Aggravating Factor: Induced Others to Participate or Occupied Position of Leadership or Dominance

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether[, for each crime,] the People have proved the additional allegation that the defendant induced others to participate in committing the crime[s] or occupied a position of leadership or dominance of other participants in the commission of the crime[s].]

<Introductory paragraph for bifurcated trial>

[The People have alleged[in Count[s] ___] that the defendant induced others to participate in committing the crime[s] or occupied a position of leadership or dominance of other participants in the commission of the crime[s].]

To prove this allegation, the People must prove that:

- 1. The defendant induced others to participate in the commission of the crime[s];**

OR

- 2. The defendant occupied a position of leadership or dominance over other participants during commission of the crime[s].**

***Induced* means persuaded, convinced, influenced, or instructed.**

You may not find the allegation true unless all of you agree that the People have proved that the defendant either induced others to participate or occupied a position of leadership or dominance. However, all of you do not need to agree on which act[s] or conduct constitutes inducing others to participate or occupying a position of leadership or dominance.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury's determination of the aggravating factors on the defendant's request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(4).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- More Than One Participant Required. *People v. Berry* (1981) 117 Cal.App.3d 184, 198 [172 Cal.Rptr. 756, 763–764].

- Leadership Not Equivalent to Dominance. *People v. Kellett* (1982) 134 Cal.App.3d 949, 961 [185 Cal.Rptr. 1].
- Factor Requires More Than Being Willing Participant. *People v. Searle* (1989) 213 Cal.App.3d 1091, 1097 [261 Cal.Rptr. 898].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3228. Aggravating Factor: Induced Minor to Commit or Assist

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged [in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*, you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the defendant induced a minor to commit or assist in the commission of the crime[s] [in Count[s] __].]

<Introductory paragraph for bifurcated trial>

[The People have alleged [in Count[s] __] that the defendant induced a minor to commit or assist in the commission of the crime[s].]

To prove this allegation, the People must prove that:

1. The defendant induced a minor to commit the crime[s];

OR

2. The defendant induced a minor to assist in the commission of the crime[s].

***Induced* means persuaded, convinced, influenced, or instructed.**

A minor is a person under the age of 18 years.

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

You may not find the allegation true unless all of you agree that the People have proved that the defendant induced a minor either to commit the crime or to assist in the commission of the crime. However, all of you do not need to agree on which act[s] or conduct constitutes the inducement.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(5).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].

COMMENTARY

Distinctively Worse Than ~~F~~the Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3229. Aggravating Factor: Threatened, Prevented, Dissuaded, Etc. Witnesses

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the defendant[in Count[s] __] (threatened witnesses[,/ [or]unlawfully prevented or dissuaded witnesses from testifying[,/ [or]suborned perjury[,/ [or] _____ *<insert other illegal activity that interfered with the judicial process>*).]

<Introductory paragraph for bifurcated trial>

[The People have alleged that the defendant[in Count[s] __] (threatened witnesses[,/ [or]unlawfully prevented or dissuaded witnesses from testifying[,/ [or]suborned perjury[,/ [or] _____ *<insert other illegal activity that interfered with the judicial process>*).]

To prove this allegation, the People must prove that the defendant (threatened [a]witness[es]/ [or]prevented [a]witness[es] from testifying/ [or]dissuaded [a]witness[es] from testifying/ [or]suborned perjury/[or] _____ *<insert other illegal activity that interfered with the judicial process>*).

[As used here, *witness* means someone[or a person the defendant reasonably believed to be someone]:

<Give the appropriate bracketed paragraph[s].>

- **[Who knows about the existence or nonexistence of facts relating to a crime(;/.)]**

[OR]

- **[Whose declaration under oath has been or may be received as evidence(;/.)]**

[OR]

- [Who has reported a crime to a (peace officer[,]/ [or] prosecutor[,]/ [or] probation or parole officer[,]/ [or] correctional officer[,]/ [or] judicial officer)(;/.)]

[OR

- Who has been served with a subpoena issued under the authority of any state or federal court.]]

[A threat may be oral or written and may be implied by a pattern of conduct or a combination of statements and conduct.]

[The defendant does not have to communicate the threat directly to the intended victim, but may do so through someone else.]

[Someone who intends that a statement be understood as a threat does not have to actually intend to carry out the threatened act [or intend to have someone else do so].]

[*Dissuaded* means persuaded or advised not to do something.]

[*Suborned perjury* means encouraged, induced, or assisted witnesses to willfully make [a]false statement[s] under oath. In order to find that the defendant suborned perjury, the People must prove, beyond a reasonable doubt, not only that the sworn statement was actually false, but also that the defendant, at the time (he/she) encouraged, induced, or assisted the witness(es) to make the statement, knew that it was false.]

[*Induced* means persuaded, convinced, influenced, or instructed.]

You may not find the allegation true unless all of you agree that the People have proved that the defendant (threatened [a]witness[es]/ [or] prevented [a]witness[es] from testifying/ [or] dissuaded [a]witness[es] from testifying/ [or] suborned perjury/ [or] _____ <insert other illegal activity that interfered with the judicial process>). However, all of you do not need to agree on which act[s] or conduct constitutes (threatening [a]witness[es]/ [or] preventing [a]witness[es] from testifying/ [or] dissuading [a]witness[es] from testifying/ [or] suborning perjury/ [or] _____ <insert other illegal activity that interfered with the judicial process>).

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Penal Code section 1170.85(a) states: “Upon conviction of any felony assault or battery offense, it shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170 if the offense was committed to prevent or dissuade a person who is or may become a witness from attending upon or testifying at any trial, proceeding, or inquiry authorized by law, or if the offense was committed because the person provided assistance or information to a law enforcement officer, or to a public prosecutor in a criminal or juvenile court proceeding.” If this section is applicable, the bracketed catch-all provision of the instruction related to other illegal activity should be modified to reflect the defendant’s alleged conduct.

If it is alleged the defendant interfered with the judicial process by committing perjury, the bracketed catch-all provision for other illegal activity should be modified and the trial court should also instruct with CALCRIM No. 2640, *Perjury*. (See *People v. Howard* (1993) 17 Cal.App.4th 999, 1002–1004 [21 Cal.Rptr.2d 676].)

The catch-all provision of other illegal activity can include attempts to dissuade or prevent a witness from testifying. (See *People v. Lewis* (1991) 229 Cal.App.3d 259, 266–267 [280 Cal.Rptr. 128].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating

circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(6).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- “Witness” Defined. Pen. Code, § 136(2).
- “Threat” Defined. Pen. Code, § 76(5).
- Attempted Subornation of Perjury. *People v. Lewis* (1991) 229 Cal.App.3d 259, 266–267 [280 Cal.Rptr. 128].

COMMENTARY

Distinctively Worse Than ~~The~~ Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

Perjury

Perjury committed by the defendant can constitute “an illegal activity that interfered with the judicial process.” (See *People v. Howard* (1993) 17 Cal.App.4th 999, 1002 [21 Cal.Rptr.2d 676].) If it is alleged that the defendant

committed perjury, the jury must find all the elements of a perjury violation. *Id.* at p. 1004 [holding that the court is constitutionally required to make findings encompassing the elements of perjury: “a willful statement, under oath, of any material matter which the witness knows to be false.”]; see also *United States v. Dunnigan* (1993) 507 U.S. 87, 96 [113 S.Ct. 1111, 122 L.Ed.2d 445].) The concern, essentially, is that a sentence may be aggravated if the defendant actually committed perjury by being untruthful, but not if the defendant merely gave inaccurate testimony because of confusion, mistake, faulty memory, or some other reason besides a willful attempt to impede justice. (*Howard, supra*, 17 Cal.App.4th at p.1005; *Dunnigan, supra*, 507 U.S. at pp. 95–96.)

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3230. Aggravating Factor: Planning, Sophistication, or Professionalism

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the offense was carried out with planning, sophistication, or professionalism.]

<Introductory paragraph for bifurcated trial>

[The People have alleged[in Count[s] __] that the offense was carried out with planning, sophistication, or professionalism.]

To prove this allegation, the People must prove that the defendant's manner of committing the crime involved planning, sophistication, or professionalism.

Whether the manner of committing the crime involves *planning, sophistication, or professionalism* depends on the totality of the circumstances surrounding the offense.

***Planning* refers to conduct before the crime, preparing for its commission.**

***Sophistication* refers to conduct demonstrating knowledge or awareness of the complexities or details involved in committing the crime.**

***Professionalism* refers to conduct demonstrating particular experience or expertise.**

You may not find the allegation true unless all of you agree that the People have proved that the defendant's manner of committing the crime involved planning, sophistication, or professionalism. However, all of you do not need to agree on which act[s] or conduct demonstrates that the manner of committing the crime involves planning, sophistication, or professionalism.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved (this/these) allegation[s] for each crime and return a separate finding for each crime.]

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 March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where the evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factors. California Rules of Court, rule 4.421(a)(8).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- “Planning, Sophistication, Professionalism” Defined. *People v. Mathews* (1980) 102 Cal.App.3d 704, 710 [162 Cal.Rptr. 615]; *People v. Stewart* (1983) 140 Cal.App.3d 11, 17 [189 Cal.Rptr. 141]; *People v. Charron* (1987) 193

Cal.App.3d 981, 994–995 [238 Cal.Rptr. 660]; *People v. Dancer* (1996) 45 Cal.App.4th 1677, 1695 [53 Cal.Rptr.2d 282], disapproved on other grounds in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123 [65 Cal.Rptr.2d 1, 938 P.2d 986].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3231. Aggravating Factor: Great Monetary Value

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the crime[s][in Count[s] __] involved [(a/an)] [attempted] [or] [actual] (taking/ [or] damage) of great monetary value.]

<Introductory paragraph for bifurcated trial>

[The People have alleged that the crime[s][in Count[s] __] involved[(a/an)][attempted][or][actual] (taking/ [or] damage) of great monetary value.]

To prove this allegation, the People must prove that:

1. During the commission of the crime[s], the defendant (attempted to take/ [or] actually took/damaged) _____ *<insert description of item>*;

AND

2. The monetary value of the _____ *<insert description of item or damage to item>* was great.

[In determining whether the *monetary value* was *great*, you may consider all evidence presented on the issue of value.]

You may not find the allegation true unless all of you agree that the People have proved that the (item/damage) that the defendant (attempted to take/took / [or] caused) was of great monetary value. However, all of you do not need to agree on a specific monetary value.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury's determination of the aggravating factors on the defendant's request "[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law." (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(9).
- "Aggravating Fact" Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] ["The essence of 'aggravation' relates to the effect of a particular fact in making the offense distinctively worse than the ordinary"].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- Great Monetary Value. *People v. Wright* (1982) 30 Cal.3d 705, 707 & 714 [180 Cal.Rptr. 196, 639 P.2d 267] [losses of \$2,300 and \$3,250 qualified]; *People v. Berry* (1981) 117 Cal.App.3d 184, 197 [172 Cal.Rptr. 756] [damage

of \$450 did not qualify]; *People v. Bejarano* (1981) 114 Cal.App.3d 693, 705–706 [173 Cal.Rptr. 71] [loss of rifle, shotgun, and television did not qualify].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3232. Aggravating Factor: Large Quantity of Contraband

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] [or of attempting to commit (that/those) crime[s]] [or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the crime[s][in Count[s] __] involved a large quantity of contraband.]

<Introductory paragraph for bifurcated trial>

[The People have alleged that the crime[s][in Count[s] __] involved a large quantity of contraband.]

To prove this allegation, the People must prove that:

- 1. The _____ *<insert description of contraband>* was contraband;**

AND

- 2. The quantity of _____ *<insert description of contraband>* was large.**

[*Contraband* means illegal or prohibited items.]

In determining whether the quantity was *large*, you may consider all evidence presented on the issue of amount.

You may not find the allegation true unless all of you agree that the People have proved that the quantity of contraband was large. However, all of you do not need to agree on the specific quantity.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury's determination of the aggravating factors on the defendant's request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(10).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].

COMMENTARY

Distinctively Worse Than ~~F~~the Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3233. Aggravating Factor: Position of Trust or Confidence

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*, you must then decide whether[, for each crime,] the People have proved the additional allegation[s] that the defendant took advantage of a position of trust or confidence to commit the crime.]

<Introductory paragraph for bifurcated trial>

[The People have alleged[in Count[s]__] that the defendant took advantage of a position of trust or confidence to commit the crime.]

To prove this allegation, the People must prove that:

- 1. (Prior to/During) the commission of the crime, the defendant (had/developed) a relationship with _____ *<insert name of victim or other person>*;**
- 2. This relationship allowed the defendant to occupy a position of trust or caused _____ *<insert name of victim or other person>* to have confidence in the defendant;**

AND

- 3. The defendant took advantage of this position of trust or confidence to commit the crime.**

You may not find the allegation true unless all of you agree that the People have proved that the defendant took advantage of a position of trust or confidence with the victim to commit the crime. However, all of you do not need to agree on which act[s] or conduct constitutes the taking advantage of a position of trust or confidence to commit the crime.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's conduct was distinctively worse than an ordinary commission of the underlying crime.

[You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify which crimes the aggravating factor pertains to if it applies to one or more specific counts.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factor. California Rules of Court, rule 4.421(a)(11).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- Factor Focuses on Special Status to Victim. *People v. DeHoyos* (2013) 57 Cal.4th 79, 155 [158 Cal.Rptr.3d 797, 303 P.3d 1]; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1262–1263 [131 Cal.Rptr.2d 628] [quasi-paternal

relationship]; *People v. Dancer* (1996) 45 Cal.App.4th 1677, 1694–1695 [53 Cal.Rptr.2d 282] [defendant intentionally cultivated friendship], disapproved on other grounds in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123 [65 Cal.Rptr.2d 1, 938 P.2d 986]; *People v. Franklin* (1994) 25 Cal.App.4th 328, 337–338 [30 Cal.Rptr.2d 376] [stepfather entrusted with care]; *People v. Clark* (1992) 12 Cal.App.4th 663, 666 [15 Cal.Rptr.2d 709] [stepfather entrusted with care]; *People v. Jones* (1992) 10 Cal.App.4th 1566, 1577 [14 Cal.Rptr.2d 9] [legal parent].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3234. Aggravating Factor: Serious Danger to Society

<Introductory paragraph for nonbifurcated trial>

[If you find the defendant guilty of the crime[s] charged[in Count[s] __[,]] or of attempting to commit (that/those) crime[s]] or the lesser crimes[s] of _____ *<insert lesser offense[s]>*], you must then decide whether the People have proved the additional allegation that _____ *<insert name of defendant>* has engaged in violent conduct, to wit: _____ *<insert description of conduct>*, which indicates (he/she) is a serious danger to society.]

<Introductory paragraph for bifurcated trial>

[The People have alleged that _____ *<insert name of defendant>* has engaged in violent conduct, to wit: _____ *<insert description of conduct>*, which indicates (he/she) is a serious danger to society.]

To prove this allegation, the People must prove that:

- 1. The defendant has engaged in violent conduct;**

AND

- 2. The violent conduct, considered in light of all the evidence presented[and the defendant's background], shows that the defendant is a serious danger to society.**

[To determine whether the defendant is a serious danger to society, you may consider the defendant's conduct before or after commission of the crime[as well as evidence about the defendant's background].]

You may not find the allegation true unless all of you agree that the People have proved that the defendant engaged in violent conduct that shows (he/she) is a serious danger to society. However, all of you do not need to agree on which violent conduct shows that the defendant is a serious danger to society.

You may not find the allegation true unless all of you agree that the People have proved that the defendant's violent conduct was distinctively worse than that posed by an ordinary commission of the underlying crime and that the violent conduct, considered in light of all the evidence presented[and the

defendant’s background], shows that the defendant is a serious danger to society.

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

*New March 2023; Revised March 2024**

** Denotes changes only to bench notes and other commentaries.*

BENCH NOTES

Instructional Duty

This instruction is provided for the court to use for an aggravating factor as stated in California Rules of Court, rule 4.421. (See Pen. Code, §§ 1170, 1170.1; see also *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856, 166 L.Ed.2d 856].)

Do not give an aggravating factor that is an element of the convicted offense. (Pen. Code, § 1170(b)(5).)

The court should specify the crime(s) to which the aggravating factor pertains.

The court must bifurcate the jury’s determination of the aggravating factors on the defendant’s request “[e]xcept where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law.” (Pen. Code, § 1170(b)(2).) For a bifurcated trial, the court must also give CALCRIM No. 221, *Reasonable Doubt: Bifurcated Trial*.

AUTHORITY

- Aggravating Factors. California Rules of Court, rule 4.421(b)(1).
- “Aggravating Fact” Defined. *People v. Black* (2007) 41 Cal.4th 799, 817 [62 Cal.Rptr.3d 569, 161 P.3d 1130]; *People v. Hicks* (2017) 17 Cal.App.5th 496, 512 [225 Cal.Rptr.3d 682]; *People v. Zamarron* (1994) 30 Cal.App.4th 865, 872 [36 Cal.Rptr.2d 17]; *People v. Moreno* (1982) 128 Cal.App.3d 103, 110 [179 Cal.Rptr. 879] [“The essence of ‘aggravation’ relates to the effect of a particular fact in making the offense distinctively worse than the ordinary”].
- Unanimity Not Required Regarding Facts Underlying the Aggravating Factor. *People v. McDaniel* (2021) 12 Cal.5th 97, 142–148 [283 Cal.Rptr.3d 32, 493 P.3d 815].
- Danger to Society: Subsequent Conduct Can Be Considered. *People v. Gonzales* (1989) 208 Cal.App.3d 1170, 1173 [256 Cal.Rptr. 669].

COMMENTARY

Distinctively Worse Than ~~T~~he Ordinary

The committee is aware of *Johnson v. United States* (2015) 576 U.S. 591, 597–598 [135 S.Ct. 2551, 192 L.Ed.2d 569], in which the United States Supreme Court held that determining what constitutes an “ordinary” violation of a criminal statute may create a constitutional vagueness problem. Nevertheless, in light of California case law that has never been disapproved (see, e.g., *People v. Moreno, supra*, 128 Cal.App.3d at p.110), the committee has elected to include in the instruction the state law requirement that an aggravating factor may not be found to be true unless the defendant’s conduct was distinctively worse than an ordinary commission of the underlying crime.

RELATED ISSUES

Prohibition Against Dual Use of Facts at Sentencing

The jury may find true multiple aggravating factors based on the same underlying fact. However, at sentencing, a single underlying fact may not support more than one aggravating factor. (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680 [276 Cal.Rptr. 631].)

3517. Deliberations and Completion of Verdict Forms: For Use When Lesser Included Offenses and Greater Crimes Are Not Separately Charged and the Jury Receives Guilty and Not Guilty Verdict Forms for Greater and Lesser Offenses (Non-Homicide)

If all of you find that the defendant is not guilty of a greater charged crime, you may find (him/her) guilty of a lesser crime if you are convinced beyond a reasonable doubt that the defendant is guilty of that lesser crime. A defendant may not be convicted of both a greater and lesser crime for the same conduct.

[Now I will explain to you the crimes affected by this instruction [including lesser crimes of the lesser crimes]:]

[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]
[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]
[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]

It is up to you to decide the order in which you consider the greater and lesser each crimes and the relevant evidence, ~~but~~ You do not have to reach a verdict on the greater crime before considering a lesser crime. However, I can accept a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime.

<Give the following paragraphs if the jury has separate guilty and not guilty forms for both greater and lesser offenses pursuant to Stone v. Superior Court. >

[[For (the/any) count in which a greater and lesser crime is charged,] (Y/y)ou will receive verdict forms of guilty and not guilty for the greater crime and also verdict forms of guilty and not guilty for the lesser crime. Follow these directions before you give me any completed and signed, final verdict form. Return any unused verdict forms to me, unsigned.

1. **If all of you agree the People have proved that the defendant is guilty of the greater crime, complete and sign the verdict form for guilty of that crime. Do not complete or sign any other verdict form [for that count].**
2. **If all of you cannot agree whether the People have proved that the defendant is guilty of the greater crime, inform me only that you cannot reach an agreement and do not complete or sign any verdict form [for that count].**
3. **If all of you agree that the People have not proved that the defendant is guilty of the greater crime and you also agree that the People have proved that (he/she) is guilty of the lesser crime, complete and sign the verdict form for not guilty of the greater crime and the verdict form for guilty of the lesser crime.**
4. **If all of you agree the People have not proved that the defendant is guilty of the greater or lesser crime, complete and sign the verdict form for not guilty of the greater crime and the verdict form for not guilty of the lesser crime.**
5. **If all of you agree the People have not proved that the defendant is guilty of the greater crime, but all of you cannot agree on a verdict for the lesser crime, complete and sign the verdict form for not guilty of the greater crime and inform me only that you cannot reach an agreement about the lesser crime.]**

<Give the following paragraphs if the jury has a combined verdict form for both greater and lesser offenses.>

[[For (the/any) charge with a lesser crime,] (Y/y)ou will receive a form for indicating your verdict on both the greater crime and the lesser crime. The greater crime is listed first. When you have reached a verdict, have the foreperson complete the form, sign, and date it. Follow these directions before writing anything on the form.

1. **If all of you agree that the People have proved that the defendant is guilty of the greater crime as charged, (write “guilty” in the blank/circle the word “guilty”/check the box for “guilty”) for that crime, then sign, date, and return the form. Do not (write/circle/check) anything for the lesser crime.**

2. If all of you cannot agree whether the People have proved that the defendant is guilty of the greater crime as charged, inform me only that you cannot reach an agreement and do not write anything on the verdict form.
3. If all of you agree that the People have not proved that the defendant is guilty of the greater crime and you also agree that the People have proved that (he/she) is guilty of the lesser crime, (write “not guilty” in the blank/circle the words “not guilty”/check the box for “not guilty”) for the greater crime and (write “guilty” in the blank/circle the word “guilty”/check the box for “guilty”) for the lesser crime. You must not (write/circle/check) anything for the lesser crime unless you have (written/circled/checked) “not guilty” for the greater crime.
4. If all of you agree that the People have not proved that the defendant is guilty of either the greater or the lesser crime, (write “not guilty” in the blank/circle the words “not guilty”/check the box for “not guilty”) for both the greater crime and the lesser crime.
5. If all of you agree that the People have not proved that the defendant is guilty of the greater crime, but all of you cannot agree on a verdict for the lesser crime, (write “not guilty” in the blank/circle the words “not guilty”/check the box for “not guilty”) for the greater crime, then sign, date, and return the form. Do not (write/circle/check) anything for the lesser crime, and inform me only that you cannot reach an agreement about that crime.]

Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].

New January 2006; Revised August 2006, June 2007, February 2012, August 2012, February 2015, March 2024

BENCH NOTES

Instructional Duty

If lesser included crimes are not charged separately and the jury receives only one verdict form for each count, the court should use CALCRIM No. 3518 instead of this instruction. For separately charged greater and lesser included offenses, use CALCRIM No. 3519.

In all cases in which one or more lesser included offenses are submitted to the jury, whether charged or not, the court has a **sua sponte** duty to instruct on the applicable procedures. (*People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555-557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense, must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309-310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser included offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].)

In *Stone v. Superior Court*, *supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser included offenses. The court later referred to this “as a judicially declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 328 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses not to follow the procedure suggested in *Stone*, the court may give CALCRIM No. 3518 in place of this instruction.

Do not give this instruction for charges of murder or manslaughter; instead give the appropriate homicide instruction for lesser included offenses: CALCRIM No. 640, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With First Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, CALCRIM No. 641, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*, CALCRIM No. 642, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, or CALCRIM No. 643, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*.

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields*, *supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict

of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields, supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

The court may not control the sequence in which the jury considers the offenses. (*People v. Kurtzman, supra*, 46 Cal.3d at p. 330.)

AUTHORITY

- Lesser Included Offenses—Duty to Instruct. Pen. Code, § 1159; *People v. Breverman, supra*, ~~(1998)~~ 19 Cal.4th at p.142, 162 [~~77 Cal.Rptr.2d 870, 960 P.2d 1094~~].
- Lesser Included Offenses—Standard. *People v. Birks* (1998) 19 Cal.4th 108, 117 [77 Cal.Rptr.2d 848, 960 P.2d 1073].
- Reasonable Doubt as to Degree or Level of Offense. Pen. Code, § 1097; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Retrial on Greater. Pen. Code, § 1023; *People v. Fields, supra*, ~~(1996)~~ 13 Cal.4th at pp.289, 309–310 [~~52 Cal.Rptr.2d 282, 914 P.2d 832~~]; *People v. Kurtzman, supra*, ~~(1988)~~ 46 Cal.3d at p.322, 329 [~~250 Cal.Rptr. 244, 758 P.2d 572~~].
- Court May Ask Jury to Reconsider Conviction on Lesser If Jury Deadlocked on Greater. Pen. Code, § 1161; *People v. Fields, supra*, ~~(1996)~~ 13 Cal.4th at p.289, 310 [~~52 Cal.Rptr.2d 282, 914 P.2d 832~~].
- Must Permit Partial Verdict of Acquittal on Greater. *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].

RELATED ISSUES

Duty to Instruct on Lesser

The court has a **sua sponte** duty to instruct “on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation] but not when there is no evidence that the offense was less than that charged. [Citations.] The obligation to instruct on lesser included offenses exists even

when as a matter of trial tactics a defendant not only fails to request the instruction but expressly objects to its being given. [Citations.] Just as the People have no legitimate interest in obtaining a conviction of a greater offense than that established by the evidence, a defendant has no right to an acquittal when that evidence is sufficient to establish a lesser included offense. [Citations.]” (*People v. Breverman*, supra, ~~(1998)~~ 19 Cal.4th at pp.142, 154–155 [~~77 Cal.Rptr.2d 870, 960 P.2d 1094~~].)

Acquittal of Greater Does Not Bar Retrial of Lesser

Where the jury acquits of a greater offense but deadlocks on the lesser, retrial of the lesser is not barred. (*People v. Smith* (1983) 33 Cal.3d 596, 602 [189 Cal.Rptr. 862, 659 P.2d 1152].)

Lesser Included Offenses Barred by Statute of Limitations

The defendant may waive the statute of limitations to obtain a jury instruction on a lesser offense that would otherwise be time-barred. (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 373 [58 Cal.Rptr.2d 458, 926 P.2d 438].) However, the court has no sua sponte duty to instruct on a lesser that is time-barred. (*People v. Diedrich* (1982) 31 Cal.3d 263, 283 [182 Cal.Rptr. 354, 643 P.2d 971].) If the court instructs on an uncharged lesser offense that is time-barred without obtaining an explicit waiver from the defendant, it is unclear if the defendant must object at that time in order to raise the issue on appeal or if the defendant may raise the issue for the first time on appeal. (See *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1145–1151 [90 Cal.Rptr.2d 885] [reasoning criticized in *People v. Smith* (2002) 98 Cal.App.4th 1182, 1193–1194 [120 Cal.Rptr.2d 185]].) The better practice is to obtain an explicit waiver on the statute of limitations when instructing on a time-barred lesser.

Conviction of Greater and Lesser

The defendant cannot be convicted of a greater and a lesser included offense. (*People v. Moran* (1970) 1 Cal.3d 755, 763 [83 Cal.Rptr. 411, 463 P.2d 763].) If the evidence supports the conviction on the greater offense, the conviction on the lesser included offense should be set aside. (*Ibid.*)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, §§ 708-712.

6 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Judgment, § 70.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.03[2][g], 85.05, 85.20 (Matthew Bender).

3518. Deliberations and Completion of Verdict Forms: For Use When Lesser Included Offenses and Greater Crimes Are Not Separately Charged and Jury Is Given Only One Not Guilty Verdict Form for Each Count (Non-Homicide)

If all of you find that the defendant is not guilty of a greater charged crime, you may find (him/her) guilty of a lesser crime if you are convinced beyond a reasonable doubt that the defendant is guilty of that lesser crime. A defendant may not be convicted of both a greater and lesser crime for the same conduct.

[Now I will explain to you the crimes affected by this instruction [including lesser crimes of the lesser crimes]:]

[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]
[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]
[_____ <insert crime> is a lesser crime of
_____ <insert crime> [charged in Count ____].]

It is up to you to decide the order in which you consider the greater and lesser each crimes and the relevant evidence. You do not have to reach a verdict on the greater crime before considering a lesser crime. However, but I can accept a verdict of guilty of a lesser crime only if you have found the defendant not guilty of the corresponding greater crime.

[For count[s] ____, you will receive (a/multiple) verdict form[s]. Follow these directions before you give me any completed and signed final verdict form. Return any unused verdict forms to me, unsigned.

1. If all of you agree the People have proved that the defendant is guilty of the greater crime, complete and sign the verdict form for guilty of that crime. Do not complete or sign any other verdict form [for that count].
2. If all of you agree the People have not proved that the defendant is guilty of the greater crime and also agree the People have proved that (he/she) is guilty of (the/a) lesser crime, complete and sign the verdict

form for guilty of the lesser crime. Do not complete or sign any other verdict form[s] [for that count].

3. If all of you agree the People have not proved that the defendant is guilty of the greater or lesser crime, complete and sign the verdict form for not guilty.
4. If all of you cannot agree whether the People have proved that the defendant is guilty of a charged or lesser crime, inform me only that you cannot reach agreement [as to that count] and do not complete or sign any verdict form [for that count].

Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].

New January 2006; Revised August 2006, June 2007, April 2010, February 2012, August 2012, February 2015, March 2024

BENCH NOTES

Instructional Duty

If lesser crimes are not charged separately and the jury receives separate not guilty and guilty verdict forms for each count, the court should use CALCRIM No. 3517 instead of this instruction. -For separately charged greater and lesser included offenses, use CALCRIM No. 3519.

In all cases in which one or more lesser included offenses are submitted to the jury, whether charged or not, the court has a **sua sponte** duty to instruct on the applicable procedures. (*People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555-557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense, must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309-310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of lesser included offense unless it has concluded that defendant is not guilty of greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render verdict of partial acquittal on greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].)

In *Stone v. Superior Court, supra*, 31 Cal.3d at p. 519, the Supreme Court suggested that the trial court provide the jury with verdict forms of guilty/not guilty on each of the charged and lesser included offenses. The court later referred to this “as a judicially

declared rule of criminal procedure.” (*People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].) However, this is not a mandatory procedure. (*Ibid.*) If the court chooses to follow the procedure suggested in *Stone*, the court should give CALCRIM No. 3517 in place of this instruction.

Do not give this instruction for charges of murder or manslaughter; instead give the appropriate homicide instruction for lesser included offenses: CALCRIM No. 640, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With First Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, CALCRIM No. 641, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*, CALCRIM No. 642, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, or CALCRIM No. 643, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*.

The court should tell the jury it may not return a guilty verdict on a lesser included offense unless it has found the defendant not guilty of the greater offense. (*People v. Fields, supra*, 13 Cal.4th at pp. 310–311.) If the jury announces that it is deadlocked on the greater offense but, despite the court’s instructions, has returned a guilty verdict on the lesser included offense, the court should again instruct the jury that it may not convict of the lesser included offense unless it has found the defendant not guilty of the greater offense. (*Ibid.*) The court should direct the jury to reconsider the “lone verdict of conviction of the lesser included offense” in light of this instruction. (*Ibid.*; Pen. Code, § 1161.) If the jury is deadlocked on the greater offense but the court nevertheless records a guilty verdict on the lesser included offense and then discharges the jury, retrial on the greater offense will be barred. (*People v. Fields, supra*, 13 Cal.4th at p. 307; Pen. Code, § 1023.)

The court may not control the sequence in which the jury considers the offenses. (*People v. Kurtzman, supra*, 46 Cal.3d at p. 330.)

AUTHORITY

- Lesser Included Offenses—Duty to Instruct. Pen. Code, § 1159; *People v. Breverman, supra*, (1998) 19 Cal.4th at p.142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094].
- Lesser Included Offenses—Standard. *People v. Birks* (1998) 19 Cal.4th 108, 117 [77 Cal.Rptr.2d 848, 960 P.2d 1073].

- Reasonable Doubt as to Degree or Level of Offense. Pen. Code, § 1097; *People v. Dewberry* (1959) 51 Cal.2d 548, 555–557 [334 P.2d 852].
- Conviction of Lesser Precludes Retrial on Greater. Pen. Code, § 1023; *People v. Fields* (1996) 13 Cal.4th 289, 309–310 [52 Cal.Rptr.2d 282, 914 P.2d 832]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
- Court May Ask Jury to Reconsider Conviction on Lesser If Jury Deadlocked on Greater. Pen. Code, § 1161; *People v. Fields*, ~~*supra*, (1996)~~ 13 Cal.4th ~~at p.289~~, 310 ~~[52 Cal.Rptr.2d 282, 914 P.2d 832]~~.
- Must Permit Partial Verdict of Acquittal on Greater. *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809].

RELATED ISSUES

Duty to Instruct on Lesser

The court has a **sua sponte** duty to instruct “on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation] but not when there is no evidence that the offense was less than that charged. [Citations.] The obligation to instruct on lesser included offenses exists even when as a matter of trial tactics a defendant not only fails to request the instruction but expressly objects to its being given. [Citations.] Just as the People have no legitimate interest in obtaining a conviction of a greater offense than that established by the evidence, a defendant has no right to an acquittal when that evidence is sufficient to establish a lesser included offense. [Citations.]” (*People v. Breverman*, ~~*supra*, (1998)~~ 19 Cal.4th ~~at pp.142~~, 154–155 ~~[77 Cal.Rptr.2d 870, 960 P.2d 1094]~~.)

Acquittal of Greater Does Not Bar Retrial of Lesser

When the jury acquits of a greater offense but deadlocks on the lesser, retrial of the lesser is not barred. (*People v. Smith* (1983) 33 Cal.3d 596, 602 [189 Cal.Rptr. 862, 659 P.2d 1152].)

Lesser Included Offenses Barred by Statute of Limitations

The defendant may waive the statute of limitations to obtain a jury instruction on a lesser offense that would otherwise be time-barred. (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 373 [58 Cal.Rptr.2d 458, 926 P.2d 438].) However, the court has no sua sponte duty to instruct on a lesser that is time-barred. (*People v. Diedrich* (1982) 31 Cal.3d 263, 283 [182 Cal.Rptr. 354, 643 P.2d 971].) If the court instructs on an uncharged lesser offense that is time-barred without obtaining an explicit waiver from the defendant, it is unclear if the defendant must object at that time in order to raise the issue on appeal or if the defendant may raise the issue for the first time on appeal. (See *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1145–1151 [90 Cal.Rptr.2d 885] [reasoning criticized in *People v.*

Smith (2002) 98 Cal.App.4th 1182, 1193–1194 [120 Cal.Rptr.2d 185].) The better practice is to obtain an explicit waiver on the statute of limitations when instructing on a time-barred lesser.

Conviction of Greater and Lesser

The defendant cannot be convicted of a greater and a lesser included offense. (*People v. Moran* (1970) 1 Cal.3d 755, 763 [83 Cal.Rptr. 411, 463 P.2d 763].) If the evidence supports the conviction on the greater offense, the conviction on the lesser included offense should be set aside. (*Ibid.*)

SECONDARY SOURCES

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, §§ 708–712.

6 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Judgment, § 70.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.03[2][g], 85.05, 85.20 (Matthew Bender).

**3519. Deliberations and Completion of Verdict Forms: Lesser Offenses—
For Use When Lesser Included Offenses and Greater Crimes Are
Separately Charged (Non-Homicide)**

If all of you find that the defendant is not guilty of a greater charged crime, you may find (him/her) guilty of a lesser crime if you are convinced beyond a reasonable doubt that the defendant is guilty of that lesser crime. A defendant may not be convicted of both a greater and lesser crime for the same conduct.

[Now I will explain to you the crimes affected by this instruction [including lesser crimes of the lesser crimes]:]

[_____ <insert crime>, as charged in Count ____, is a lesser crime to _____ <insert crime> [as charged in Count ____].]
[_____ <insert crime>, as charged in Count ____, is a lesser crime to _____ <insert crime> [as charged in Count ____].]
[_____ <insert crime>, as charged in Count ____, is a lesser crime to _____ <insert crime> [as charged in Count ____].]

It is up to you to decide the order in which you consider ~~the each~~ greater and lesser crimes and the relevant evidence. **You do not have to reach a verdict on the greater crime before considering a lesser crime. However, but** I can accept a verdict of guilty of the lesser crime only if you have found the defendant not guilty of the greater crime.

[[For (the/any) count in which a greater and lesser crime is charged,] (Y/y)ou will receive verdict forms of guilty and not guilty for [each/the] greater crime and lesser crime. Follow these directions before you give me any completed and signed, final verdict form. Return any unused verdict forms to me, unsigned.

1. If all of you agree the People have proved that the defendant is guilty of the greater crime, complete and sign the verdict form for guilty of that crime. Do not complete or sign any verdict form for the [corresponding] lesser crime.
2. If all of you cannot agree whether the People have proved that the defendant is guilty of the greater crime, inform me of your disagreement and do not complete or sign any verdict form for that

crime or the [corresponding] lesser crime.

3. **If all of you agree the People have not proved that the defendant is guilty of the greater crime and also agree the People have proved that (he/she) is guilty of the lesser crime, complete and sign the verdict form for not guilty of the greater crime and the verdict form for guilty of the [corresponding] lesser crime. Do not complete or sign any other verdict forms [for those charges].**
4. **If all of you agree the People have not proved that the defendant is guilty of the greater or lesser crime, complete and sign the verdict form for not guilty of the greater crime and the verdict form for not guilty of the [corresponding] lesser crime.**
5. **If all of you agree the People have not proved that the defendant is guilty of the greater crime, but all of you cannot agree on a verdict for the lesser crime, complete and sign the verdict form for not guilty of the greater crime and inform me about your disagreement on the lesser crime.]**

Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].

New June 2007, Revised August 2012, February 2015, March 2024

BENCH NOTES

Instructional Duty

In all cases in which one or more lesser included offenses are submitted to the jury, whether charged or not, the court has a sua sponte duty to instruct on the applicable procedures. (*People v. Breverman* (1998) 19 Cal.4th 142, 162 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [duty to instruct on lesser included offenses]; *People v. Dewberry* (1959) 51 Cal.2d 548, 555-557 [334 P.2d 852] [duty to instruct that if jury has reasonable doubt of greater offense, must acquit of that charge]; *People v. Fields* (1996) 13 Cal.4th 289, 309-310 [52 Cal.Rptr.2d 282, 914 P.2d 832] [duty to instruct that jury cannot convict of a lesser included offense unless it has concluded that defendant is not guilty of the greater offense]; *Stone v. Superior Court* (1982) 31 Cal.3d 503, 519 [183 Cal.Rptr. 647, 646 P.2d 809] [duty to give jury opportunity to render a verdict of partial acquittal on a greater offense], clarified in *People v. Marshall* (1996) 13 Cal.4th 799, 826 [55 Cal.Rptr.2d 347, 919 P.2d 1280] [no duty to inquire about partial acquittal in absence of indication jury may have found defendant not guilty of greater offense].-)

Whenever greater and lesser included crimes are separately charged the court must use this instruction instead of CALCRIM No. 3517 or CALCRIM No. 3518.

Do not give this instruction for charges of murder or manslaughter; instead give the appropriate homicide instruction for lesser included offenses: CALCRIM No. 640, *Deliberations and Completion of Verdict Forms: For Use When Defendant is Charged With First Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, CALCRIM No. 641, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*, CALCRIM No. 642, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide*, or CALCRIM No. 643, *Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With Second Degree Murder and Jury Is Given Only One Not Guilty Verdict Form for Each Count; Not to Be Used When Both Voluntary and Involuntary Manslaughter Are Lesser Included Offenses*.

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The court may not control the sequence in which the jury considers the offenses. (*People v. Kurtzman, supra*, 46 Cal.3d at p. 330.)

AUTHORITY

- Lesser Included Offenses—Duty to Instruct. Pen. Code, § 1159; *People v. Breverman, supra*, (1998) 19 Cal.4th at p.142, 162 [~~77 Cal.Rptr.2d 870, 960 P.2d 1094~~].
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- Conviction of Lesser Precludes Retrial on Greater. Pen. Code, § 1023; *People v. Fields*, supra, ~~(1996)~~ 13 Cal.4th at pp.289, 309–310 [~~52 Cal.Rptr.2d 282, 914 P.2d 832~~]; *People v. Kurtzman* (1988) 46 Cal.3d 322, 329 [250 Cal.Rptr. 244, 758 P.2d 572].
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- Must Permit Partial Verdict of Acquittal on Greater. *People v. Marshall*, supra, ~~(1996)~~ 13 Cal.4th at p.799, 826 [~~55 Cal.Rptr.2d 347, 919 P.2d 1280~~]; *Stone v. Superior Court*, supra, ~~(1982)~~ 31 Cal.3d at p.503, 519 [~~183 Cal.Rptr. 647, 646 P.2d 809~~].

RELATED ISSUES

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The defendant may waive the statute of limitations to obtain a jury instruction on a lesser offense that would otherwise be time-barred. (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 373 [58 Cal.Rptr.2d 458, 926 P.2d 438].) However, the court has no sua sponte duty to instruct on a lesser that is time-barred. (*People v. Diedrich* (1982) 31 Cal.3d 263, 283 [182 Cal.Rptr. 354, 643 P.2d 971].) If the court instructs on an uncharged lesser offense that is time-barred without obtaining an explicit waiver from the defendant, it is unclear if the defendant must object at that time in order to raise the issue on appeal or if the defendant may raise the issue for the first time on appeal. (See *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1145–1151 [90 Cal.Rptr.2d 885] [reasoning criticized in *People v. Smith* (2002) 98 Cal.App.4th 1182, 1193–1194 [120 Cal.Rptr.2d 185]].) The better

practice is to obtain an explicit waiver on the statute of limitations when instructing on a time-barred lesser.

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The defendant cannot be convicted of a greater and a lesser included offense. (*People v. Moran* (1970) 1 Cal.3d 755, 763 [83 Cal.Rptr. 411, 463 P.2d 763].) If the evidence supports the conviction on the greater offense, the conviction on the lesser included offense should be set aside. (*Ibid.*)

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5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial, §§ 708-712.

6 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Judgment, § 70.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.03[2][g], 85.05, 85.20 (Matthew Bender).



JUDICIAL COUNCIL OF CALIFORNIA

CRIMINAL JUSTICE SERVICES

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MEMORANDUM

Date

January 26, 2024

To

Members of the Rules Committee

From

Criminal Law Advisory Committee
Brian M. Hoffstadt, Chair

Subject

Amendment of Annual Agenda and
Formation of Pretrial Policy and Data
Subcommittee

Action Requested

Approve Amendment of Annual Agenda
with Formation of New Subcommittee

Deadline

February 7, 2024

Contact

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Deirdre.Benedict@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee (CLAC) requests amendment of its annual agenda, including approval of the creation of the Pretrial Policy and Data Subcommittee as a standing CLAC subcommittee to address the increased scope of pretrial justice issues. The subcommittee will consider statewide pretrial issues, including bail practices, pretrial release decisions, conditions of pretrial release, and the use of pretrial risk assessments, and develop and recommend to the Judicial Council any appropriate rules, forms, and standards of judicial administration regarding pretrial release issues.

Action Requested

The Criminal Law Advisory Committee asks the Rules Committee to:

Approve amending the 2024 Annual Agenda of the Criminal Law Advisory Committee to include a new standing subcommittee, the Pretrial Policy and Data Subcommittee.

Basis for Request

Starting in 2017, former Chief Justice Tani Cantil-Sakauye created two distinct workgroups to address pretrial justice: the Pretrial Detention Reform Workgroup and the Pretrial Reform and Operations Workgroup.¹ However, these workgroups have now sunsetted.

As a continuation of the judicial branch’s work on pretrial justice issues, the Budget Act of 2021 (Sen. Bill 129) allocated \$140 million to the Judicial Council for the implementation and operation of ongoing court programs and practices that “promote the safe, efficient, fair, and timely pretrial release of individuals booked into jail.”² The California Pretrial Release Program within the Judicial Council’s Criminal Justice Services office administers this funding to courts.

Several important policy questions related to pretrial justice have arisen during the administration of SB 129 funds, highlighting the need for a judicial branch committee to address emerging issues and provide guidance as courts navigate this complicated, nuanced, and high-profile landscape. These issues fall within the purview of CLAC, whose charge is to make recommendations to the council for improving the administration of criminal justice. (Cal. Rules of Court, rule 10.42(a).) That advisory committee currently has several members with extensive pretrial experience to draw upon to develop recommendations for statewide guidance to ensure the success of pretrial release and detention reform and wishes to form a standing subcommittee to consider these issues.

Pretrial issues that have statewide impact and implications include:

- The use of bail and the application of *In re Humphrey* (2021) 11 Cal.5th 135, including the development of court rules and forms, as needed.
- The imposition of pretrial release conditions and the use of “least restrictive” monitoring, which would benefit from judicial ownership and leadership.
- The evaluation of bias or disparate effect in pretrial decision-making and mitigation of any bias or disparate effects found.
- The identification of emerging pretrial practices.

¹ Established in 2016, the Pretrial Detention Reform Workgroup was tasked with providing analysis and recommendations for identifying better ways for courts to make pretrial release decisions. In its 2017 report, the workgroup identified some of the challenges related to pretrial justice and made recommendations to improve pretrial practices and procedures. The workgroup sunsetted in 2017 upon submitting its report (available at www.courts.ca.gov/documents/PDRReport-20171023.pdf).

In January 2019, the Pretrial Reform and Operations Workgroup was established to investigate the use of pretrial risk assessment instruments in the pretrial context as well as to develop recommendations for the application process, selection criteria, and funding allocations of a pretrial pilot program. This pretrial pilot program involved 16 courts over a three-year period and was funded by a one-time \$75 million allocation through the Budget Act of 2019. The workgroup sunsetted in January 2021 upon submitting its final report on pretrial risk assessment instruments and areas for future policy development.

² Sen. Bill 129, § 4, item 0250-101-0001, provision 9.

- The proper role of actuarial risk assessment tools in California, and a plan for evaluation and modifications based on data.
- The annual review of authorizing legislation and consideration of amendments or revisions, if appropriate.

A new standing subcommittee would aid CLAC in considering all these issues, and development of recommendations to the council regarding them.

New Subcommittee

The Criminal Law Advisory Committee proposes creating the Pretrial Policy and Data Subcommittee and that it be added to its Annual Agenda as a standing subcommittee. The specifications for the items would be as follows:

- **Project Summary:** The subcommittee will consider statewide pretrial issues, including bail practices, pretrial release decisions, conditions of pretrial release, and the use of pretrial risk assessments. This includes the development of recommendations to the council of necessary or appropriate rules, forms, and standards of judicial administration regarding pretrial release issues.
- **Origin of Project:** The subcommittee will build on the Pretrial Detention Reform Workgroup's *Recommendations to the Chief Justice* (Oct. 2017) and *Pretrial Reform and Operations Workgroup Update and Recommendations on Use of Pretrial Risk Assessment Instruments* (Nov. 13, 2020).³
- **Resources:** Committee staff and SB 129 pretrial funding specifically allocated for Judicial Council of California administration.
- **Completion Date:** Subcommittee would be ongoing.

The subcommittee would meet primarily by videoconference; however, SB 129 pretrial funds are available for any in-person meeting costs that may be necessary, and which are approved by the Executive Office. The subcommittee would be supported by the Criminal Justice Services office, with lead support provided by the Pretrial Unit's Supervising Analyst and the Research Unit's Senior Analyst.

Any rule, form, and/or legislative proposal that originates in the subcommittee would follow normal procedure and be reviewed by CLAC before recommendation to the Rules Committee or the Legislation Committee for approval.

³ Available at <https://jcc.legistar.com/View.ashx?M=F&ID=8870018&GUID=AFC468B3-B307-45AC-9AB2-A77DE0A692C9>.

This pretrial justice work aligns with CLAC's charge to make recommendations to the council for improving the administration of justice in criminal proceedings. (Cal. Rules of Court, rule [10.42\(a\)](#)). It is anticipated that the subcommittee may eventually also undertake additional duties and provide statewide guidance directly to the courts. Although this is outside the realm of the rule-making processes typically undertaken by CLAC and other advisory bodies that are overseen by the Rules Committee, it is similar to additional duties performed by other Judicial Council advisory committees, such as the Collaborative Justice Courts Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and the Court Executives Advisory Committee. However, before any such action is taken, CLAC will seek amendment of California Rule of Court 10.42 to add such additional duties to its charge and, if successful, will add any such projects to its annual agenda after the rule has been amended.

Membership of New Subcommittee

If approved, the Pretrial Policy and Data Subcommittee would include the seven CLAC members listed below.

- Hon. Lisa R. Rodriguez, Judge of the Superior Court of California, County of San Diego. Judge Rodriguez would serve as the chair of the subcommittee. Judge Rodriguez currently serves as vice-chair of the Criminal Law Advisory Committee. She also served as cochair of the Pretrial Detention Reform Workgroup.
- Ms. Laura Arnold, Senior Deputy Public Defender, Office of the Public Defender, County of Santa Barbara.
- Ms. Melissa Fowler-Bradley, Court Executive Officer, Superior Court of California, County of Shasta.
- Mr. John Keene, Chief Probation Officer, San Mateo County Probation Department.
- Hon. Serena R. Murillo, Judge of the Superior Court of California, County of Los Angeles.
- Ms. Anabel Z. Romero, Court Executive Officer, Superior Court of California, County of San Bernardino.
- Mr. Stephen M. Wagstaffe, District Attorney, San Mateo County District Attorney's Office.

Six non-advisory body members will be recruited to ensure sufficient expertise in this area of criminal law and to provide technical and policy expertise to the subcommittee, at the subcommittee's request. CLAC will seek approval of these non-advisory body members from the Executive Office and the Rules Committee at a later date.

Criminal Law Advisory Committee
Annual Agenda¹—2024
Approved by Rules Committee:

I. COMMITTEE INFORMATION

Chair:	Hon. Brian M. Hoffstadt, Chair, Associate Justice of the Court of Appeal, Second Appellate District Hon. Lisa Rodriguez, Vice Chair, Judge, Superior Court of San Diego County
Lead Staff:	Sarah Fleischer-Ihn, Attorney, Criminal Justice Services Office
Committee's Charge/Membership: Rule 10.42(a) of the California Rules of Court states the charge of the Criminal Law Advisory Committee, which is to make recommendations to the Judicial Council for improving the administration of justice in criminal proceedings. Rule 10.42(b) sets forth the membership categories of the committee. The Criminal Law Advisory Committee currently has 21 voting members. The current committee roster is available on the committee's webpage.	
Subcommittees/Working Groups²: <ol style="list-style-type: none">1. New - Pretrial Policy and Data Subcommittee. This subcommittee will consider bail and pretrial-related legislation and recommendations on statewide pretrial issues, including bail practices, pretrial release decisions, conditions of pretrial release, and the use of pretrial risk assessments.2. New – Racial Justice Act working group to develop rules and forms to implement the Racial Justice Act and related legislation3. Protective Orders Working Group (POWG)4. Joint subcommittee to review mental health legislation with the Collaborative Justice Courts Advisory Committee	

¹ The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

² California Rules of Court, rule 10.30 (c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body's duties, subject to available resources, with the approval of its oversight committee.

Meetings Planned for 2024³ (Advisory body and all subcommittees and working groups)

Date/Time/Location or Teleconference:

- January 2024 (in-person meeting to discuss and review winter and spring cycle proposals)
- February/March 2024 (videoconference to discuss and review spring cycle proposals, make final recommendations of winter cycle proposals, and discuss pending legislation)
- April 2024 (videoconference to discuss pending legislation)
- May 2024 (videoconference to discuss pending legislation)
- June 2024 (videoconference to discuss pending legislation)
- July 2024 (videoconference to make final recommendations on spring cycle proposals and discuss pending legislation)
- August 2024 (videoconference to discuss pending legislation)
- September 2024 (videoconference to discuss pending legislation)
- November 2024 (videoconference to discuss winter cycle proposals)
- Other videoconference meetings as needed to address urgent items

Subcommittee Meetings:

- Pretrial Policy and Data Subcommittee: as needed to work on rule and form proposals and reviewing legislation
- Racial Justice Act Working Group: as needed to work on rule and form proposals
- Protective Orders Working Group (POWG): as needed to work on rule and form proposals
- Joint subcommittee to review mental health legislation with the Collaborative Justice Courts Advisory Committee: as needed from February through September to review proposed legislation

Check here if exception to policy is granted by Executive Office or rule of court.

³ Refer to [Operating Standards for Judicial Council Advisory Bodies](#) for governance on in-person meetings.

II. COMMITTEE PROJECTS

#	New or One-Time Projects ⁴	
1.	<i>Amend California Rules of Court, rule 4.433, Matters to be considered at time set for sentencing</i>	<p><i>Priority 1(a)</i>⁵</p> <p><i>Strategic Plan Goal IV</i>⁶</p>
<p>Project Summary⁷: Amend California Rules of Court, rule 4.433, Matters to be considered at time set for sentencing, to update references to the parole or postrelease community supervision period. Rule 4.433 currently states that the sentencing judge must inform the defendant under Penal Code section 1170(c) of the parole period provided by section 3000 to be served after the expiration of the sentence. Section 1170(c) was amended by AB 1156 (Stats. 2015, ch. 378) to add references to a parole period provided by section 3000.08 or postrelease community supervision in section 3451.</p> <p>Status/Timeline: Anticipate circulating for comment in spring 2024, for an effective date of January 1, 2025.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the amended rule for the committee.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial courts</p> <p>AC Collaboration: None</p>		

⁴ All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

⁵ For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to or accurately reflect the law; 1(b) Council or an internal committee has directed the committee to consider new or amended rules and forms; 1(c) Change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(d) Proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk. 2(a) Useful, but not necessary, to implement changes in law; 2(b) Responsive to identified concerns or problems; 2(c) Helpful in otherwise advancing Judicial Council goals and objectives.

⁶ Indicate which goal number of The Strategic Plan for California’s Judicial Branch the project most closely aligns.

⁷ A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	New or One-Time Projects ⁴	
2.	<i>Revise the optional felony plea form (form CR-101)</i>	<i>Priority 1(a)</i>
		<i>Strategic Plan Goal IV</i>
<p>Project Summary: Revise the felony plea form advisement on parole violations to state that a parole violation may result in a return to state prison if the defendant is convicted of a crime that is subject to parole pursuant to Penal Code section 3000.1 or 3000(b)(4) and delete references to the Department of Juvenile Justice.</p> <p>Status/Timeline: Anticipate circulating for comment in spring 2024, for an effective date of January 1, 2025.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the revised form for the committee.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial courts</p> <p>AC Collaboration: None</p>		

#	New or One-Time Projects	
3.	Revise the optional misdemeanor domestic violence plea form (form CR-102)	Priority 1(a)
		Strategic Plan Goal IV
<p>Project Summary: Revise the optional misdemeanor domestic violence plea form (form CR-102) to reflect the lifetime ban on possession of firearms for persons convicted after January 1, 2019 of a misdemeanor violation of Penal Code section 273.5. This statutory change was enacted by AB 3219 (Stats. 2018, ch. 883).</p> <p>Status/Timeline: Anticipate circulating for public comment in winter 2023, for an effective date of September 1, 2024.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the revised form for the committee.</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: Trial courts</p> <p>AC Collaboration: None</p>		
4.	Develop a proposal to implement the Racial Justice Act	Priority 1(a)
		Strategic Plan Goal I, IV
<p>Project Summary: Amend California Rules of Court, rule 4.451, Habeas Corpus proceedings, and revise <i>Petition for Writ of Habeas Corpus</i> (form HC-001) to incorporate habeas corpus proceedings under Penal Code section 745 and 1473(f). Revise <i>Motion to Vacate Conviction or Sentence</i> (form CR-187), and <i>Order on Motion to Vacate Conviction or Sentence</i> (form CR-188) to incorporate requests for relief under Penal Code section 745 and 1473.7(a)(3). Develop standards for appointment of private counsel in superior court for Racial Justice Act claims, as required under Penal Code section 1473.1 (SB 133 (Stats. 2023, ch. 34)).</p> <p>Status/Timeline: Anticipate circulating for comment in winter 2023, for an effective date of September 1, 2024.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the proposal for the committee. The Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review the proposal for court operations impacts.</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: Trial courts, justice system partners, advocacy organizations.</p>		

#	New or One-Time Projects	
	AC Collaboration: The Appellate Advisory Committee will recommend similar revisions to implement Penal Code section 745 and 1473(f) to the California Rules of Court on habeas corpus proceedings in the appellate courts.	
5.	Revise Prohibited Persons Relinquishment Form Findings (form CR-210)	Priority 1(a) Strategic Plan Goal IV
<p>Project Summary: Revise <i>Prohibited Persons Relinquishment Form Findings</i> (form CR-210) to reflect statutory changes to firearms relinquishment procedures under AB 732 (Stats. 2023, ch. 240).</p> <p>Status/Timeline: Anticipate circulating for comment in winter 2023, for an effective date of September 1, 2024.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the revised form for the committee. The Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial courts, justice system partners.</p> <p>AC Collaboration: None</p>		
6.	Consider proposal addressing fee waivers for certified copies of criminal records	Priority 1(c), 2(b) Strategic Plan Goal I, IV
<p>Project Summary: The committee will consider a rule and form proposal requested by a coalition of advocacy organizations regarding fee waivers for certified records in an inactive criminal case. This largely impacts persons with immigration cases who often need certified copies of criminal records to show that a criminal case has been terminated, charges have been dismissed, or that criminal charges were never filed.</p> <p>Status/Timeline: Anticipate circulating for comment in spring 2024, for an effective date of January 1, 2025.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the proposal for the committee. The Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts.</p>		

#	New or One-Time Projects	
	<p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial courts, justice system partners, advocacy organizations.</p> <p>AC Collaboration: None</p>	
7.	Pretrial release implementation	<p>Priority 2</p> <p>Strategic Plan Goal IV</p>
<p>Project Summary: Consider developing proposals on the implementation of pretrial release, such as the use of actuarial risk assessment tools, the use of bail in light of <i>In re Humphrey</i> (2021) 11 Cal.5th 135, and the imposition of pretrial release conditions.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff.</p> <p><input type="checkbox"/> <i>This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</i></p> <p>Internal/External Stakeholders: Trial courts, justice system partners.</p> <p>AC Collaboration: None</p>		
8.	Revise Notification of Military Status form (MIL-100)	<p>Priority 2(a)</p> <p>Strategic Plan Goal I, IV</p>
<p>Project Summary⁷: Revise form MIL-100 to 1) state that, in a criminal case, either the defendant or defendant’s counsel may file the notification with the court; 2) add language stating that in a criminal case, the court will send the form to the county veteran’s service office to confirm the person’s military status, 3) add a reference to CalVet, the state Department of Veteran’s Affairs, and 4) reference pretrial diversion offering treatment as an alternative to trial, conviction, and incarceration under Penal Code section 1001.80. The Family and Juvenile Law Advisory Committee is also recommending revisions to the form to comply with SB 1182 (Stats. 2022, ch. 385), which added new statutory provisions regarding considerations for veterans in family court.</p> <p>Status/Timeline: Anticipate circulating for public comment in winter 2023, for an effective date of September 1, 2024.</p>		

# New or One-Time Projects	
<p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the proposal for the committee.</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: Trial courts, justice system partners.</p> <p>AC Collaboration: Family and Juvenile Law Advisory Committee</p>	
9.	<p>Develop a legislative proposal regarding access to prison records for resentencing</p> <p style="text-align: right;">Priority 1</p> <p style="text-align: right;">Strategic Plan Goal I, IV</p> <p>Project Summary⁷: Committee members have identified issues with the defendant being able to access and present their prison record in resentencing cases where the court is directed to consider postconviction factors. This proposal would explore options to facilitate CDCR’s production of a defendant’s prison records for these purposes.</p> <p>Status/Timeline: Anticipate circulating for public comment in spring 2024, to go to the Council in September 2024 as proposed legislation with an effective date of January 1, 2026.</p> <p>Fiscal Impact/Resources: Criminal Justice Services staff will prepare the proposal for the committee and consult with Governmental Affairs staff.</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: Trial courts, justice system partners, JCC Governmental Affairs.</p> <p>AC Collaboration: None</p>
# Ongoing Projects and Activities ⁴	
1.	<p>Review pending legislation</p> <p style="text-align: right;">Priority 1</p> <p style="text-align: right;">Strategic Plan Goal II</p>

#	Ongoing Projects and Activities⁴	
	<p>Project Summary: The committee will review pending criminal law legislation and provide recommendations as to whether the Judicial Council should support or oppose the legislation.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Governmental Affairs</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: None</p> <p>AC Collaboration: None</p>	
2.	Criminal justice and mental health	Priority 1
	<p>Project Summary: The committee will review pending legislation related to criminal justice and mental health and provide recommendations as to whether the Judicial Council should support or oppose the legislation. The committee will provide subject matter expertise on pending criminal justice and mental health legislation and related issues.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Governmental Affairs</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: None</p> <p>AC Collaboration: Collaborative Justice Courts Advisory Committee</p>	
3.	Provide subject matter expertise for other advisory committees	Priority 1
	Strategic Plan Goal IV	

#	Ongoing Projects and Activities ⁴
	<p>Project Summary⁷: The committee will provide subject matter expertise for other advisory committees working on proposals involving criminal law and procedure.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: None</p> <p><input type="checkbox"/> This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.</p> <p>Internal/External Stakeholders: None</p> <p>AC Collaboration: Respective advisory committees.</p>

III. LIST OF 2023 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	Revise Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense. At its May 2023 meeting, the Judicial Council approved revisions to this optional form to reflect the repeal of Penal Code section 987.8 by Assembly Bill 1869 (Stats. 2020, ch. 92). The changes were effective September 1, 2023.
2.	Amend Cal. Rules of Court, rule 4.130, mental competency proceedings. At its May 2023 meeting, the Judicial Council approved amendments to the rule to reflect recent statutory changes regarding antipsychotic medication and mental health diversion. The changes were effective May 15, 2023.
3.	Amend Cal. Rules of Court, rule 4.117, qualifications for appointed counsel in capital cases. At its September 2023 meeting, the Judicial Council approved amendments to this rule to clarify that qualified counsel must be appointed in a capital case unless the district attorney states on the record that the death penalty will not be sought. These changes will be effective January 1, 2024.
4.	Rules and forms to implement court reporting requirements on a person’s competency to vote. At its September 2023 meeting, the Judicial Council adopted a new rule of court and two forms to implement changes to the Elections Code by Assembly Bill 2841 (Stats. 2022, ch. 807), which requires courts to report findings regarding a person’s competency to vote to the Secretary of State. The Judicial Council was required to develop rule and forms by statute. This was a joint proposal with the Probate and Mental Health Advisory Committee. The rule and forms will be effective January 1, 2024.

#	Project Highlights and Achievements
5.	Revise Petition for Resentencing Based on Health Conditions Due to Military Service. At its September 2023 meeting, the Judicial Council approved revisions to this optional form to reflect statutory changes expanding and clarify eligibility for relief. The proposal circulated twice for public comment. The changes will be effective January 1, 2024.
6.	Revise record cleaning forms to reflect various statutory changes. At its September 2023 meeting, the Judicial Council approved revisions to several optional record cleaning forms to incorporate several statutory changes. The changes will be effective January 1, 2024.
7.	Revise the felony plea form. At its September 2023 meeting, the Judicial Council approved revisions to the felony plea form to incorporate judicial findings on circumstances in aggravation, to reflect statutory changes. The changes will be effective January 1, 2024.
8.	Rules and forms to implement the Racial Justice Act (AB 2542) and AB 256. The committee developed a proposal to revise rules and forms to implement the Racial Justice Act. It is anticipated that this proposal will circulate for public comment in winter 2023.
9.	Revise the military notification form. The committee was asked to make revisions to the military notification form as part of a proposal headed by the Family and Juvenile Law Advisory Committee. It is anticipated that the proposal will circulate for public comment in winter 2023.
10.	<p>Review pending legislation. CLAC provided subject matter expertise or a recommended position on over 75 criminal law bills, including the following:</p> <ul style="list-style-type: none"> a. AB 304, Domestic violence: probation; AB 455, Firearms: prohibited persons; AB 467, Domestic violence: restraining orders; AB 600, Criminal procedure: resentencing; AB 732, Crimes: relinquishment of firearms; AB 806, Criminal procedure: crimes in multiple jurisdictions; AB 829, Crimes: Animal abuse; AB 881, Jury duty; AB 890, Controlled substances: probation; AB 945, Criminal procedure: Expungement of Records; AB 1118, Criminal procedure: discrimination; AB 1214, Remote Proceedings; AB 1253, Hearsay: exceptions; AB 1310, Sentencing: recall and resentencing; AB 1584, Criminal procedure: competence to stand trial; SB 22, Courts: remote proceedings; SB 81, Parole Review; SB 94, Recall and resentencing: special circumstances; SB 97, Criminal procedure: writ of habeas corpus; SB 99, Judicial Council: criminal remote proceedings; SB 349, Criminal procedure: competence to stand trial; SB 441, Criminal procedure: discovery; SB 652, Evidence: expert testimony; and SB 717, County mental health services. b. Committee leadership provided extensive support on criminal remote proceedings legislation.
11.	Criminal justice and mental health. The committee convened a joint working group with the Collaborative Justice Courts Advisory Committee to review pending legislation related to criminal justice and mental health, and provided recommendations as to whether the Judicial Council should support or oppose the legislation.
12.	Provide subject matter expertise for other advisory groups. The committee provided subject matter expertise to the Family and Juvenile Law Advisory Committee on a proposal to revise the military notification form.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: February 7, 2023

Rules Committee action requested [Choose from drop down menu below]:
Circulate for comment (out of cycle)

Title of proposal: Child Support: Implementing Amendments Made to the Family Code.

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

Approve forms FL-302 and FL-632-INFO; revise forms FL-192, FL-342, FL-342(A), FL-530, FL-600, FL-610, FL-616, FL-630, FL-632, FL-635, FL-640, FL-640-INFO, FL-643, FL-665, FL-680, FL-683, FL-687, FL-688, FL-692, and FL-693; and revoke forms FL-380, FL-381, and FL-382.

Committee or other entity submitting the proposal:

Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Marina Soto, (916) 643-6906, marina.soto@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: SB 343 (Skinner) Child support (Stats. of 2023, Ch. 213). Implements numerous changes to child support law to bring California's statutes into compliance with updated federal regulations. Repeals Chapter 5 of Part 1 of Division 9 of the Family Code which authorizes the entry of expedited support orders. Effective September 1, 2024, revises the statewide uniform child support guideline, including modifying the formula and increasing the income bands. Increases the ceiling for the low-income adjustment to a net disposable income that is less than the amount earned from full-time statewide minimum wage at 40 hours per week, 52 weeks per year, and the formula for determining the low-income adjustment to reflect the same net disposable income, and provides that there is a rebuttable presumption that an obligor is entitled to the low-income adjustment when their income falls below the ceiling. Clarifies that, in the course of a proceeding for support, if the court learns that a parent is subject to one or more orders for support involving children with parents who are not parties to the action, the court may, in its discretion, take steps to avoid an inequitable distribution of support between children. Requires the court, in cases where the parent's annual gross income is unknown, to consider the earning capacity of the parent; and authorizes the court, where the parent's annual gross income is known, to rely on earning capacity in lieu of actual income if doing so is consistent with the best interests of the children. Beginning on January 1, 2026, eliminates, for suits for child support brought by a local child support agencies (LCSA), the ability to seek an order on the basis of "presumed income" calculated at 40 hours a week at the prevailing minimum wage, and replaces it with the requirement that the LCSA seek support on the basis of the parent's actual income or earning capacity, as determined based on the specific circumstances of the parent. Requires the Judicial Council to adopt and approve forms to implement these provisions by September 1, 2024.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

The legislation underlying the proposed form changes (SB 343) was signed into law on September 22, 2023, and contains a mandate that the council approve most of the forms by September 1, 2024. SB 343 made wide sweeping changes to the child support statutes and, therefore, impacts a substantial number of forms. Due to the number of forms affected by the new law, Stakeholder input was required before we could begin the process of developing and revising the forms, thus prohibiting us from submitting the proposal during the regular winter cycle.

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

SB 343 was signed into law on September 22, 2023 to bring California into compliance with new federal regulations by September 2024. The new federal regulations require that child support orders be based on evidence of actual income and where actual income is unknown, the specific circumstances of the obligor. SB 343 also requires the Judicial Council make necessary forms changes to implement amendments made to Family Code sections 17400, 17404.1, 17430, and 17432 by September 1, 2024, with an effective date of January 1, 2026 for the 16 affected forms forms. The delayed implementation date is to allow the Department of Child Support Services to update their statewide case management system and have the Judicial Council forms available for use when the legislation becomes effective.

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP24-01

Title

Child Support: Implementing Amendments to the Family Code

Action Requested

Review and submit comments by March 22, 2024

Proposed Rules, Forms, Standards, or Statutes

Approve forms FL-302 and FL-632-INFO; revise forms FL-192, FL-342, FL-342(A), FL-530, FL-600, FL-610, FL-616, FL-630, FL-632, FL-635, FL-640, FL-640-INFO, FL-643, FL-665, FL-680, FL-683, FL-687, FL-688, FL-692, and FL-693; revoke forms FL-380, FL-381, and FL-382

Proposed Effective Date

September 1, 2024, and January 1, 2026

Contact

Marina Soto, 916-643-6906
marina.soto@jud.ca.gov

Proposed by

Family and Juvenile Law Advisory
Committee
Hon. Stephanie E. Hulse, Cochair
Hon. Amy M. Pellman, Cochair

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes approving 2 new forms, revising 20 forms, and revoking 3 forms related to child support. This action is necessary to implement changes to the Family Code made by Assembly Bill 207 (Stats. 2022, ch. 573) and Senate Bill 343 (Stats. 2023, ch. 213) to bring California into compliance with federal regulations requiring child support orders be based on evidence of actual income or, where actual income is unknown, the specific circumstances of the obligor parent. The proposed action is also necessary to implement changes made to the Family Code by Assembly Bill 2960 (Stats. 2022, ch. 420), which mandates that local child support agencies provide notice regarding payment of support to parents and the court when they begin and cease to provide child support enforcement services, and Assembly Bill 1148 (Stats. 2023, ch. 565), which increases the time period before child support resumes after an obligor parent has been released from incarceration or confinement.

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

Background

In 2016, the federal Office of Child Support Services issued the *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule*.¹ The federal final rule requires states update their child support guidelines to ensure they result in child support orders that reflect a parent's actual ability to pay or the specific circumstances of the obligor parent when evidence of earnings and income is unavailable or insufficient to determine the parent's ability to pay. The final rule also requires that child support guidelines take into consideration the basic subsistence needs of the obligor parent who has a limited ability to pay by incorporating a low-income adjustment. Additionally, states are no longer allowed to use a standard amount to impute income to an obligor parent in lieu of fact gathering to determine the specific circumstances of the parent and cannot treat incarceration as voluntary unemployment when modifying child support orders. California must implement the regulations promulgated by the federal final rule by September 2024.

Legislation to comply with federal final rule

On September 27, 2022, Assembly Bill 207 (Stats. 2022, ch. 573) was signed into law, amending Family Code sections 4007.5, 4054, and 4058.² These amendments brought California closer to compliance with the final rule by (1) providing that incarceration cannot be considered as voluntary unemployment, and (2) providing for the consideration of the factors listed in the federal regulation when income imputation (i.e., earning capacity) is authorized.³

A year later, on September 22, 2023, SB 343 was signed into law. This legislation made wide-ranging changes to the current child support scheme, including:

- Revising the child support guideline by updating the K-factor bands, which is the combined net income of both parents allocated for child support;
- Tying the low-income adjustment to full-time minimum wage;
- Creating a new basis for deviating below guideline, if after applying the low-income adjustment the guideline child support would be greater than 50 percent of the support obligor's net disposable income;
- Changing the apportionment of expenses for additional child support from one-half to each parent to dividing the expenses in proportion to the parents' net incomes;
- Expanding the protocols for issuing an order to pay uninsured health-care costs to also include orders for payment of childcare costs actually incurred, unless childcare costs are included in the guideline calculation;
- Eliminating the ability for local child support agencies to request initial support orders based on presumed income of full-time minimum wage ability when an obligor's income

¹ 81 Fed.Reg. 93492 (Dec. 20, 2016).

² All further statutory references are to the Family Code unless otherwise noted.

³ See 45 C.F.R. § 302.56(c)(1)(iii) (2023).

is unknown; in these situations, the obligor’s earning capacity must be considered based on the factors enumerated in section 4058(b); and

- Repealing the expedited child support order scheme.

Delayed implementation date

California is required to implement regulations promulgated by the federal final rule no later than September 2024. While SB 343 and certain provisions of AB 207 were enacted by the Legislature for this purpose, the forms necessary to apply the new law must also be approved by the council no later than September 1, 2024, to ensure compliance with the federal deadline. However, to give the state Department of Child Support Services sufficient time to program the new forms that they use into their electronic case management system, SB 343 added section 17432.5 to the Family Code, which states, “No later than September 1, 2024, the Judicial Council shall adopt and approve any forms necessary to implement Sections 17400, 17404.1, 17430, and 17432 as added by the act that added this section. Forms adopted pursuant to this section shall have an effective date of January 1, 2026.” Thus, most of the forms in the proposal must be approved by September 1, 2024, but only the revisions to forms FL-192, FL-342, FL-342(A), FL-632, and new forms FL-302 and FL-632-INFO will go into effect on that date. The effective date for the remaining 15 revised governmental child support forms and the revised judgment form for UIFSA cases⁴ (form FL-530) will be January 1, 2026.

Other legislation

In addition to the changes made to the Family Code to bring California into compliance with the federal final rule, two other bills have recently been enacted that effect the practices of local child support agencies and the child support obligations of parents who are incarcerated or involuntarily institutionalized.

Changes to section 4204

On September 18, 2022, Assembly Bill 2960 (Stats. 2022, ch. 420) was signed into law. This bill, among other things, amended section 4204 to require the local child support agency to notify the parents and the court when the agency starts to provide enforcement services in a case and when it stops providing enforcement services in a case.

Changes to section 4007.5

On September 19, 2023, the Judicial Council approved revisions to form FL-192 to incorporate changes made to section 4007.5 by AB 207. The newly revised form FL-192 became effective on January 1, 2024. However, additional changes are now needed because on October 8, 2023, the Governor signed Assembly Bill 1148 (Stats. 2023, ch. 565). AB 1148 amends section 4007.5 to extend the date a child support obligation resumes, after being suspended by operation of law due to the incarceration or involuntary institutionalization of the parent ordered to pay child support, to the first day of the 10th month after release. The bill also authorizes the person to whom support is owed or the local child support agency to seek a court order reinstating the

⁴ Cases brought under the Uniform Interstate Family Support Act (Fam. Code, § 5700.101 et seq.)

child support obligation to an amount determined by the court if the person owing support obtains employment before the date set for reinstatement.

The Proposal

In order to implement changes in law made by AB 207 and SB 343 to bring California into compliance with the federal final rule, as well as other changes recently made to the Family Code, the committee proposes:

1. Approval of the following 2 new forms, effective September 1, 2024, to (1) implement new law regarding the factors used to determine the earning capacity of a parent to calculate child support, (2) provide information to courts and parties regarding the involvement of a local child support agency in a case, and (3) increase access to justice:
 - *Earning Capacity Factors Attachment* (form FL-302);
 - *Information Sheet: Notice Regarding Payment of Support* (form FL-632-INFO).
2. Revising the following 4 forms to conform to new law, effective September 1, 2024:
 - *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures)* (form FL-192);
 - *Child Support Information and Order Attachment* (form FL-342);
 - *Non-Guideline Support Findings Attachment* (form FL-342(A));
 - *Notice Regarding Payment of Support* (form FL-632).
3. Revising the following 16 forms to comply with new law by September 1, 2024, with an effective date of January 1, 2026:
 - *Judgment Regarding Parental Obligations (UIFSA)* (form FL-530);
 - *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-600);
 - *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610);
 - *Declaration for Amended Proposed Judgment* (form FL-616);
 - *Judgment Regarding Parental Obligations* (form FL-630);
 - *Notice of Entry of Judgment and Proof of Service by Mail* (form FL-635);
 - *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640);
 - *Information Sheet for Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640-INFO);
 - *Declaration of Obligor's Income During Judgment Period—Presumed Income Set-Aside Request* (form FL-643);
 - *Findings and Recommendation of Commissioner* (form FL-665);
 - *Notice of Motion* (form FL-680);
 - *Order to Show Cause* (form FL-683);

- *Order After Hearing* (form FL-687);
- *Short Form Order After Hearing* (form FL-688);
- *Minutes and Order or Judgment* (form FL-692); and
- *Guideline Findings Attachment* (form FL-693).

4. Revoking the following 3 forms immediately upon council approval as the corresponding Family Code provisions have been repealed:

- *Application for Expedited Child Support Order* (form FL-380);
- *Response to Application for Expedited Child Support Order and Notice of Hearing* (form FL-381); and
- *Expedited Child Support Order* (form FL-382).

Changes to implement AB 207 and SB 343

AB 207 and SB 343 made several changes to the Family Code that affect 22 current Judicial Council forms. The changes also necessitate the creation of a new form to help ensure child support orders are based on the specific circumstances of the obligor parent.

New basis for deviating from guideline support

SB 343 amends section 4057 to add a new factor that rebuts the presumption that the amount of child support established by the guideline formula is the correct amount of support ordered under certain circumstances. Effective September 1, 2024, the presumption that the guideline child support amount is the correct order will be rebutted if a support obligor qualifies for a low-income adjustment and the amount of child support established by the formula exceeds 50 percent of the support obligor’s net disposable income after application of the low-income adjustment.⁵ However, SB 343 also limited the amount of the adjustment to no greater than the amount exceeding 50 percent of the support obligor’s net disposable income. The committee proposes revising *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) and *Guideline Findings Attachment* (form FL-693) to add the new rebuttal deviation factor to the forms.

Earning capacity

AB 207 and SB 343 both made changes to the law regarding earning capacity to comply with the federal final rule. AB 207 amended the law to require the court to consider certain factors when earning capacity is used instead of actual income to set a child support order. Specifically, section 4058(b) now states:

- (1) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income, consistent with the best interests of the children,

⁵ Stats. 2023, ch. 213, § 5.

taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(2) When determining the earning capacity of the parent pursuant to this subdivision, the court shall consider the specific circumstances of the parent, to the extent known. Those circumstances include, but are not limited to, the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings levels in the local community, and other relevant background factors affecting the parent's ability to earn.

Under SB 343, courts must hold a hearing to consider those same factors when the local child support agency requests an order based on earning capacity in its initial pleadings and the matter is proceeding by default. SB 343 also requires the agency to indicate in its initial pleadings the earning capacity factors it used to calculate the proposed guideline child support requested. Consequently, the committee proposes that a new optional form, *Earning Capacity Factors Attachment* (form FL-302), be approved to become effective September 1, 2024. The proposed form would be a dual-use form that could be attached by a party making a request for an order based on earning capacity or could also be used by the court to make findings regarding a parent's earning capacity. The committee also proposes revising the following 15 forms to include provisions related to the earning capacity of the parents that reflects the new law:

- *Child Support Information and Order Attachment* (form FL-342);
- *Judgment Regarding Parental Obligations (UIFSA)* (form FL-530);
- *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-600);
- *Declaration for Amended Proposed Judgment* (form FL-616);
- *Judgment Regarding Parental Obligations* (form FL-630);
- *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640);
- *Information Sheet for Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640-INFO);
- *Declaration of Obligor's Income During Judgment Period—Presumed Income Set-Aside Request* (form FL-643);
- *Findings and Recommendation of Commissioner* (form FL-665);
- *Notice of Motion* (form FL-680);
- *Order to Show Cause* (form FL-683);
- *Order After Hearing* (form FL-687);
- *Short Form Order After Hearing* (form FL-688);
- *Minutes and Order or Judgment* (form FL-692); and
- *Guideline Findings Attachment* (form FL-693).

Childcare costs and reimbursement procedures

SB 343 also amends section 4062 to require that the court order as additional support childcare costs that are actually incurred and related to employment, or reasonably necessary education or training for employment skills, unless childcare costs are included in the guideline calculation. While section 4062 currently mandates that the court order childcare costs that are related to employment, or reasonably necessary education or training for employment skills, as additional support, it does not explicitly require that childcare costs be actually incurred to obtain reimbursement when a parent is ordered to pay a percentage of childcare costs. Effective September 1, 2024, unless a specific amount of childcare costs is included as part of the guideline calculation for monthly support, a party will have to establish childcare costs were actually incurred to obtain reimbursement from the other parent. AB 343 also amended section 4063, which specifies the current procedure for seeking reimbursement of uninsured health-care expenses, to incorporate a claim for childcare costs into those reimbursement procedures.

The committee proposes revising form FL-192 to reflect the changes in law regarding additional support and advise parties of their rights and responsibilities concerning childcare costs and reimbursement. Because the proposed version of FL-192 will provide information regarding both reimbursement of childcare and health-care costs, as well as information on changing a child support order and information on the child support obligations of incarcerated or confined parents, the committee also proposes revising the title of form FL-192 to simply *Notice of Rights and Responsibilities Regarding Child Support (Health Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192).

Elimination of presumed income

In order to ensure child support orders are based on a parent's actual ability to pay, SB 343 amends sections 17400 and 17404.1 to eliminate the ability of local child support agencies to plead for child support orders based on presumed income of minimum wage at 40 hours per week when the actual income or income history of the obligor parent is unknown. The committee proposes revising forms FL-530, FL-600, FL-616, FL-630, FL-635, FL-680, and FL-683 to remove items referring to the use of presumed income.

Section 17432 set-aside request

SB 343 will amend section 17432 to allow parties to request the court set aside the part of a judgment or order concerning child support that was established by default if the support order was based on earning capacity and did not reflect the obligor's actual income situation. This relief is currently only available to obligors whose order was based on presumed income of full-time minimum wage. As of January 1, 2026, parties will be able to seek a set-aside for child support orders obtained by default that are based on earning capacity, as well as for pre-2026 orders based on presumed income. The window to request relief was also expanded from one year to two.

The committee proposes revising forms FL-640, FL-640-INFO, and FL-643 to reflect the new law created by SB 343. The committee also proposes revising FL-640-INFO to a plain-language form to make it more understandable for parents.

The committee additionally proposes that the titles of these forms be revised as follows to correspond to the changes made to the forms:

- *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income or Earning Capacity* (form FL-640), with a similar change to the title of form FL-640-INFO; and
- *Declaration of Obligor's About Parent's Income During Judgment Periods—Presumed Income Set Aside Request* (form FL-643).

Revocation of expedited child support order forms

SB 343 eliminated the expedited child support order statutory scheme by repealing sections 3620–3634, effective January 1, 2024. The committee proposes that forms FL-380, FL-381, and FL-382 be repealed, effective as soon as approved by the council.

Other changes to forms

In addition to the changes discussed above to implement the provisions of AB 207 and SB 343 and bring California into compliance with the federal final rule, the committee proposes replacing any gendered nouns in the forms being revised. The committee also proposes the additional revisions discussed below to implement other recent changes to the Family Code and ensure compliance with existing law.

Notice regarding payment of support

Effective January 1, 2023, AB 2960 amended section 4204 to require a local child support agency notify the parents and the court when it starts to provide enforcement services in a case and when it stops providing enforcement services in a case. Previously, the law simply stated that the agency may provide notice when it started to provide services. The committee proposes revising *Notice Regarding Payment of Support* (form FL-632) to allow local child support agencies to inform the parents and the court when it is no longer enforcing support owed to the parent receiving support because that parent has requested the local child support agency close its case and cease to provide services to collect child support owed to that parent, but where the local child support agency is still enforcing child support arrears formerly assigned to the county for a period when the parent was receiving cash aid (i.e., CalWORKs).

The committee proposes revising the form to further clarify whether a child support commissioner should still hear a matter once the local child support agency is only enforcing assigned arrears. Ordinarily, if a parent is receiving CalWORKs or if they have requested the local child support agency enforce the support order, then any matters in such cases involving a local child support agency must be heard by a child support commissioner, unless one is not available due to exceptional circumstances.⁶ However, once a parent closes their case, the agency may retain a vested interest in participating in hearings involving child support arrears, but not in other types of hearings—for example, a request to modify ongoing support. In an effort to address this complexity, a notice box for the court clerk has been added to the form. Other

⁶ §§ 4250–4522.

changes have also been made to make the form easier to understand for self-represented litigants, including the creation of a new stand-alone information sheet (form FL-632-INFO). Although FL-632 does not need to be approved by September 1, 2024, to comply with the federal final rule deadline, the committee proposes the revisions to the form also go into effect on September 1 so the changes made a year ago to section 4204 can be properly implemented.

Reinstatement of child support after release from incarceration or confinement

As noted above, effective January 1, 2024, AB 1148 amended section 4007.5 by extending the date a child support obligation resumes after suspension by operation of law due to the incarceration or involuntary institutionalization of the parent ordered to pay child support. Former section 4007.5(b) stated that the suspended child support obligation of a parent who has been incarcerated or involuntarily institutionalized “shall resume on the first day of the first full month after release of the person owing support.” AB 1148 extended the date child support will restart to the first day of the 10th month after release. AB 1148 also amended section 4007.5 by adding a provision that authorizes the person to whom support is owed or the local child support agency to seek a court order reinstating the child support obligation at an amount determined by the court if the parent ordered to pay support becomes employed before the date set for reinstatement.

Form FL-192 provides information about child support orders for incarcerated or detained parents.⁷ The committee proposes revising form FL-192 to:

- Advise that the timing for child support to automatically restart is the first full day of the 10th month after the parent is released; and
- Specify that a person to whom support is owed or the local child support agency may seek a court order reinstating the child support obligation at an amount to be determined by the court if the parent owing support obtains employment before the reinstatement date.

Low-income adjustment

Section 4055(b)(7) provides that in all cases where the obligor parent’s net disposable income is less than \$1,500, adjusted annually for cost-of-living increases, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment on their child support obligation.⁸ The presumption can be rebutted by evidence showing that application of the low-income adjustment would be unjust and inappropriate in the particular case.⁹ Currently, forms FL-342, FL-530, FL-630, FL-665, FL-687, FL-688, and FL-692 each contain an optional item for the judicial officer to complete that states “the low income adjustment does not apply” and provides a field

⁷ Although recently approved revisions to form FL-192 included updates to the section of the form providing information on child support for incarcerated or detained parents to reflect changes made to section 4007.5 by AB 270, the newly approved form does not reflect the changes in law that were made by AB 1148.

⁸ The current threshold for the low-income adjustment is \$2,056, based on the annual California Consumer Price Index for All Urban Consumers.

⁹ § 4055(b)(7).

for the court to specify the reasons the low-income adjustment is not applicable. The committee proposes adding language to this provision in the seven forms identified above to clarify that the reasons for not applying the low-income adjustment need only be specified when the low-income adjustment has been rebutted in cases where the threshold amount has been met.

Signature line for attorney of record

In addition to the changes discussed above that were made to *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640) to implement AB 207 and SB 343, the committee also proposes revising the signature line on the form. Currently, the signature line on the motion simply states, “Signature.” However, the motion to cancel (set aside) a support order based on presumed income, and now also earning capacity, may be brought by a local child support agency, a party who is not represented, or the attorney of a party. Code of Civil Procedure section 128.7(a) requires that “[e]very pleading, petition, written notice of motion, or other similar paper” be signed by at least one attorney of record in the attorney’s individual name or by the party if they are not represented by an attorney. In order to ensure form FL-640 complies with Code of Civil Procedure section 128.7, the committee proposes changing the signature line to specify that the motion is being signed by a party or their attorney.

Alternatives Considered

The committee considered alternative actions regarding several proposed changes to the forms.

Take no action

The committee considered taking no action and leaving the current forms in place. However, as discussed above, California must implement regulations promulgated by the federal final rule no later than September 2024. In order to ensure compliance with the deadline, the forms necessary to apply the provisions of AB 207 and SB 343 must also be approved by the council no later than September 1, 2024. Moreover, SB 343 requires the council approve any changes to the governmental child support forms discussed above no later than September 1, 2024, despite a delay in the effective date of the forms until January 1, 2026. Due to the mandated deadline imposed by both federal and state law for most of the changes proposed on the forms, and the sweeping nature of the amendments to the Family Code caused by AB 207 and SB 343, the committee recommends moving forward with the proposed form revisions.

The committee additionally considered not moving forward with the proposed revisions to *Notice Regarding Payment of Support (Governmental)* (form FL-632), since the form currently contains a provision for a local child support agency to indicate that it “is no longer providing services under title IV-D of the Social Security Act” and thus complies with the recent amendment made to section 4204. However, the committee decided to proceed with the proposed changes to FL-632 because there are circumstances where the local child support agency may no longer be enforcing current child support and back support owed to the other parent but still be involved in the case to collect arrears owed for public assistance paid by the county. This can cause confusion for the parties regarding to whom support payments should be

made. It can also create confusion for the court in determining whether a matter should be heard by a child support commissioner or other judicial officer. The proposed revisions will allow the local child support agency to not only indicate whether it is enforcing all aspects of a support order or no longer providing any enforcement services in a case, but also (1) provide notice to the court and parties that it is only involved in the case for purposes of enforcing child support arrears assigned to the county; (2) provide notice to the parent ordered to pay support about where current support, back support owed to the other parent, and back support owed to the county should be paid; and (3) aid court clerks in determining whether matters should be calendared for hearing before a child support commissioner or another judicial officer.

The committee has also proposed adding language to seven forms to clarify that the court need only specify reasons for not applying the low-income adjustment when the low-income adjustment has been rebutted. Alternatively, the committee could have chosen to take no action and leave the current forms in place as the forms currently provide an optional provision for the court to find that “the low-income adjustment does not apply” and provides a fillable field for the court to specify its reasons. The committee chose, however, to propose revising the language of the provision to “the low-income adjustment has been rebutted and does not apply” to avoid possible confusion that justification must be provided in every case where the low-income adjustment does not apply, including cases that do not initially meet the required threshold.

Exclude new form FL-302 from the proposal

Another alternative the committee considered was not including the new form *Earning Capacity Factors Attachment* (form FL-302) as part of the proposal since the form would be for optional use only and is not required to implement the new law regarding earning capacity. The committee decided, however, to move forward with the proposed new form because it would benefit the public, attorneys, judicial officers, and local child support agencies by allowing parties and attorneys to provide the necessary information to support a request that the court utilize the earning capacity of a parent to determine support. It would also provide a means for courts to create a meticulous record of its findings regarding earning capacity. The optional form could additionally be used by local child support agencies to meet their obligation to inform an obligor parent of the factors it considered and used to determine the obligor’s earning capacity in the initial pleadings.¹⁰

Revise jurat in form FL-640

The committee has proposed changing the signature line on *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income* (form FL-640) to comply with the requirement in Code of Civil Procedure section 128.7(a) that written notice of motion be signed by an attorney of record or party. In considering this recommendation, the committee also considered revising the form to include a jurat (an oath or affirmation regarding the content of a document) that allows the attorney or party to sign the form upon knowledge, information, and

¹⁰ § 17400(d)(2)(B).

belief as to its truth, rather than under penalty of perjury, as Code of Civil Procedure section 128.7(b) states:

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

- (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
- (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
- (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Although it appears the jurat on form FL-640 should be revised to reflect the language in Code of Civil Procedure section 128.7(b), the committee recommends deferring consideration of the jurat issue until a later forms revision cycle, as the issue is not currently on the committee's annual agenda for consideration and such a revision may be needed on several other family law forms. Indeed, a review of the forms in this current proposal indicates that the signature line and jurat on forms FL-610, FL-616, and FL-643, all of which are declarations, may also require further examination to ensure they properly provide for the signature of an attorney. Deferring the matter will allow the committee to seek approval from the Rules Committee to add the issue to a future agenda and provide opportunity for the committee to consider appropriate language, format, and application for a jurat upon information and belief more fully and uniformly. Deferring the matter will also allow for a thorough review of all the family law forms so the issue can be addressed in a single comprehensive proposal.

Fiscal and Operational Impacts

The committee anticipates that courts would incur 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. However, the committee notes that most of the changes proposed are needed to implement the new law, and therefore the result of legislative action.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- What challenges, if any, would courts face in implementing new forms FL-302 and FL-632-INFO and the revisions to forms FL-192, FL-342, FL-342(A), and FL-632 within 2 months from Judicial Council approval of this proposal until its effective date?
- Would 17 months from Judicial Council approval of this proposal until its effective date for form FL-530 and the FL-600 series forms for governmental child support actions provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms FL-192, FL-302, FL-342, FL-342(A), FL-380, FL-381, FL-382, FL-530, FL-600, FL-610, FL-616, FL-630, FL-632, FL-632-INFO, FL-635, FL-640, FL-640-INFO, FL-643, FL-665, FL-680, FL-683, FL-687, FL-688, FL-692, and FL-693, at pages 14–79.
2. Link A: Sen. Bill 343 (Stats. 2023, ch. 213),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB343.
3. Link B: Assem. Bill 1148 (Stats. 2023, ch. 565),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1148.

NOTICE OF RIGHTS AND RESPONSIBILITIES REGARDING CHILD SUPPORT

Childcare and Health-Care Costs and Reimbursement Procedures

Your child support order may include a provision for payment of childcare or uninsured health-care costs. Childcare costs may be included as part of the monthly child support payment or reimbursable as a percentage of the costs. If the childcare costs are included as part of the monthly child support payment, you must pay that amount each month until the court changes (modifies) the child support order. If you need to change your child support order because there has been a change in the cost of childcare, see page 2.

If you have a child support order that includes a provision for the reimbursement of a percentage of childcare costs or 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 childcare costs or health-care costs not paid by insurance. You must give this statement to the other parent within a reasonable time, but no more than 90 days after those costs were given to you.

2. Proof of full payment. If you have already paid all of the childcare costs or uninsured health-care 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 childcare costs or uninsured health-care 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 childcare or 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 a childcare or 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 childcare and 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 requests for payment.** If you dispute a request for payment made by the other parent, you may file a request for the court to resolve the dispute, but only if you pay the requested amount 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.
 - c. Paid charges.** The court will presume that if uninsured health-care costs or childcare costs for employment or necessary training for job skills have been paid, those costs were reasonable. If you want to dispute paid charges, you will have to show the court that the costs were unreasonable.
 - d. 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.
 - e. 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 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 circumstances change significantly. For example if 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 in your county. You can find them here: <https://www.courts.ca.gov/selfhelp-facilitators.htm>.

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 deliver copies of your filed court forms to the other parent, at least **16 court days** before the hearing. Add **5 calendar days** if delivered 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.

Blank copies of both of these forms must also be served:

- [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*. 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](#) in your county or call your county's bar association and ask for an experienced family lawyer.

Information About Child Support for Incarcerated or Confined Parents

1. Child support. As of September 27, 2022, child support 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.

Exception. Child support does not automatically stop if the parent who has to pay has money available to pay child support.

2. Past confinement. Child support also stops during past confinement if it was ordered from October 8, 2015, through December 31, 2019, or January 1, 2021, through September 26, 2022, and the parent who has to pay was confined for more than 90 days in a row during the same time frame.

Exceptions for past confinement. Child support does not automatically stop if the parent who has to pay was in jail or prison for failing to pay child support or for domestic violence against the other parent or the child, or if they had money available to pay support.

3. Timing. Child support automatically restarts the first day of the 10th month after the parent is released. If you need to change your child support order, see page 2.

Employment before restart date. If the parent who has to pay support starts working before the date child support is set to automatically restart, the person who is owed support or the local child support agency can request the court restart the child support order early. The court may order a different amount of child support if appropriate.

4. More info. For more information about child support and incarcerated parents, see [Family Code section 4007.5](#) or go to <https://selfhelp.courts.ca.gov/child-support/incarcerated-parent>.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER: DRAFT
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EARNING CAPACITY FACTORS ATTACHMENT

**Not approved by
the Judicial Council
FL-302.v3.01302024.WC**

Attachment To:

- | | |
|--|---|
| <input type="checkbox"/> Child Support Information and Order Attachment (form FL-342)

<input type="checkbox"/> Request for Order (form FL-300)

<input type="checkbox"/> Judgment Regarding Parental Obligations (form FL-630)

<input type="checkbox"/> Notice of Motion (form FL-680) | <input type="checkbox"/> Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (form FL-600)

<input type="checkbox"/> Declaration for Amended Proposed Judgment (form FL-616)

<input type="checkbox"/> Other (specify): |
|--|---|

1. Earning capacity factors. (Family Code section 4058(b))

a. **Attachment to judgment or court order (to be completed by court only).**

The court determines that petitioner respondent other parent/party has the capacity to earn \$ _____ per month. This determination is in the best interests of the children, taking into consideration their overall welfare and developmental needs, and the time that parent spends with the children. The factors the court considered are listed below in item 2.

b. **Attachment to request (to be completed by party).**

Petitioner Respondent Other parent/party request the court determine that the petitioner respondent other parent/party has the capacity to earn \$ _____ per month. This request is in the best interests of the children, taking into consideration their overall welfare and developmental needs, and the time that parent spends with the children. The factors that the court is being asked to consider are listed below in item 2.

(If this form is attached to a request or declaration that is made under penalty of perjury, all statements in this attachment are made under penalty of perjury.)

2. Specific circumstances.

The specific circumstances of the parent that demonstrate why the parent has the capacity to earn the amount listed in item 1 are (specify all that apply):

a. The parent's assets (describe):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. b. The parent's residence (*describe*):

c. The parent's employment and earnings history (*describe*):

d. The parent's job skills (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. e. The parent's education (*check all that apply*):
- (1) Parent completed high school or the equivalent.
 - (2) Parent attended college.
 - (a) Number of years of college completed (*specify*):
 - (b) Degree obtained, if any (*specify*):
 - (3) Parent attended graduate school.
 - (a) Number of years of college completed (*specify*):
 - (b) Degree obtained, if any (*specify*):
 - (4) Parent has a professional or occupational license (*specify*):
 - (5) Parent has vocational training (*specify*):
 - (6) Other (*describe*):

- f. The parent's ability to read and write (*check all that apply*):
- (1) Parent is unable to read write.
 - (2) Parent is able to read write in English.
 - (3) Parent is able to read write in another language (*specify*):
 - (4) Other (*describe*):

g. The parent's age (*describe*):

h. The parent's health (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. i. The parent's employment barriers due to incarceration (*describe*):

j. The parent's other employment barriers (*describe*):

k. The parent's record of seeking work (*describe*):

l. The local job market (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. m. The availability of employers willing to hire the parent (*describe*):

n. The average earnings in the local community (*describe*):

o. Other relevant background factors affecting the parent's ability to earn (*describe*):

p. Other (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER: DRAFT Not approved by the Judicial Council
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NON-GUIDELINE CHILD SUPPORT FINDINGS ATTACHMENT

FL-342(A)
2024-1-30.WC-MS.v3

- Attachment to Child Support Information and Order Attachment (form FL-342)
 Other (specify):

The court makes the following findings required by Family Code sections 4056, 4057, and 4065:

STIPULATION TO NON-GUIDELINE ORDER

1. The child support agreed to by the parties is below or above the statewide child support guidelines. The amount of support that would have been ordered under the guideline formula is: \$ _____ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. If the order is below the guideline, no change of circumstances will be required to modify this order. If the order is above the guideline, a change of circumstances will be required to modify this order.

OTHER REBUTTAL FACTORS

2. **Support calculation**
- a. The guideline amount of child support calculated is: \$ _____ per month payable by petitioner respondent other parent/party
 - b. The court finds by a preponderance of the evidence that rebuttal factors exist. The rebuttal factors result in an increase decrease in child support. The revised amount of support is: \$ _____ per month.
 - c. The court finds the child support amount revised by these factors to be in the best interest of the children and that application of the formula would be unjust or inappropriate in this case under Family Code section 4057(b). These changes remain in effect until (date): _____ until further order
 - d. **The factors are:**
 - (1) The sale of the family residence is deferred under Family Code section 3800, and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowners insurance, and property taxes by: \$ _____ per month.
 - (2) The parent ordered to pay support has extraordinarily high income, and the amount determined under the guideline would exceed the needs of the children.
 - (3) The parent ordered to pay support person receiving ordered support is not contributing to the needs of the children at a level commensurate with that party's custodial time.
 - (4) After application of the low-income adjustment, guideline child support would be greater than 50 percent of the net disposable income of the parent ordered to pay support.
 - (5) Special circumstances exist in this case. The special circumstances are:
 - (a) The parents have different timesharing arrangements for different children.
 - (b) The parents have substantially equal custody of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.
 - (c) A child has special medical or other needs that require support greater than the formula amount. These needs are (specify): _____
 - (d) Other (specify): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER: DRAFT Not approved by the Judicial Council FL-342 2024-2-1 WC-MS.v7
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CHILD SUPPORT INFORMATION AND ORDER ATTACHMENT

- Attachment to:** Findings and Order After Hearing (form FL-340) Judgment (form FL-180)
 Judgment (form FL-250) Restraining Order After Hearing (form DV-130)
 Other (specify):

THE COURT USED THE FOLLOWING INFORMATION IN DETERMINING THE AMOUNT OF CHILD SUPPORT:

1. A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.

2. **Income**

a. Each parent's monthly income is as follows:

	<u>Gross monthly income</u>	<u>Net monthly income</u>	<u>Receiving TANF/CalWORKs</u>
Petitioner: \$	\$	\$	<input type="checkbox"/>
Respondent: \$	\$	\$	<input type="checkbox"/>
Other Parent/Party: \$	\$	\$	<input type="checkbox"/>

- b. **Earning capacity.** The court finds that the petitioner respondent other parent/party has the ability to earn \$ _____ per month. The factors used to calculate earning capacity under Family Code section 4058(b) are stated In *Earnings Capacity Factors Attachment* (form FL-302) as follows (specify):

3. **Children of this relationship**

- a. Number of children who are the subjects of the support order (specify):
- b. Approximate percentage of time spent with petitioner: _____ %
 respondent: _____ %
 other parent/party: _____ %

4. **Hardships** Hardships for the following have been allowed in calculating child support:

	<u>Petitioner</u>	<u>Respondent</u>	<u>Other Parent/Party</u>	<u>Approximate end date for the hardship</u>
a. <input type="checkbox"/> Other minor children:	\$	\$	\$	
b. <input type="checkbox"/> Extraordinary medical expenses:	\$	\$	\$	
c. <input type="checkbox"/> Catastrophic losses:	\$	\$	\$	

THE COURT ORDERS

5. **Low-income adjustment**
- a. The low-income adjustment applies.
- b. The low-income adjustment has been rebutted and does not apply because (specify reasons):

THIS IS A COURT ORDER.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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6. **Child support**

a. **Base child support**

Petitioner Respondent Other parent/party must pay child support beginning *(date)*:
 and continuing until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student, whichever occurs first, as follows:

<u>Child's name</u>	<u>Date of birth</u>	<u>Monthly amount</u>	<u>Payable to (name):</u>
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Payable on the 1st of the month other *(specify)*:

THE COURT FURTHER ORDERS

6. b. **Mandatory additional child support**

(1) **Childcare** costs related to employment or reasonably necessary job training

- (a) Petitioner must pay: % of total or \$ per month child-care costs.
- (b) Respondent must pay: % of total or \$ per month child-care costs.
- (c) Other parent/party must pay: % of total or \$ per month child-care costs.
- (d) Costs to be paid as follows *(specify)*:

(2) **Reasonable uninsured health-care costs for the children**

- (a) Petitioner must pay: % of total or \$ per month.
- (b) Respondent must pay: % of total or \$ per month.
- (c) Other parent/party must pay: % of total or \$ per month.
- (d) Costs to be paid as follows *(specify)*:

c. **Additional child support**

(1) Costs related to the educational or other special needs of the children

- (a) Petitioner must pay: % of total or \$ per month.
- (b) Respondent must pay: % of total or \$ per month.
- (c) Other parent/party must pay: % of total or \$ per month.
- (d) Costs to be paid as follows *(specify)*:

(2) Travel expenses for visitation

- (a) Petitioner must pay: % of total or \$ per month.
- (b) Respondent must pay: % of total or \$ per month.
- (c) Other parent/party must pay: % of total or \$ per month.
- (d) Costs to be paid as follows *(specify)*:

d. **Non-Guideline Order**

This order is below above the child support guideline set forth in Family Code section 4055. *Non-Guideline Child Support Findings Attachment (form FL-342(A))* is attached.

Total child support per month: \$

THIS IS A COURT ORDER.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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7. Health-care expenses

- a. Health insurance coverage for the minor children of the parties must be maintained by the petitioner respondent other parent/party if available at no or reasonable cost through their respective places of employment or self-employment. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any health-care claims. The 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.
- b. Health insurance is not available to the petitioner respondent other parent/party at a reasonable cost at this time.
- c. The party providing coverage must assign the right of reimbursement to the other party.

8. Earnings assignment

An earnings assignment order is issued. **Note:** The parent ordered to pay support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor's wages and for payment of any support not paid by the assignment.

- g. In the event that there is a contract between a parent receiving ordered 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 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 parent receiving ordered support, jointly.

10. Employment search order (Family Code section 4505)

Petitioner Respondent Other parent/party is ordered to seek employment with the following terms and conditions:

11. Other orders (specify):

12. Notices

- a. *Notice of Rights and Responsibilities Regarding Child Support (form FL-192)* must be attached and is incorporated into this order.
- b. If this form is attached to *Restraining Order After Hearing (form DV-130)*, the support orders issued on this form (form FL-342) remain in effect after the restraining orders issued on form DV-130 end.

13. Child Support Case Registry Form

Both parties must complete and file with the court a *Child Support Case Registry Form (form FL-191)* within 10 days of the date of this order. Thereafter, the parties must notify the court of any change in the information submitted within 10 days of the change by filing an updated form.

NOTICE: Any parent ordered to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

THIS IS A COURT ORDER.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): _____	TELEPHONE NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
APPLICATION FOR EXPEDITED CHILD SUPPORT ORDER		CASE NUMBER:

Notice to applicant: This form must be served on you if it is filed with the court.

To (name):

1. I am requesting the court to order you to pay child support in the sum of: \$ _____ per month until trial of this action. (See item 2 of the proposed *Expedited Child Support Order* attached to this form.) Attached is a completed Income and Expense Declaration (form FL-15) for each parent and a worksheet showing the basis for the support.

2. I am receiving am not receiving intend to apply for public assistance for the child or children listed in the proposed order.

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)

IF YOU DO NOT WANT TO PAY THE AMOUNT OF CHILD SUPPORT ASKED FOR, YOU MUST FILE A WRITTEN RESPONSE WITHIN 30 DAYS AND ASK FOR A COURT HEARING. The necessary forms (three blank copies of the *Response to Application for Expedited Child Support Order and Notice of Hearing*, and three blank copies of the *Income and Expense Declaration* (form FL-15)) are attached. You do not have to pay any fee for filing the *Response* (form FL-381).

Contact the clerk's office by telephone or in person and ask for a date for a hearing. The hearing date must be at least 20 days and not more than 30 days after you file the *Response to Application for Expedited Child Support Order* (form FL-381). Complete and file the *Response* after serving a copy on the other parent. You must have someone at least 18 years old, other than you, serve the forms. Have that person mail the papers to the address of the other parent or attorney for the other parent as shown on the top of the *Application*, or have that person personally give the papers to the other parent or attorney for the other parent. See the back of the *Response* for details. Have the person serving the *Response* complete and sign the *Proof of Service* on the back of the *Response*.

If you have this matter set for hearing, you must bring a copy of your most recent federal and state income tax return (whether individual or joint) to the hearing. You may examine the other parent's tax return and ask questions about it. The other parent may examine your tax return and ask questions about it. If you cannot find a copy of your tax return you must ask for a copy from the Internal Revenue Service and State Franchise Tax Board.

Tell them your name, the year of the return, your social security number, and the address to which they should mail the return. Sign the letter in the same way as you signed your tax return. Make a copy of the letter before you mail the original and bring it to the hearing.

If you have not filed a tax return for the last three years, you do not need to bring any return.

- IMPORTANT WARNING -

Unless you file a written response **within 30 calendar days** from the date this form is served on you, and ask the court for a hearing, you will be ordered to pay child support in the amount shown.

PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT:	CASE NUMBER:
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PROOF OF SERVICE — APPLICATION FOR EXPEDITED CHILD SUPPORT ORDER

1. I served the

a. *Application for Expedited Child Support Order* (form FL-380), proposed *Expedited Child Support Order* (form FL-382), a completed *Income and Expense Declaration* (form FL-150) for both parents, a worksheet setting forth the basis of the amount of support requested, three blank copies of the *Income and Expense Declaration* (form FL-150) and three blank copies of the *Response to Application for Expedited Child Support Order and Notice of Hearing* (form FL-381).

b. on petitioner/plaintiff respondent/defendant

c. by serving petitioner/plaintiff respondent/defendant
 other (name and title or relationship to person served):

d. by delivery at home at business
 (1) date:
 (2) time:
 (3) address:

e. By mailing
 (1) date:
 (2) place:

2. Manner of service (check proper box):

a. **Personal service.** Personally delivering copies. (CCP 415.10)

b. **Substituted service on natural person.** By leaving copies at the dwelling, house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the care or property of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where copies were left. (CCP 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**

c. **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) **(Attach completed acknowledgment of receipt.)**

d. **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) **(Attach signed return receipt or other evidence of actual delivery to the person served.)**

3. At the time of service I was at least 18 years of age and not a party to this action.

4. Fee for service: \$

5. Person serving:

a. California sheriff, marshal, or constable.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Not a registered California process server.

e. Exempt from registration under Business Prof. Code, § 22350(b).

f. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

 (SIGNATURE)

 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
RESPONSE TO APPLICATION FOR EXPEDITED CHILD SUPPORT ORDER AND NOTICE OF HEARING		CASE NUMBER:

To (name):

1. I object to the proposed expedited child support order for the following reasons (check one or more):

- a. I am not the parent of the child or children involved in this action.
- b. My income is incorrectly stated in the application.
- c. The other parent's income is incorrectly stated in the application.
- d. I am entitled to hardship deductions as shown in the attached *Income and Expense Declaration* (form FL-150).
- e. The other parent is not entitled to hardship deductions claimed in the application.
- f. The amount of support is incorrectly computed.
- g. other (specify):

2. I have attached a completed copy of my *Income and Expense Declaration* (form FL-150).

At my request, the court has set a hearing on the application as follows:

a. Date:	Time:	<input type="checkbox"/> Dept.	<input type="checkbox"/> Rm.:
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b. The address of the court is shown above is:

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)

You must bring a copy of your most recent federal and state income tax return (whether individual or joint) to the hearing or declare at the hearing that it doesn't exist or that you don't have it and have requested it from the Internal Revenue Service and Franchise Tax Board. Otherwise the court may grant the other party's request.

PETITIONER/PLAINTIFF:	CASE NUMBER:
RESPONDENT/DEFENDANT:	

PROOF OF SERVICE BY PERSONAL SERVICE MAIL

Service of the response on the other party may be made by anyone at least 18 years of age EXCEPT you. Service is made in one of the following ways:

(1) Personally delivering it to the attorney for the other party or, if no attorney for the other party.

OR

(2) Mailing it, postage prepaid, to the last known address of the attorney for the other party or, if no attorney, to the other party.

Anyone at least 18 years of age **EXCEPT ANY PARTY** may personally serve or mail the response. Be sure whoever served the response fills out and signs this proof of service. File this proof of service with the court as soon as the response is served.

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. I served a copy of the *Response to Application for Expedited Child Support Order and Notice of Hearing* as follows (check either a or b below):
 - a. **Personal service.** I personally delivered the response as follows:
 - (1) Name of person served:
 - (2) Address where served:
 - (3) Date served:
 - (4) How served:
 - b. **Mail.** I deposited the response in the United States mail in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 - (1) Name of person served:
 - (2) Address:
 - (3) Date of mailing:
 - (4) Place of mailing (*city and state*):
 - (5) I am a resident of or employed in the county where the response was mailed.
 - c. My residence or business address is (*specify*):
 - d. My phone number is (*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 OF PERSON WHO SERVED THE RESPONSE)

(SIGNATURE OF PERSON WHO SERVED THE RESPONSE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 	TELEPHONE NO.:	FOR COURT USE ONLY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER/PLAINTIFF:		
RESPONDENT/DEFENDANT:		
EXPEDITED CHILD SUPPORT ORDER <input type="checkbox"/> Proposed		CASE NUMBER:

THE COURT FINDS No Response to Application for Expedited Child Support Order has been filed and 30 days have elapsed since service of the application on the other parent on (date):

THE COURT ORDERS Pending trial or until further order of this court:

- Existing orders will continue in effect except as modified by this order.
- Support of the minor children of the parties is fixed as follows beginning on (date):
Child's name Monthly amount Payable by Payable to Payable on (dates)
- The maximum deductions allowed for extreme financial hardship total: \$
- The hardship deduction is allowed for the period beginning (date): _____ and ending (date): _____
- The payments for monthly child support will change as follows beginning on (date): _____
Child's name Monthly amount Payable by Payable to Payable on (dates)
- Child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student residing with a parent, whichever occurs first.

Date: _____ JUDICIAL OFFICER

— NOTICE —

AN EARNINGS ASSIGNMENT WILL BE OBTAINED WITHOUT FURTHER NOTICE TO YOU IF YOU FAIL TO PAY ANY COURT-ORDERED CHILD SUPPORT OR IF REQUESTED BY THE LOCAL CHILD SUPPORT AGENCY.

THIS ORDER IS ENFORCEABLE AS SOON AS IT HAS BEEN SIGNED BY A JUDICIAL OFFICER.

ANY PARTY REQUIRED TO PAY CHILD SUPPORT MUST PAY INTEREST ON OVERDUE AMOUNTS AT THE "LEGAL" RATE, WHICH IS CURRENTLY 10 PERCENT. THIS CAN BE A LARGE ADDED AMOUNT.

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-530.v5.02012024.wc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
JUDGMENT REGARDING PARENTAL OBLIGATIONS (UIFSA) <input type="checkbox"/> AMENDED <input type="checkbox"/> SUPPLEMENTAL	CASE NUMBER:

1. a. **NOTICE TO RESPONDENT: THIS IS A PROPOSED JUDGMENT.** This *Judgment Regarding Parental Obligations (UIFSA)* may be entered by the court and may become legally binding unless you fill out and file the *Response to Uniform Support Petition (UIFSA)* (form FL-520) with the court clerk within 30 days of the date you were served with the *Summons (UIFSA)* (form FL-510) and *Uniform Support Petition* (form OMB 0970-0085). If you need a *Response* form, you may get one from the local child support agency, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the *Response*, follow the procedures listed in the information sheet attached to that form.
- b. **NOTICE: THIS IS A JUDGMENT.** It is now legally binding.
2. **THIS MATTER PROCEEDED AS FOLLOWS:**
 - a. Judgment entered under Family Code section 17430(a).
 - b. By court hearing, appearances as follows:
 - (1) Date: _____ Dept: _____ Judicial Officer: _____
 - (2) Judgment entered by default after court hearing (Fam. Code, §§ 17404.1(c) and 17430(b)(3)).
 - (3) Petitioner present Attorney present (name): _____
 - (4) Respondent present Attorney present (name): _____
 - (5) Other parent/party present Attorney present (name): _____
 - (6) Local child support agency (Family Code, §§ 17400, 17406) (name): _____
 - (7) Other (specify): _____
 - c. The parent ordered to pay support is the petitioner respondent other parent/party.
3. This order is based on earning capacity because the earning capacity of the parent ordered to pay support is greater than their known actual income the actual income of the parent ordered to pay support is unknown. The factors used to determine earning capacity under Family Code section 4058(b) are stated
 - a. in *Earnings Capacity Factors Attachment* (form FL-302)
 - b. as follows (specify): _____

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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4. Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
5. The order is based on the attached documents (*specify*):

6. **THE COURT ORDERS:**

- a. The parent ordered to pay support is the parent of the children named in item 6b.
 has previously been determined to be the parent of the children named in item 6b.

b. The parent ordered to pay support must pay current child support as follows:

Name of child	Date of birth	Monthly support amount
---------------	---------------	------------------------

- (1) Mandatory additional child support.
- (a) The parent ordered to pay support must pay additional monthly support for reasonable **childcare** costs, as follows:
 One-half or % or (*specify amount*): \$ _____ per month of the costs
 Payments must be made to the other parent/party State Disbursement Unit child-care provider.
- (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
 One-half or % or (*specify amount*): \$ _____ per month of the costs
 Payments must be made to the other parent/party State Disbursement Unit health-care provider.

(2) Other (*specify*):

(3) For a total of: \$ _____ payable on the: _____ day of each month
 beginning (*date*): _____

- (4) The low-income adjustment applies.
 The low-income adjustment **has been rebutted and** does not apply because (*specify reasons*):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

- c. The parent ordered to pay support The **person receiving ordered support** must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The 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.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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6. d. The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount
---------------	---------------	-------------------	--------

(1) Other (*specify*):

(2) For a total of: \$ _____ payable: \$ _____ on the: _____ day of each month beginning (*date*):

(3) Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. No provision of this judgment operates to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the following address:
California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.

g. **An earnings assignment order is issued.**

h. In the event that there is a contract between a person receiving ordered 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 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 person receiving ordered support, jointly.

i. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.

j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.

k. *Notice of Rights and Responsibilities Regarding Child Support Order* (form FL-192) is attached.

l. The court further orders (*specify*):

Date: _____

Number of pages attached: _____

 JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order.
 Date: _____

(SIGNATURE OF PARENT ORDERED TO PAY SUPPORT OR THEIR ATTORNEY)

GOVERNMENTAL AGENCY (under Fam. Code, §§ 17400 and 17406): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-600 2024-2-1 WC-MS.v8
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
<input type="checkbox"/> SUMMONS AND COMPLAINT <input type="checkbox"/> SUPPLEMENTAL COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT REGARDING PARENTAL OBLIGATIONS	CASE NUMBER: _____

TO (name):

The local child support agency has filed this lawsuit against you. This lawsuit says you and the other parent are the parents of each child named in this *Complaint* and that the obligor may be required to pay child support. The attached proposed *Judgment Regarding Parental Obligations* (form FL-630) names you and the other parent as parents of each child listed below and, if there is an amount stated in item 6 of the proposed **Judgment**, orders the obligor to pay support for these children. If you disagree with the proposed **Judgment**, you must file the attached **Answer** (form FL-610) with the court clerk **within 30 days of the date that you were served with this Complaint**. **If the amount of child support in the proposed Judgment is based on actual income and you do not file an Answer, the proposed Judgment will become a final determination that you are the parent and responsible for support. If the amount of child support in the proposed Judgment is based on earning capacity, the court will hold a hearing before entering a judgment. If you do not file an answer or appear at the hearing, the court will enter a judgment without your input. If you are required to pay child support, the payments may be taken from your pay or other property without further notice. See the attached statement of your rights and responsibilities for more information.**

[Proposed revisions in Spanish are pending.] La agencia local que vigila la manutención de menores ha registrado la presente demanda contra usted. Esta demanda dice que usted y el otro padre son los padres de los hijos nombrados aquí y que el obligado deberá pagar manutención de menores. El propuesto FALLO RESPECTO A OBLIGACIONES PATERNAS (Gubernamental) (formulario FL-630) los nombra a usted y al otro padre como padres de cada uno de los hijos que figuran a continuación y, si se incluye una suma en el inciso 6, obliga al obligado a pagar manutención por estos hijos. Si no está de acuerdo con el FALLO propuesto, deberá registrar el formulario de RESPUESTA que se adjunta, presentándolo al actuario del tribunal dentro de 30 días después de haber recibido notificación de esta DEMANDA. Si usted no registra una RESPUESTA, el FALLO propuesto tomará efecto con una determinación final de paternidad. Si se le está exigiendo que pague manutención de menores, los pagos podrán ser deducidos de su salario o de otras pertenencias suyas sin necesidad de mandarle ninguna otra notificación. Para mayor información, vea la declaración anexa respecto a los derechos y responsabilidades que tiene.

	<p>Notice to person served: You are served</p> <p>1. <input type="checkbox"/> as an individual defendant/respondent.</p> <p>2. <input type="checkbox"/> on behalf of a minor child or children.</p> <p>3. <input type="checkbox"/> other (<i>specify</i>): _____</p> <p>Date: _____ Clerk, by _____, Deputy</p>
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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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1. The local child support agency is asking the court to issue judgment or orders for the following children:

Name	Date of Birth	Establish Parentage	Establish Support	Modify Order	Beginning Date
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Additional children are listed on a page (labeled Attachment 1) attached to this *Complaint*.

2. a. The parents of the children named in item 1 are (*specify name*):

(*specify name*):

b. (*Specify name*): _____ is named as the parent of the children listed in item 1 in the declaration of parentage on file with the local child support agency or the county welfare department.

c. The obligor (the parent asked to pay support) is (*specify*):

3. Complete the following section if support is being requested but the "Establish Parentage" box has not been checked in item 1. Please specify each child. You do not need to complete this section if a final judgment of parentage was previously entered under this case number.

a. A voluntary declaration of parentage or paternity that has not been canceled and was signed by both parents has been forwarded to the California Department of Child Support Services for the following children (*specify*):

b. The following are named as children of the marriage in a family law judgment in (*specify county and state*) _____ in case number (*specify*) _____ for the following children (*specify*):

c. Judgment of parentage has previously been entered in (*specify county and state*) _____ in case number (*specify*) _____ for the following children (*specify*):

d. Other (*specify*):

(*Names of children*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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4. a. Some or all of the children named in item 1 are receiving or have received public assistance from the following counties (specify):
- b. Date public assistance first paid:

5. Other (specify):

THE LOCAL CHILD SUPPORT AGENCY REQUESTS THAT:

6. The court determine that the persons listed in item 2 are the parents of the children listed in item 1 for whom the "Establish Parentage" boxes have been checked.

7. Based on the California support guideline, the court order the obligor to pay:

a. \$ _____ current monthly child support based on the obligor's known actual income of \$ _____ per month, and, if applicable, the obligee's known actual income of \$ _____ per month.

b. \$ _____ current monthly child support based on the obligor's earning capacity of \$ _____ per month because (check one):

- (1) the obligor's earning capacity is greater than the obligor's known actual income.
- (2) the obligor's actual income is unknown.
- (3) The obligor's earning capacity was determined based on a consideration of the following factors

(check all that apply):

- | | |
|--|--|
| (a) <input type="checkbox"/> Assets | (b) <input type="checkbox"/> Age |
| (c) <input type="checkbox"/> Residence | (d) <input type="checkbox"/> Health |
| (e) <input type="checkbox"/> Work and earnings history | (f) <input type="checkbox"/> Incarceration |
| (g) <input type="checkbox"/> Job skills | (h) <input type="checkbox"/> Employment Barriers |
| (i) <input type="checkbox"/> Education | (j) <input type="checkbox"/> Local job market |
| (k) <input type="checkbox"/> Record of seeking work | (l) <input type="checkbox"/> Availability of employers willing to hire |
| (m) <input type="checkbox"/> Ability to read and write | (n) <input type="checkbox"/> Average earnings in local community |
| (o) <input type="checkbox"/> Other (specify): | |

c. \$ _____ additional monthly child support for the following reasons (specify):

d. The court issue appropriate orders for sharing the costs of

- (1) childcare (specify):
- (2) health care (specify):

e. Other (specify):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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- 8. The court order the obligor to provide health insurance for each child named in item 1 if available at no or reasonable cost; to keep the local child support agency informed of the availability of the coverage; and to complete and return, within 20 days of the local child support agency's request, a health insurance form and that a *National Medical Support Notice* be issued. If health insurance is not available at no or reasonable cost, that the court orders obligor to provide coverage when it becomes available. **NOTICE:** The obligor's employer or other person providing health insurance will be ordered to enroll the children in an appropriate health insurance plan if the obligor is found to be the parent.
- 9. A wage and earnings assignment be issued.
- 10. The court order the parents to advise the local child support agency within 10 days in writing of any change in residence or employment.
- 11. The court order the obligor to make all payments to (*specify*):
- 12. The other parent be added as a party to this case.
- 13. Number of pages attached: _____

NOTICE

- Child support:** The court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
- If you want legal advice, contact a lawyer immediately.
- A Statement of Rights and Responsibilities is attached to this document. Please read it carefully.**

Date: _____

(TYPE OR PRINT NAME)



(ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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Hearing by Court Commissioner

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 acting as a temporary judge. You can object to the commissioner acting as a temporary judge in one of two ways: (1) by telling the commissioner in court, at the start of your hearing, that you object or (2) by delivering a written objection to the court clerk. You must object before the hearing in your case begins. You do not have to give a reason for your objection. The court commissioner may still hear your case to make findings and a recommended order. 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.

Family Law Facilitator

Each superior court has a family law facilitator's office to provide education, information, and assistance to parents who have child support issues. The basic duties of the family law facilitator include:

- Providing educational materials;
- Distributing court forms;
- Providing assistance in completing forms;
- Preparing child support guideline calculations; and
- Providing referrals to the local child support agency, family court services, and other community agencies.

The family law facilitator is a neutral person whose services are available to any person who is NOT represented by an attorney. Both parties in the same case may receive assistance from the family law facilitator. There is no attorney-client privilege between the family law facilitator and any person assisted by the family law facilitator, and matters discussed with the family law facilitator are not confidential. No person can be represented by the family law facilitator.

STATEMENT OF RIGHTS AND RESPONSIBILITIES

NOTICE to the respondent: The proposed *Judgment Regarding Parental Obligations* (form FL-630) may be entered against you unless you file your written *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610) with the court clerk within 30 days of the date you were served with the Complaint. The proposed Judgment may be entered whether or not you have a lawyer. If you were served with a form telling you the date of a court hearing, you should go to court on that date. An order may be entered without your input if you do not attend the hearing.

[Proposed revisions in Spanish are pending.] AVISO para el acusado: El FALLO propuesto entrará en efecto contra usted, a menos que dentro de 30 días desde cuando recibió notificación de la DEMANDA, usted registre por escrito una RESPUESTA A DEMANDA o DEMANDA SUPLEMENTAL RESPECTO A OBLIGACIONES PATERNAS (Gubernamental) (formulario 610). El FALLO propuesto entrará en efecto contra usted, tenga o no tenga usted un abogado. Si le dieron notificación con un formulario que especifica una fecha de audiencia, usted tiene que presentarse al tribunal en esa fecha. Si no asiste a la audiencia, una orden judicial podrá emitirse sin considerar su punto de vista.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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NOTICE TO BOTH PARENTS

The local child support agency has sued both of you to determine whether you are the parents of the children listed and if one or both of you should be ordered to pay child support. The local child support agency does not represent any individual in this lawsuit, including either parent or the children. Carefully read this statement and the other papers that you received.

You have the right to be represented by a lawyer. If you dispute that you are the parent of the children listed in the *Complaint* and you do not have enough money for a lawyer, you may ask the court to appoint a lawyer to represent you on the issue of parentage.

Other information about court-appointed lawyers (specify):

A blank *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (form FL-610)* is included in the papers that were served on you. If you did not receive an *Answer* form or if you would like another copy, you may get one from the local child support agency, the court clerk's office, or the family law facilitator. The family law facilitator can assist you in filling out the *Answer* form. **You must file your *Answer* form with the court clerk within 30 days of the date you were served with the *Complaint* whether or not you obtain an attorney.**

Settling Out of Court

You may contact the local child support agency to try to work out a settlement agreement. However, you must still file an *Answer* form within 30 days. If you and the local child support agency can reach an agreement regarding the requests made in the *Complaint*, you may sign a settlement agreement called a **stipulation**. By signing a stipulation, you are agreeing to give up your rights explained in this statement, you are agreeing that you are the parent of the children listed in the *Complaint*, and you are agreeing to obey all of the terms of the stipulation. The stipulation will become a court order that you must obey.

Going to Court

If you file your *Answer* form, you have the right to a court hearing, to subpoena witnesses, to ask questions of any witness against you, and to present evidence on your behalf. **If the amount of child support requested in the *Complaint* is based on earning capacity, the court will hold a hearing even if you do not file an answer.** Genetic testing may be performed if the respondent questions parentage of the children listed in the *Complaint*. If the respondent refuses to cooperate in the genetic testing process, the issue of parentage may be resolved against the respondent. The costs of the genetic testing may be charged to one of you.

Earnings Assignment

All orders for support must contain an earnings assignment. If you are obligated to pay support, this assignment will require your employer or other payor to deduct support payments from your salary or earnings and send the payments to the local child support agency. Your employer may also be required to enroll your children in a health insurance plan and deduct the cost from your salary or earnings.

Any amounts you owe may be collected from your property, whether or not you are current in your payments toward past due support. Collection may be made by taking money owed to you by the state or federal government (such as tax refunds, unemployment and disability benefits, and lottery winnings), by taking property you own, by placing a lien on your property, or by any other lawful means. You may be fined or imprisoned if you fail to pay support as ordered.

If the local child support agency does not know how much money the obligor (parent asked to pay support) earns, the local child support agency will base the child support amount stated in item 6b of the proposed *Judgement Regarding Parental Obligations (form FL-630)* on the obligor's earning capacity after review of the factors stated in Family Code section 4058(b)(2).

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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Other Important Information

Both parents should tell the local child support agency everything they know about the other parent's earnings, assets, work history, job skills, education, and any other specific circumstances that may affect earning capacity (see item 7b of the *Complaint*).

The respondent is always a party to this action. If the other parent has requested or is receiving services from the local child support agency, that parent will become a party to the lawsuit filed by the local child support agency after the initial support order or medical support order is entered by the court. After the other parent has become a party to the lawsuit, either parent may then ask the court to decide issues concerning support, custody, visitation, and restraining orders (domestic violence). No other issues may be raised in this lawsuit. Either parent may go to court to modify the court order. The local child support agency cannot bring proceedings to establish or modify custody, visitation, or restraining orders.

After the other parent has become a party to the lawsuit, either parent may go to court to enforce the existing order against the other, but must first notify the local child support agency as required by law. The local child support agency is allowed 30 days to determine whether or not a parent will be permitted to proceed with the enforcement action against the other parent. The local child support agency may deny a parent permission to proceed if it is currently taking enforcement action or if the action by a parent would interfere with an investigation. If the local child support agency does not respond to the notice by the parent seeking enforcement within 30 days or if the local child support agency notifies the parent seeking enforcement that the enforcement action can proceed, the parent may then file the enforcement action as long as all support is paid through the local child support agency.

If the custodial person receives public assistance, the local child support agency may agree to settle any parentage or support issue in this lawsuit without providing advance notice to the custodial person. A child support agency may not settle any child support issue without the consent of any parent who is an applicant for child support services and who does not receive public assistance.

The local child support agency is required, under section 466(a)(13) of the Social Security Act, to place in the records pertaining to child support the social security number of any individual who is subject to a divorce decree, support order, or parentage determination or acknowledgment. This information is mandatory and will be kept on file at the local child support agency.

Your family law facilitator is available to help you with any questions you may have about the above information. You can find information about the family law facilitator in your county or the county where the case is filed at www.courts.ca.gov/selfhelp-facilitators.htm

You can reach your family law facilitator in the county where the case is filed by telephone at:

or in person at:

For more information on finding a lawyer or family law facilitator, see the Self-Help Guide to the California Courts at <https://selfhelp.courts.ca.gov/>.

PARTY WITHOUT ATTORNEY OR ATTORNEY <i>(Name, state bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ EMAIL ADDRESS: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-610.v4.02012024.wc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/PARTY: _____	
ANSWER TO COMPLAINT OR SUPPLEMENTAL COMPLAINT REGARDING PARENTAL OBLIGATIONS	CASE NUMBER: _____

YOU MUST FILE THIS ANSWER WITH THE COURT IF YOU WISH TO OPPOSE THE LAWSUIT

If you disagree with the proposed judgment attached to the *Summons and Complaint*, you must file this *Answer* with the court clerk within 30 days of the date you were served with the *Complaint*. File the original *Answer* with the court clerk at the address for the superior court stated above and serve a copy on the local child support agency. Keep a copy for your records.

1. PARENTAGE:

a. I am the parent of the following children

	Name of Child		Date of Birth
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<input type="checkbox"/> Yes		<input type="checkbox"/> No	
<input type="checkbox"/> Yes		<input type="checkbox"/> No	

Additional children are listed on a page attached to this *Answer*.

b. I request genetic testing to determine parentage be done for all children for whom I have checked a "No" box above. I understand that the local child support agency will pay for the cost of the testing now, but that I may have to repay those costs if the court decides that I am the parent.

2. CHILD SUPPORT

- a. I agree to pay support as stated in the proposed judgment.
- b. I disagree with the support requested. Attached is my completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). NOTE: You can file this *Answer* without either of these forms.

3. CHILDCARE COSTS:

- a. I agree with the requested order for childcare costs in the proposed judgment.
- b. I disagree with the requested order for childcare costs.

4. UNINSURED HEALTH-CARE COSTS:

- a. I agree with the requested order for uninsured health-care costs stated in the proposed judgment.
- b. I disagree with the requested order for uninsured health-care costs.

5. I disagree with the proposed judgment for the following reasons (*specify*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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6. My address and telephone number for receipt of all notices and court dates until I file a change with the court and with the local child support agency are as follows:

- Address:
- City and Zip Code:
- Home Telephone:
- Work Telephone:
- Email Address (optional):

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 OF DECLARANT)

An adult *other than you* must complete the *Proof of Service* below and provide a copy of this *Answer* to the local child support agency at the following address (*specify*):

PROOF OF SERVICE

6. I am at least 18 years of age, and not a party to this action. I served this *Answer* and any other forms filed with the *Answer* on the local child support agency and any other party required to be served.
- a. **Personal delivery.** I personally delivered this *Answer* to an employee of the local child support agency as follows:
 - (1) Name of employee:
 - (2) Address where delivered:
 - (3) Date of delivery:
 - (4) Time of delivery:
 - b. **Mail.** I deposited this *Answer* in the United States mail, in a sealed envelope with postage fully prepaid. I used **first-class** mail. The envelope was addressed and mailed as follows:
 - (1) Name:
 - (2) Address:
 - (3) Date of mailing:
 - (4) Place of mailing (*city and state*):

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 OF PERSON WHO SERVED ANSWER)

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 acting as a temporary judge. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days in writing (use *Notice of Objection (Governmental)* (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.

INFORMATION SHEET FOR ANSWER TO COMPLAINT

Please follow these instructions to complete the *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations* (form FL-610) if you do not have an attorney to represent you. Your attorney, if you have one, should complete this form.

You must file the completed *Answer* and attachments with the court clerk within 30 days of the date you received the *Summons and Complaint* (form FL-600). The address of the court clerk is the same as the one shown for the Superior Court on the *Summons and Complaint* (form FL-600). There is no fee to file an answer in this case. **Keep two copies of the filed *Answer* form and its attachments. Serve one copy on the local child support agency and keep the other copy for your records. (See *Information Sheet for Service of Process* (form FL-611).)**

Upon receipt of your filed *Answer*, the local child support agency will set a court hearing on this matter.

INSTRUCTIONS FOR COMPLETING THE ANSWER FORM (TYPE OR PRINT FORM IN BLACK INK):

Front page, first box, top of form, left side. Print your name, address, and telephone number in this box if they are not already there.

1. a. For each child listed on the *Answer* form, you must check the "yes" box if you agree that you are that child's parent, or check the "no" box if you do not think or are not sure whether you are that child's parent. You must write in the name of each child listed in the *Summons and Complaint* (form FL-600) if your *Answer* form does not include the names of any children.
- b. If you have checked a "no" box in answer to number 1 above, you must request genetic testing to determine whether you or the other parent is the parent. The local child support agency will tell you when and where to go for the test. The local child support agency will pay for the cost of the test now. If the court decides the test shows parentage as pleaded in the *Complaint*, you may have to repay this cost to the local child support agency.

NOTE: Checking the "no" box does not satisfy the requirements needed to request the court cancel (set aside) any voluntary declaration of parentage or paternity which you may have signed or to request the court find a voluntary declaration is void (invalid) (Fam. Code, §§ 7573.5, 7576, 7577). To make this request, you must file a *Request for Hearing and Application to Cancel (Set Aside) Voluntary Declaration of Parentage or Paternity* (form FL-280). If you signed a voluntary declaration of parentage or paternity for a child listed in the *Summons and Complaint*, you will need to file the request before genetic testing can be done.

2. a. Check this box if you agree to pay the support asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630) that you received.
- b. You should check this box if you do not agree to pay the support asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630).
3. a. Check this box if you agree to pay the requested amount or portion of childcare costs.
- b. You should check this box if you do not agree to pay the requested amount of childcare or do not agree with how the childcare costs are to be divided.
4. a. Check this box if you agree to pay the requested amount or portion of uninsured health-care costs.
- b. You should check this box if you do not agree to pay the requested amount of health-care cost or do not agree with how the costs are to be divided.
5. If you agree to pay the support, childcare costs, and uninsured healthcare costs asked for in the proposed *Judgment Regarding Parental Obligations* (form FL-630), but you disagree with the proposed *Judgment* for another reason, you should check this box and write your reasons in this space. **If you have documents that prove your reasons for disagreeing with the proposed *Judgment*, you should attach the documents to the *Answer* form.**
6. You must list your address and phone numbers where you can receive all notices and court dates. You must let the court know whenever your address changes. If the court does not have your current address, you may not receive important notices that affect you.

You must date the *Answer* form, print your name, and sign the form under a penalty of perjury. When you sign the *Answer* form, you are stating that the information you have provided is true and correct.

Instructions for how to complete the *Proof of Service* section of the *Answer* form are in the *Information Sheet for Service of Process* (form FL-611). The person who serves the *Answer* and its attachments must fill out this section of the form. **You cannot serve your own *Answer*.**

GOVERNMENTAL AGENCY (Under Family Code, §§ 17400 and 17406): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-616 2024-1-23 WC-MS.v5
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/PARTY: _____	
DECLARATION FOR AMENDED PROPOSED JUDGMENT	CASE NUMBER: _____

1. The local child support agency is providing enforcement services in this case.
2. On (date): _____ a *Summons and Complaint Regarding Parental Obligations* (form FL-600) was filed requesting the respondent pay child support based on the California support guideline. The amount of the support requested was based on the respondent's gross monthly income as follows (check one):
 - a. Known income of: \$ _____ per month
 - b. Earning capacity of: \$ _____ per month because respondent's (check one)
 - (1) earning capacity was greater than known income.
 - (2) actual income was unknown.
3. Since the service of the *Summons and Complaint Regarding Parental Obligations* (form FL-600), the local child support agency has received the following new information that would result in a different support order.
 - a. Other parent's monthly income is: \$ _____
 - b. Respondent's gross monthly income is as follows (check one):
 - (1) Known income of: \$ _____ per month
 - (2) Earning capacity of: \$ _____ per month. The factors used to calculate respondent's earning capacity under Family Code section 4058(b) are stated
 - (a) in *Earnings Capacity Factors Attachment* (form FL-302).
 - (b) as follows (specify): _____
 - c. Other (specify): _____
4. An amended proposed judgment is attached.

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 OF DECLARANT)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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PROOF OF SERVICE

5. I served this declaration and the attached amended proposed judgment on the respondent.

a. **Personal delivery.** I personally delivered this declaration and amended proposed judgment to the respondent as follows:

- (1) Name:
- (2) Address where delivered:
- (3) Date of delivery:
- (4) Time of delivery:

b. **Mail.** I deposited this declaration and amended proposed judgment in the United States mail, in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:

- (1) Name:
- (2) Address:
- (3) Date of mailing:
- (4) Place of mailing (*city and state*):

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 OF PERSON WHO SERVED RESPONDENT)

6. I served this declaration and the attached amended proposed judgment on the other parent/party.

a. **Personal delivery.** I personally delivered this declaration and amended proposed judgment to the other parent/party as follows:

- (1) Name:
- (2) Address where delivered:
- (3) Date of delivery:
- (4) Time of delivery:

b. **Mail.** I deposited this declaration and amended proposed judgment in the United States mail, in a sealed envelope with postage fully prepaid. I used first-class mail. The envelope was addressed and mailed as follows:

- (1) Name:
- (2) Address:
- (3) Date of mailing:
- (4) Place of mailing (*city and state*):

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 OF PERSON WHO SERVED OTHER PARENT/PARTY)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-630 2024-02-1 WC- MS.v7
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
<div style="text-align: center;"> JUDGMENT REGARDING PARENTAL OBLIGATIONS <input type="checkbox"/> AMENDED <input type="checkbox"/> SUPPLEMENTAL </div>	CASE NUMBER:

1. a. **NOTICE: THIS IS A** **PROPOSED** **AMENDED PROPOSED JUDGMENT.** This *Judgment Regarding Parental Obligations* may be entered by the court and may become legally binding unless you fill out and file *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610) with the court clerk within 30 days of the date you were served with *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-600). If you need form FL-610, you may get one from the local child support agency's office, the court clerk, or the family law facilitator. The family law facilitator will help you fill out the forms. To file the answer, follow the procedures listed in the attached instructions
- b. **NOTICE: THIS IS A JUDGMENT.** It is now legally binding.
2. **This matter proceeded as follows:**
 - a. Judgment entered under Family Code section 17430(a).
 - b. By court hearing, appearances as follows:
 - (1) Date: _____ Dept.: _____ Judicial officer: _____
 - (2) Judgment entered by default after court hearing under Family Code section 17430(b)(3).
 - (3) Petitioner present Attorney present (name): _____
 - (4) Respondent present Attorney present (name): _____
 - (5) Other parent/party present Attorney present (name): _____
 - (6) Local child support agency attorney (Family Code, §§ 17400,17406) (name): _____
 - (7) Other (specify): _____
 - c. The parent ordered to pay support is the petitioner respondent other parent/party.
3. This order is based on earning capacity because the earning capacity of the parent ordered to pay support is greater than their known actual income the actual income of the person ordered to pay support is unknown. The factors used to determine earning capacity under Family Code section 4058(b) are stated
 - a. in *Earnings Capacity Factors Attachment* (form FL-302)
 - b. as follows (specify): _____
4. Attached is a computer printout showing the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
5. This order is based on the attached documents (specify): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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THE COURT ORDERS

6. a. Petitioner Respondent Other parent/party are the parents of the children named in item 6b below.

b. The parent ordered to pay support must pay current child support as follows:

Name of Child	Date of birth	Monthly Support Amount
---------------	---------------	------------------------

(1) Mandatory additional child support.

(a) The parent ordered to pay support must pay additional monthly support for reasonable childcare costs, as follows:
 One-half or % or (specify amount): \$ _____ per month of the costs.
 Payments must be made to the other parent/party State Disbursement Unit child-care provider.

(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:
 One-half or % or (specify amount): \$ _____ per month of the costs.
 Payments must be made to the other parent/party State Disbursement Unit health-care provider.

(2) Other (specify):

(3) For a total of: \$ _____ payable on the _____ day of each month beginning (date):

(4) The low-income adjustment applies.

The low-income adjustment has been rebutted and does not apply because (specify reasons):

(5) Any support ordered will continue until further order of court, unless terminated by operation of law.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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c. The parent ordered to pay support The person receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The 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.

d. The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of Child	Date of birth	Period of support	Amount
---------------	---------------	-------------------	--------

(1) Other (specify):

(2) For a total of: \$ _____ payable: \$ _____ on the: _____ day of each month beginning (date):

(3) Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

- e. If this is a judgment on a *Supplemental Complaint*, it does not modify or supersede any prior judgment or order for support or arrearage, unless specifically provided.
- f. No provision of this judgment can operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.
- g. All payments, unless specified in item 6b(1) above, must be made to the State Disbursement Unit at the address listed below: **California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067**

h. An earnings assignment order is issued.

- i. In the event that there is a contract between a person 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 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 person receiving support, jointly.
- j. If "The parent ordered to pay support" box is checked in item 6c, a health insurance coverage assignment must issue.
- k. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- l. *Notice of Rights and Responsibilities Regarding Child Support* (form FL-192) is attached.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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m. The following person (the "other parent/party") is added as a party to this action (*name*):

n. The court further orders (*specify*):

Date: _____

Number of pages attached: _____

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order. Date: _____ (SIGNATURE OF PARENT ORDERED TO PAY SUPPORT OR THEIR ATTORNEY)
--

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406):
 RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

TEL NO.: _____ FAX NO. (optional): _____
 EMAIL ADDRESS: _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____
 STREET ADDRESS: _____
 MAILING ADDRESS: _____
 CITY AND ZIP CODE: _____
 BRANCH NAME: _____

DRAFT v.2
Not approved by
the Judicial Council
FL-632 2024-2-1 WC-MS.v8

FOR RECORDER'S USE ONLY

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	FOR COURT USE ONLY CASE NUMBER: _____
<p align="center">NOTICE REGARDING PAYMENT OF SUPPORT</p> <input type="checkbox"/> NOTICE OF ASSIGNED SUPPORT <input type="checkbox"/> SUBSTITUTION OF PAYEE	
<p align="center">INFORMATION ABOUT THIS FORM</p> <ul style="list-style-type: none"> This form is used to tell the parents and the court when the local child support agency is or is not enforcing support orders in this case. For more information about this form, see <i>Information Sheet: Notice Regarding Payment of Support (form FL-632-INFO)</i>. 	

- The parent ordered to pay support is the: Petitioner Respondent Other Parent/Party
 (specify name and address): _____
 - The person receiving ordered support is the: Petitioner Respondent Other Parent/Party
 (specify name and address, if parent is payee): _____
 The address of the person receiving ordered support cannot be provided because a protective order was issued or the local child support agency has reason to believe the release of the information may result in harm to the parent or children, per Family Code section 17212(b)(2).
- The substituted payee is:
 - The local child support agency (specify name and address): _____
 - Other (specify name and address): _____

NOTICE TO THE CLERK:

If item 3(b) is checked, no matters should be heard by a child support commissioner.

The following matters should be heard by a child support commissioner, unless one is not available due to exceptional circumstances (Fam. Code, §§ 4250-4252): (1) A request to modify ongoing child support, if Item 3(a) (1) is checked, (2) a request to determine back support (arrears) if item 3(a)(2) or (3) is checked and, (3) a request regarding medical support if item 3(a)(4) is checked.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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3. a. The local child support agency is providing the following enforcement services in this case (*check all that apply*):
- (1) Current support
 - (2) Back support (arrears) owed to the parent listed in Item 1(b)
 - (3) Back support (arrears) owed for public assistance paid by the county
 - (4) Medical support
- b. The local child support agency is no longer providing any enforcement services in this case.

4. All payments must be made as follows:

- a. Payments collected by an Income Withholding Order must be sent to:
California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.
- b. All payments, other than income withholding payments, must be sent to (*check all that apply*):

Type of support	Local child support Agency listed in Item 2(a)	Person listed in Item 1(b)
Current support	<input type="checkbox"/>	<input type="checkbox"/>
Back support (arrears) owed to the person listed in Item 1(b)	<input type="checkbox"/>	<input type="checkbox"/>
Back support (arrears) owed for public assistance paid by the county	<input type="checkbox"/>	<input type="checkbox"/>
Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/>

5. One of the parents has applied for and received public assistance for the children. This means that under California law they gave away (assigned) their right to receive support, while aid is being paid, to the county of (*specify*):

6. The substituted payee must be contacted when notice to a lienholder may or must be given. An abstract or notice of support judgment or support judgment was recorded as follows:

County
Date of recording
Instrument number
Book number
Page number

Date:

_____ _____

(TYPE OR PRINT NAME) (SIGNATURE)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

NOTICE:
No acknowledgment is required when this form is recorded by a local child support agency.

ACKNOWLEDGMENT

(To be completed when this form is recorded by a person or entity other than a local child support agency.)

STATE OF CALIFORNIA
 COUNTY OF

On _____, before me, _____ (here insert name and title of the officer),
 personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 (SIGNATURE OF NOTARY)

When is form FL-632 used?

Form FL-632 is used to tell the parents and the court when the local child support agency is or is not enforcing support orders in this case. It is also used to identify who is the payee in the case.

What is a payee?

The form tells the parents and the court if support must be paid to one of the parents or the local child support agency. Whomever support must be paid to is called the “payee.”

- **Note:** Sometimes a parent who formerly received public assistance closes their case with the local child support agency but back support (arrears) could still be owed to the county for the time when aid was active. In this situation, current support would be owed to the parent, while this back support would be owed to the county, meaning both the parent *and* the local child support agency would be considered payees.

How does support get paid?

If the local child support agency is enforcing the support order, payments collected by Income Withholding Order must be made to the State Disbursement Unit at the following address: **California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.**

If the local child support agency stops enforcing current support or back support (arrears) owed to the parent listed in item 1b on form FL-632, this does not affect or change the child support order and child support must still be paid.

- Support must be paid directly to the parent listed in item 1b until a new *Income Withholding Order for Support* ([form FL-195](#)) is put in place. This will *not* happen automatically and it is the responsibility of one of the parents to submit the new Income Withholding Order to the court for approval and then have it delivered to the employer of the parent listed in item 1a on form FL-632.
- Each parent must also complete and deliver to the court a *Child Support Case Registry Form* ([form FL-191](#)) within 10 days of receiving a *Notice Regarding Payment of Support* ([form FL-632](#)) stating that the local child support agency has stopped enforcing current support or back support (arrears) owed to the parent listed in item 1b.

How can parents change the order?

The current child support order will remain the same unless one of the parents (or the local child support agency if they are enforcing current support) requests that the support order can be changed. Parents can change the support order in two different ways:

- If the parents agree to a new amount, they can complete, sign, and submit to the court a *Stipulation to Establish or Modify Child Support and Order* ([form FL-350](#)).
- If the parents don't have an agreement, one of the parents can request a court hearing by filing a *Request for Order* ([form FL-300](#)) and an *Income and Expense Declaration* ([form FL-150](#)) and then having the papers served on the other parent. The judge will decide at the hearing how much support must be paid.

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.

Is the case assigned to a child support commissioner or a judge?

The following hearings will be in front of a child support commissioner:

- A request to modify ongoing child support if the local child support agency is involved in your case and item 2a(1) is checked on form FL-632.
- A request to determine back support (arrears) if the local child support agency is involved in your case and item 2a(2) or (3) is checked on form FL-632.
- A request regarding medical support if the local child support agency is involved in your case and item 2a(4) is checked on form FL-632.

A judge or other judicial officer will hear your case if the local child support agency is no longer providing any enforcement services in your case and item 2b is checked on form FL-632.

For information about hearings involving a child support commissioner and the local child support agency, visit: <https://selfhelp.courts.ca.gov/request-for-order/LCSA/hearing>.



How can parents get free help?

Every county has a family law facilitator who 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. You can find the facilitator in your county here: www.courts.ca.gov/selfhelp-facilitators.htm.

How do I contact the local child support agency?

If you have questions about form FL-632 or about your case with the local child support agency in general, call the Child Support Customer Connect line for more information: **866-901-3212**.

GOVERNMENTAL AGENCY (Under Family Code, §§ 17400 and 17406): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-635 2024-1-4 WC-MS.v1
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
NOTICE OF ENTRY OF JUDGMENT AND PROOF OF SERVICE BY MAIL	CASE NUMBER: _____

1. You are notified that the following judgment was entered on (date):
 - a. Default taken and proposed judgment entered under Family Code section 17430(a)
 - b. Judgment Regarding Parental Obligations (form FL-630)
 - c. Other (specify): _____

2. A copy of each document referred to in item 1 is attached.

NOTICE

If the support order contained in the judgment is based on earning capacity and was entered by default, the parents or the local child support agency may file a request (form FL-640) to cancel (set aside) the support order. The request can be obtained online at www.courts.ca.gov/forms.htm, or from the family law facilitator's office, the court clerk, or the local child support agency. The request must be filed to ask the court to cancel (set aside) the child support portions of the judgment. If the court decides to cancel (set aside) the support order, the court will issue a new support order based on the actual income or earning capacity of the parent ordered to pay support. The request must be filed with the court clerk within two years from the date the first collection of support by wage garnishment is made.

PROOF OF SERVICE BY MAIL

3. I am at least 18 years of age, **not a party to this cause**, and a resident of or employed in the county where the mailing took place.
4. My residence or business address is (specify): _____
5. I served a copy of this notice of entry and referenced documents by enclosing them in a sealed envelope directly in the United States mail with postage prepaid OR at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar.
 - a. Date of deposit _____
 - b. Place of deposit (city and state): _____
 - c. Addressed as follows:

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 OF DECLARANT)

**NOTICE OF ENTRY OF JUDGMENT
AND PROOF OF SERVICE BY MAIL
(Governmental)**

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) OR ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-640.v6.2024-1-31 WC.MS.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
NOTICE AND MOTION TO CANCEL (SET ASIDE) SUPPORT ORDER BASED ON PRESUMED INCOME OR EARNING CAPACITY	CASE NUMBER: _____

If the support order was entered by default and is based on presumed income or earning capacity, you may file this motion and ask the court to cancel (set aside) the support order. If the court agrees with you, the court will issue another order based on the actual income, earning capacity, or income allowable by law. You must file the original of this motion and the attachments with the court clerk within two years from the date the first collection of support made by wage garnishment was received by the local child support agency and serve a copy on all other parties in this case. Keep a copy of this motion for your records.

1. To: Petitioner Respondent Local child support agency Other (specify):
 A hearing on this motion will be held as follows (see instructions on how to get a hearing date):
 a. Date: _____ Time: _____ Dept.: Div: Room:
 b. Address of court is same as noted above other (specify): _____
2. I am asking the court to cancel (set aside) the child support order in this case.
3. I am asking the court to issue another order because the current order was entered by default and is based on presumed income or earning capacity that is different from the actual income or earning capacity of the parent ordered to pay support.
4. Attached is an *Income and Expense Declaration* (form FL-150) or a *Financial Statement (Simplified)* (form FL-155), or other information concerning income for any relevant years.
5. Attached is my proposed *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610).
6. My address and telephone number for receipt of all notices and court dates are as follows:
 Address:
 City, state, and zip code:
 Home telephone:
 Work telephone:

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 OF PARTY OR ATTORNEY)

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 acting as a temporary judge. The court commissioner may still hear your case to make findings and recommendations to a judge. However, if you object to the commissioner acting as a temporary judge, an order will not be made until a judge reviews your case.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to the legal action.
2. My residence or business address is (*specify*):

3. I served a copy of the foregoing *Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income or Earning Capacity (Governmental)* and all attachments as follows (check either a, b, or c for each person served):

- a. **Personal delivery.** I personally delivered a copy and all attachments as follows:
- | | |
|--|--|
| (1) <input type="checkbox"/> Name of party or attorney served: | (2) <input type="checkbox"/> Name of party or attorney served: |
| (a) Address where delivered: | (a) Address where delivered: |
| (b) Date delivered: | (b) Date delivered: |
| (c) Time delivered: | (c) Time delivered: |

- b. **Mail.** I am a resident of or employed in the county where the mailing occurred.
- (1) I enclosed a copy in an envelope and
- | | |
|--|--|
| (a) <input type="checkbox"/> deposited the sealed envelope with the U.S. Postal Service with the postage fully prepaid. | (b) <input type="checkbox"/> placed the envelope for collection and mailing on the date and at the place shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid. |
|--|--|
- | | |
|--|---|
| (2) <input type="checkbox"/> Name of party or attorney served: | (3) <input type="checkbox"/> Name of local child support agency served: |
| (a) Address where delivered: | (a) Address where delivered: |
| (b) Date mailed: | (b) Date mailed: |
| (c) Place of mailing (<i>city and state</i>): | (c) Place of mailing (<i>city and state</i>): |

- (4) **Address Verification** (please specify):
- | | |
|---|--|
| (a) <input type="checkbox"/> I served a request to modify a child custody, visitation, or child support judgment or permanent order, which included an address verification declaration (<i>Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order</i> (form FL-334) may be used for this purpose). | (b) <input type="checkbox"/> The address for each individual identified in items 3a and 3b was |
| | (i) <input type="checkbox"/> verified by the California Child Support Enforcement System (CSE) as the current primary mailing address on file. |
| | (ii) <input type="checkbox"/> Other (<i>specify</i>): |
- c. **Other** (*specify code section*):
 Additional page is attached.

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 OF PERSON WHO SERVED MOTION)
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FL-640-INFO**Information Sheet: Notice and Motion to Cancel (Set Aside)
Support Order Based on Presumed Income or Earning Capacity****INSTRUCTIONS****Who can use this form?**

Either parent can use this form.

Fill out this form yourself if you do not have an attorney to represent you. If you have an attorney, your attorney will need to fill out this form.

What do I use this form for?

Use this form to ask the court to cancel (set aside) a default judgment that is based on **earning capacity** or presumed income.

A **default judgment** is made when a party does not show up to court.

Earning capacity is used when the court does not have information about a parent's income, or the court believes the parent is underemployed. Before January 1, 2026, courts used **presumed income** in these situations, which was minimum wage at 40 hours every week.

You can only use this form if your actual income was different from the amount of **earning capacity** or presumed income that was used to make a decision about child support.

Is there a deadline to ask for a judgment to be canceled or set aside?

Yes, you must file this request within **two years** from the date that the first child support payment made by wage garnishment was received by the local child support agency.

How do I fill out this form?

- ① Fill out the **caption**. The caption is the box at the top of the first page. Put your name, address, and telephone number in the top left part of the box if they are not already there. You will also need to put information about the local child support agency, the other parent, case number, and the court name and address in the caption. Look at *Judgment Regarding Parental Obligations (Governmental)* (form FL-630) in your case to help you fill out this information.
- ② Contact the court clerk to ask for a hearing date. You can find information about how to contact the court at www.courts.ca.gov/find-my-court.htm.
- ③ Fill out an ***Income and Expense Declaration (form FL-150)*** or ***Financial Statement (Simplified) (form FL-155)*** to give the court information about your current income and expenses. Attach this form to the Motion.
Find forms FL-150 and FL-155 at www.courts.ca.gov/forms.htm.
- ④ You may fill out a ***Declaration About Parent's Income During Judgment Periods (FL-643)*** to give the court information about your actual income and expenses during the time period covered by the Judgment.
Find form FL-643 at www.courts.ca.gov/documents/fl643.pdf.
- ⑤ You might also want to attach *Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form FL-610) to give the court more information. Talk to a lawyer or your family law facilitator for more information.
- ⑥ Fill out your contact information so the court can get in touch with you about this motion.
- ⑦ Sign and date your Motion.



FL-640-INFO

Information Sheet: Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income or Earning Capacity

- ⑧ Fill out the box at the top of the second page. Use the same information printed in the caption box on page 1 of FL-640. Make sure to leave the rest of the page blank. You **do not** fill out this page. The person who serves the Motion will fill this out. Look at the "What do I do after I fill out the form?" section of these instructions for more information.

The person who serves the Motion will need to fill out the "Proof of Service" section on page 2 of the form.

③ File your Motion with the Court

There is no fee to file this Motion.

You can file in person or by mail.

If you file in person:

Take your original Notice and Motion form and your copies to the court. Look at the top of the Notice and Motion in your case to find the court's address:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

Give your original Motion form and copies to the court clerk. The clerk will:

- Stamp your forms
- Keep the original and give the copies back to you.

If you file by mail:

- Mail your original Motion form and your copies you to the court. Look at the top of the Notice and Motion in your case to find the court's address:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

- Send a self-addressed stamped envelope with your forms. If you do not include a self-addressed stamped envelope, you will have to go to the courthouse to pick up your copies.

You may be able to file electronically:

- Look at your court's website to see if you can file electronically. Visit www.courts.ca.gov/find-my-court.htm.

What do I do after I fill out the form?

① Make copies

Fill out the box at the top of the second page. Use the same information printed in the caption box on page 1 of form FL-640. Make at least 3 copies of the papers: one for yourself, one to send to the child support agency, and one to send to the other parent if the other parent is a party in the case.

② Have someone give a copy of the Motion to the local child support agency and the other parent if necessary

The local child support agency and, in some situations, the other parent must be given a copy of any documents that you file. This is called service. You **cannot** serve your own Motion.

To serve these documents, you must ask someone who is 18 or older and not a part of the case to mail or hand deliver the documents to the local child support agency. If the other parent is a part of the case, the person serving the motion must also mail or hand deliver them to the other parent. If the documents are mailed to the other parent, the person serving the documents will need to state on the proof of service how the mailing address of the other parent was verified as their current address.

If you do not know the other parent's current mailing address, the person serving the documents can mail extra copies of the documents to the local child support agency. They will send the copies to the other parent. The local child support agency must receive the documents **at least 30 days before the hearing** if you want them to send the Motion to the other parent.



What happens next?

Go to your court hearing.

If you do not go, the court will not cancel and recalculate the child support order in your case.

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. You can find the facilitator in your county here: www.courts.ca.gov/selfhelp-facilitators.htm.

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 MC-410-INFO](#).

PARTY WITHOUT ATTORNEY OR ATTORNEY OR GOVERNMENTAL AGENCY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-643 2024-1-31 WC-MS.v3
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
DECLARATION ABOUT PARENT'S INCOME DURING JUDGMENT PERIODS	CASE NUMBER:

1. I am:
 - a. the parent ordered to pay support.
 - b. the parent receiving ordered support.
 - c. a representative of the local child support agency providing services in this case.
2. On (date): _____ a Judgment Regarding Parental Obligations (form FL-630) was entered using earning capacity or presumed income, instead of actual income.
3. The actual income of the parent ordered to pay support and other factors needed to calculate the correct support for the time periods in the judgment are listed below:

	Time periods in judgment (enter start and end dates)	Average monthly income	Percentage of time with children	Monthly guideline support requested	Source of income
a.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
b.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
c.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
d.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
e.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
f.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
g.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	
h.	from _____ to _____ <small>(month/year) (month/year)</small>	\$ _____ /month	_____ %	\$ _____ /month	

4. Additional proof about the parent ordered to pay support's actual income during the time periods in the judgment is attached. (Black out the Social Security number from any papers you attach, like paycheck stubs.)

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 OF DECLARANT)

PARTY WITHOUT ATTORNEY OR ATTORNEY (<i>Name, state bar number, and address</i>): TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (<i>name</i>): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-665 2024-2-1 WC-MS.v8
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
FINDINGS AND RECOMMENDATION OF COMMISSIONER	CASE NUMBER: _____

1. Name (*specify*): _____ objected to Commissioner (*name*): _____ hearing this matter as a temporary judge.
2. **THIS MATTER PROCEEDED AS FOLLOWS**
 - a. By court hearing, appearances as follows:
 - (1) Date: _____ Dept.: _____ Judicial officer: _____
 - (2) Petitioner present Attorney present (*name*): _____
 - (3) Respondent present Attorney present (*name*): _____
 - (4) Other parent/party present Attorney present (*name*): _____
 - (5) Local child support agency attorney (Fam. Code, §§ 17400, 17406) by (*name*): _____
 - (6) Other (*specify*): _____
 - b. The parent ordered to pay support is the petitioner respondent other parent/party.
3. Attached is a computer printout showing the parents' incomes and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
4. This recommended order is based on the attached documents (*specify*): _____

5. **THE COMMISSIONER RECOMMENDS THE FOLLOWING**
 - a. All orders previously made in this action remain in full force and effect except as modified below.
 - b. (*Name of parent*): _____ (*Name of parent*): _____ are the parents of the children listed below.
 - c. The parent ordered to pay support must pay current child support as follows:

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly support amount</u>
(1) <input type="checkbox"/> Mandatory additional child support.		
(a) The parent ordered to pay support must pay additional monthly support for reasonable childcare costs, as follows:		
<input type="checkbox"/> One-half or <input type="checkbox"/> _____ % or <input type="checkbox"/> (<i>specify amount</i>): \$ _____ per month of the costs Payments must be made to the <input type="checkbox"/> other parent/party <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> childcare provider.		
(b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows:		
<input type="checkbox"/> One-half or <input type="checkbox"/> _____ % or <input type="checkbox"/> (<i>specify amount</i>): \$ _____ per month of the costs Payments must be made to the <input type="checkbox"/> other parent/party <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> health-care provider.		

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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5. c. (2) Other (specify):

(3) For a total of: \$ _____ payable on the (specify): _____ day of each month beginning on (date): _____

(4) The low-income adjustment applies.
 The low-income adjustment is rebutted and does not apply because (specific reasons):

(5) **Earning capacity.** The court finds that the parent ordered to pay support parent receiving ordered support has the ability to earn \$ _____ per month. The factors used to calculate earning capacity, under Family Code section 4058(b) are stated

(a) in *Earning Capacity Factors Attachment (form FL-302)*.

(b) as follows (specify):

(6) Any support ordered will continue until further order of court, unless terminated by operation of law.

d. The parent ordered to pay support The person receiving ordered support must (1) provide and maintain health insurance coverage for the children, if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The 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.

e. The parent ordered to pay support must pay child support for the past periods and in the amounts set forth below:

Name of child	Date of birth	Period of support	Amount
---------------	---------------	-------------------	--------

(1) Other (specify):

(2) For a total of: \$ _____ payable: \$ _____ on the: _____ day of each month beginning (date): _____

(3) Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

f. The parent ordered to pay support owes support arrears as follows, as of (date):

(1) Child support: \$ _____ Spousal support: \$ _____ Family support: \$ _____

(2) Interest is not included and is not waived.

(3) Payable: \$ _____ on the: _____ day of each month beginning (date): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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- (4) Interest accrues on the entire principal balance owing and not on each installment as it becomes due.
- 5. g. No provision of this judgment/order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.
- h. All payments, unless specified in item 5c(1) above, must be made to the State Disbursement Unit at:
California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.
- i. **An earnings assignment order is issued.**
- j. In the event that there is a contract between a person receiving ordered 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 person receiving ordered support, jointly.
- k. If "The parent ordered to pay support" box is checked in item 5d, a health insurance coverage assignment must issue.
- l. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- m. *Notice of Rights and Responsibilities Regarding Child Support* (form FL-192) is attached.
- n. The following person (the "other parent/party") is added as a party to this action (*name*):
- o. The court further recommends (*specify*):

Date: _____

COMMISSIONER

Number of pages attached: _____ SIGNATURE FOLLOWS LAST ATTACHMENT

CLERK’S CERTIFICATE OF SERVICE OR MAILING

I certify that I am not a party to this cause and that

- 1. **Personal service.** A true copy of this *Findings and Recommendation of Commissioner* was handed to the petitioner respondent other parent/party at the hearing of this matter before the commissioner.
- 2. **Mail.** A true copy of this *Findings and Recommendation of Commissioner* was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below, and that the request was mailed
 at (*place*): _____ California,
 on (*date*): _____

Date: _____ Clerk, by _____, Deputy

GOVERNMENTAL AGENCY <i>(Under Family Code, §§ 17400 and 17406):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ EMAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-680.v5.02012024.wc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PETITIONER: _____ RESPONDENT: _____ OTHER PARENT/PARTY: _____	
NOTICE OF MOTION <input type="checkbox"/> JUDGMENT <input type="checkbox"/> MODIFICATION <input type="checkbox"/> Child Support <input type="checkbox"/> Health Care <input type="checkbox"/> Injunctive Order <input type="checkbox"/> Other: _____	CASE NUMBER: _____

1. TO *(name)*:
2. **READ THE ATTACHED REQUEST FORM.** A hearing on the motion for the relief requested will be held as follows:

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Div.:	<input type="checkbox"/> Rm:
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b. Address of court is same as noted above other *(specify)*:

3. Supporting attachments:

- | | |
|---|--|
| a. Completed <i>Request for Order and Supporting Declaration</i> (form FL-684) and blank <i>Response to Governmental Notice of Motion or Order to Show Cause</i> (form FL-685)

b. <input type="checkbox"/> Financial information and blank <i>Income and Expense Declaration</i> (form FL-150) | c. <input type="checkbox"/> <i>Earning Capacity Factors Attachment</i> (form FL-302)
d. <input type="checkbox"/> Points and authorities
e. <input type="checkbox"/> <i>Order for Genetic (Parentage) Testing</i> (form FL-627) (If you ignore this order, you may be found to be the parent.)
f. <input type="checkbox"/> Other <i>(specify)</i> : |
|---|--|

4. NOTICE: IF YOU WISH TO HAVE A TRIAL, YOU MUST APPEAR AT THE HEARING ON THIS REQUEST.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY)

ORDER

IT IS ORDERED THAT

5. Time for service hearing is shortened. Service must be on or before *(date)*:
6. Any responsive declaration must be served on or before *(date)*:
7. **Petitioner** **Respondent** Other parent/party is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of the following property (describe):

8. Other *(specify)*:

9. Number of pages attached: _____

Date: _____

JUDICIAL OFFICER

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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NOTICE

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 acting as a temporary judge. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days; 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.

Child support is based on your ability to pay, which may include your income, earning capacity, expenses, and lifestyle. The amount of child support can be large and can continue until the children reach age 18. You should give the court information about your income and expenses, and any specific circumstances that may affect your ability to earn. If you do not, the support order will be based on other information given to the court. If the child support amount in the proposed judgment is based on your earning capacity, and you do not appear at the hearing after failing to file an Answer (form FL-610), the court will enter a judgment against you by default.

You do not have to pay any fee to file your *Response to Governmental Notice of Motion or Order to Show Cause (Governmental)* (form FL-685) and your completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). You must file any documents with the court and have the copies served at least 9 court days before the hearing date to the local child support agency and the other party unless ordered otherwise. Add 5 calendar days if the motion is served by mail within California. (See Code of Civil Procedure section 1005 for other situations.) To determine court days and calendar days, go to <https://selfhelp.courts.ca.gov/child-support/LCSA-Hearing-Notice/Respond>.

PROOF OF SERVICE BY MAIL

1. I am at least 18 years of age, **not a party to this cause**, and a resident of or employed in the county where the mailing took place.
2. My residence or business address is:

3. I served a copy of this motion by enclosing it in a sealed envelope and depositing the envelope directly in the U.S. mail with postage paid OR at my place of business for same-day collection and mailing with the U.S. mail, following our business practices, with which I am readily familiar.
 - a. Date of deposit:
 - b. Place of deposit (*city and state*):
 - c. Addressed as follows:

4. The address for each individual identified in item 3 was
 - a. verified by the California Child Support Enforcement System (CSE) as the current primary mailing address on file.
 - b. Other (*specify*):
5. 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 OF PERSON WHO SERVED MOTION)



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court days before the trial. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)

GOVERNMENTAL AGENCY (Under Family Code, §§ 17400 and 17406): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-683.v5.02012024.wc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
<input type="checkbox"/> Child Support <input type="checkbox"/> MODIFICATION <input type="checkbox"/> Other: <input type="checkbox"/> Health Care <input type="checkbox"/> Injunctive Relief	CASE NUMBER: _____

1. To (name): _____
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED.

Date: _____	Time: _____	<input type="checkbox"/> Dept.: _____	<input type="checkbox"/> Room: _____
<input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify): _____			

3. IT IS FURTHER ORDERED that a completed *Request for Order and Supporting Declaration (Governmental)* (form FL-684), or equivalent application order form, a **blank Response to Governmental Notice of Motion or Order to Show Cause (Governmental)** (form FL-685), and the following must be served with this order:

- Financial information and blank *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155)
 - Points and authorities
 - Order for Genetic (Parentage) Testing* (form FL-627)
 - Other (specify): _____
 - Time for service hearing is shortened. Service must be on or before (date): _____
- Any responsive declaration must be served on or before (date): _____
- Petitioner** **Respondent** **Other parent/party**

(describe): _____

Other (specify): _____

Date: _____ _____ JUDICIAL OFFICER

NOTICE

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 acting as a temporary judge. The court commissioner may still hear your case to make findings and a recommended order. If you do not like the recommended order, you must object to it within 10 court days; 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.

Child support is based on your ability to pay, which may include your income, earning capacity, expenses, and lifestyle. The amount of child support can be large and can continue until the children reach age 18. You should give the court information about your income, expenses, and any other circumstances that may affect your ability to earn. If you do not, the support order will be based on other information given to the court.

You do not have to pay any fee to file your *Response to Governmental Notice of Motion or Order to Show Cause (Governmental)* (form FL-685) and your completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155). You must file any documents with the court and serve copies at least 9 court days before the hearing date to the local child support agency and the other party unless ordered otherwise. Add 5 calendar days if you serve by mail within California. (See Code of Civil Procedure section 1005 for other situations.) To determine court and calendar days, go to <https://selfhelp.courts.ca.gov/child-support/LCSA-Hearing-Notice/Respond>.

Request for Accommodations
 Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five court days before the trial. Contact the clerk's office or go to www.courts.ca.gov/formsrules.htm for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code, § 54.8.)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) OR PARTY WITHOUT ATTORNEY OR ATTORNEY (Name, state bar number, and address):

TELEPHONE NO.: FAX NO. (Optional):

EMAIL ADDRESS:

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PETITIONER:

RESPONDENT:

OTHER PARENT/PARTY:

ORDER AFTER HEARING

FOR COURT USE ONLY

DRAFT

Not approved by the Judicial Council

FL-687.v4.02012024.wc

CASE NUMBER:

1. **This matter proceeded as follows:** Uncontested By stipulation Contested
- a. Date: Dept.: Judicial officer:
- b. Petitioner present Attorney present (name):
- c. Respondent present Attorney present (name):
- d. Other parent/party present Attorney present (name):
- e. Local child support agency attorney (Fam. Code, §§ 17400, 17406) by (name):
- f. Other (specify):
- g. The parent ordered to pay support is the petitioner respondent other parent/party.
2. Attached is a computer printout showing the parents' income and percentage of time each parent spends with the children. The printout, which shows the calculation of child support payable, will become the court's findings.
3. This order is based on the attached documents (specify):

THE COURT ORDERS

4. a. All orders previously made in this action remain in full force and effect except as specifically modified below.
- b. The parent ordered to pay support is the parent of and must pay current child support for the following children:
- | Name of child | Date of birth | Monthly support amount |
|--|---------------|------------------------|
| (1) <input type="checkbox"/> Mandatory additional child support. | | |
| (a) The parent ordered to pay support must pay additional monthly support for reasonable childcare costs, as follows: | | |
| <input type="checkbox"/> One-half or <input type="checkbox"/> % or <input type="checkbox"/> (specify amount): \$ | | per month of the costs |
| Payments must be made to the <input type="checkbox"/> other parent/party <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> childcare provider. | | |
| (b) The parent ordered to pay support must pay reasonable uninsured health-care costs for the children, as follows: | | |
| <input type="checkbox"/> One-half or <input type="checkbox"/> % or <input type="checkbox"/> (specify amount): \$ | | per month of the costs |
| Payments must be made to the <input type="checkbox"/> other parent/party <input type="checkbox"/> State Disbursement Unit <input type="checkbox"/> health-care provider. | | |

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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4. b. (2) Other (specify):

(3) For a total of: \$ _____ payable on the: _____ day of each month beginning (date): _____

(4) The low-income adjustment applies.

The low-income adjustment is rebutted and does not apply because (specific reasons):

(5) **Earning capacity.** The court finds that the parent ordered to pay support person receiving ordered support has the ability to earn \$ _____ per month. The factors used to calculate earning capacity under Family Code section 4058(b) are stated

(a) in *Earnings Capacity Factors Attachment* (form FL-302).

(b) as follows (specify):

(6) Any support ordered will continue until further order of court, unless terminated by operation of law.

c. The parent ordered to pay support The person receiving ordered support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost, and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The 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.

d. The parent ordered to pay support owes support arrears as follows, as of (date):

(1) Child support: \$ _____ Spousal support: \$ _____ Family support: \$ _____

(2) Interest is not included and is not waived.

(3) Payable: \$ _____ on the: _____ day of each month beginning (date): _____

(4) Interest accrues on the entire principal balance owing and not on each installment as it becomes due.

e. No provision of this order may operate to limit any right to collect the principal (total amount of unpaid support) or to charge and collect interest and penalties as allowed by law. All payments ordered are subject to modification.

f. All payments, unless specified in item 4b(1) above, must be made to the State Disbursement Unit at: **California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.**

g. **An earnings assignment order is issued.**

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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- 4. h. In the event that there is a contract between a person receiving ordered 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 person receiving ordered support, jointly.
- i. If "The parent ordered to pay support" box is checked in item 4c, a health insurance coverage assignment must issue.
- j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- k. *Notice of Rights and Responsibilities Regarding Child Support* (form FL-192) is attached.
- l. The following person (the "other parent/party") is added as a party to this action (*name*):
- m. The court further orders (*specify*):


Date:

JUDICIAL OFFICER

Number of pages attached: _____

SIGNATURE FOLLOWS LAST ATTACHMENT

Approved as conforming to court order. Date:  _____ (SIGNATURE OF THE PARENT ORDERED TO PAY SUPPORT OR THEIR ATTORNEY)

Approved as conforming to court order. Date:  _____ (SIGNATURE OF THE PERSON RECEIVING ORDERED SUPPORT OR THEIR ATTORNEY)
--

GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406): <hr/> TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council FL-688.v3.02012024.wc
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT: 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 present Attorney present (name): _____
- c. Respondent 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 low-income adjustment applies.
 The low-income adjustment is rebutted and does not apply because (specific reasons): _____
- f. **Earning capacity.** The court finds that the parent ordered to pay support person receiving ordered support has the ability to earn \$ _____ per month. The factors used to calculate earning capacity under Family Code section 4058(b) are stated
 (1) in Earnings Capacity Factors Attachment (form FL-302).
 (2) as follows (specify): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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3. g. 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.
- h. Any order to liquidate the support arrearage is suspended until further order of this court.
- i. In the event that there is a contract between a person receiving ordered 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 person receiving ordered support, jointly.
- j. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- k. 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.
- l. If this order includes orders for child support or reimbursement of uninsured health-care or childcare costs, *Notice of Rights and Responsibilities Regarding Child Support* (form FL-192) must be attached and is incorporated into this order.
- m. Other (specify):

4. Number of pages attached: _____

Date: _____

JUDICIAL OFFICER

Approved as conforming to court order.

Date: _____

(SIGNATURE OF PARENT ORDERED TO PAY SUPPORT OR THEIR ATTORNEY)

Approved as conforming to court order.

Date: _____

(SIGNATURE OF THE PERSON RECEIVING ORDERED SUPPORT OR THEIR ATTORNEY)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> DRAFT Not approved by the Judicial Council FL-692.v4.02012024.wc
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
<input type="checkbox"/> MINUTES <input type="checkbox"/> ORDER <input type="checkbox"/> JUDGMENT <input type="checkbox"/> RECOMMENDED ORDER	

This form may be used for preparation of court minutes and/or as an alternative to form FL-615, FL-625, FL-630, FL-665, or FL-687. If this form is prepared as both court minutes and an alternative to one of these forms, then the parties do not need to prepare any additional form of order.

1. **This matter proceeded as follows:** Uncontested By stipulation Contested
- a. Date: _____ Time: _____ Department: _____
- b. Judicial officer (*name*): _____ Judge pro tempore Commissioner
 Court reporter (*name*): _____ Court clerk (*name*): _____
- c. Interpreter(s) present (*name*): _____ (specify language): _____
 for (*name*): _____
- d. Petitioner present Attorney present (*name*): _____
- e. Respondent present Attorney present (*name*): _____
- f. Other parent/party present Attorney present (*name*): _____
- g. Local child support agency attorney (Fam. Code, §§ 17400, 17406) by (*name*): _____
- h. The parent ordered to pay support is the petitioner respondent other parent/party.
- i. Other (*specify*): _____

2. This is a recommended order/judgment based on the objection of (*specify name*): _____
3. a. This matter is taken off calendar.
- b. This entire matter is denied with without prejudice.
- c. This matter is continued at the request of the local child support agency petitioner
 respondent other parent/party to
 Date: _____ Time: _____ Department: _____
 (*specific issues*):
 Petitioner Respondent Other parent/party is ordered to appear at that date and time.
- d. The court takes the following matters under submission (*specify*): _____

4. **Order of examination**
 The petitioner respondent other parent/party other (*specify*): _____
 was sworn and examined.
 Examination was held outside of court.

5. **Referrals**
- a. The parties are referred to family court services or mediation.
- b. Petitioner Respondent Other parent/party is referred to the family law facilitator.
- c. Other (*specify*): _____

THE COURT FINDS

6. Petitioner Respondent Other parent/party was was not served regarding this matter.
7. Petitioner Respondent Other parent/party admits denies parentage.
8. The parents of the children named below in item 14a are (*specify names*): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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9. Petitioner Respondent Other parent/party has read, understands, and has signed *Advisement and Waiver of Rights for Stipulation (Governmental)* (form FL-694) and gives up those rights and freely agrees that a judgment may be entered in accordance with these findings.

10. a. Guideline support amount: \$

b. This order is is not based on the guideline.

c. The attached *Guideline Findings Attachment (Governmental)* (form FL-693) is incorporated into these findings.

d. A printout, which shows the calculation of child support payable, is attached and must become the court's findings.

e. The child support agreed to by the parents is below above the statewide child support guideline. The amount of support that would have been ordered under the guideline formula is: \$ _____ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance, and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. The order is in the best interest of the children. If the order is below the guideline, no change of circumstance will be required for the court to modify this order. If the order is above the guideline, a change of circumstance will be required for the court to modify this order.

f. The low-income adjustment applies.

The low-income adjustment is rebutted and does not apply because (*specific reasons*):

11. Arrearages from (*specify date*): _____ through (*specify date*): _____ are: \$ _____ including interest interest not computed and not waived.

THE COURT ORDERS

12. All orders previously made in this action must remain in full force and effect except as specifically modified below.

13. Genetic testing must be coordinated by the local child support agency.

a. Petitioner Respondent Other parent/party Other (*specify*): _____ and the minor children must each submit to genetic testing as directed by the local child support agency.

b. The parent ordered to pay support must reimburse the local child support agency for genetic testing costs of: \$ _____

14. a. The parent ordered to pay support is the parent of the children listed below and must pay current child support for them.

The court finds that there is sufficient evidence that the parent ordered to pay support is the parent of the children listed below and therefore there is sufficient evidence to enter a support order.

<u>Name of child</u>	<u>Date of birth</u>	<u>Monthly basic support amount</u>
----------------------	----------------------	-------------------------------------

Additional children are listed on an attached page.

b. The parent ordered to pay support must pay additional support monthly for actual **childcare** costs of (*specify amount*): \$ _____ one-half (*specify percent*): _____ percent of said costs. Payments must be made to the other parent/party State Disbursement Unit child-care provider.

c. The parent ordered to pay support must pay reasonable uninsured health-care costs for the children of (*specify amount*): \$ _____ one-half (*specify percent*): _____ percent of said costs. Payments must be made to the other parent/party State Disbursement Unit health-care provider.

d. The parent ordered to pay support must pay additional support monthly for the following (*specify*): (*specify amount*): \$ _____ one-half (*specify percent*): _____ percent of said costs. Payments must be made to the other parent/party State Disbursement Unit

e. Other (*specify*): _____

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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14. f. For a total of: \$ _____ payable on the: _____ day of each month
 beginning (date): _____
- g. The low-income adjustment applies.
 The low-income adjustment is rebutted and does not apply because (specific reasons): _____
- h. **Earning Capacity.** The court finds that the parent ordered to pay support person receiving ordered support has the ability to earn \$ _____ per month. The factors used to calculate earning capacity under Family Code section 4058(b) are stated
 (1) in *Earning Capacity Factors Attachment (form FL-302)*.
 (2) as follows (specify): _____
- i. Any support ordered will continue until further order of court, unless terminated by operation of law.
15. The parent ordered to pay support The person receiving ordered support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5 percent of gross income to add a child); (2) if health insurance is not available, provide coverage when it becomes available; (3) within 20 days of the local child support agency's request, complete and return a health insurance form; (4) provide to the local child support agency all information and forms necessary to obtain health-care services for the children; (5) present any claim to secure payment or reimbursement to the other parent or caretaker who incurs costs for health-care services for the children; and (6) assign any rights to reimbursement to the other parent or caretaker who incurs costs for health-care services for the children. The 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.
16. The parent ordered to pay support may claim the children for tax purposes as long as all child support payments are current as of the last day of the year for which the exemptions are claimed.
17. Petitioner Respondent Other parent/party must pay to petitioner respondent other parent/party as spousal support family support \$ _____ per month, beginning (date): _____ payable on the: _____ day of each month.
18. The parent ordered to pay support must pay child support for the following past periods and in the following amounts:
- | Name of child | Period of support | Amount |
|---|-------------------|--------|
| a. <input type="checkbox"/> Other (specify): _____ | | |
| b. <input type="checkbox"/> For a total of: \$ _____ payable: \$ _____ on the: _____ day of each month
beginning (date): _____ | | |
| c. <input type="checkbox"/> Interest accrues on the entire principal balance owing and not on each installment as it becomes due. | | |
19. The parent ordered to pay support owes support arrears as follows, as of (date):
- a. Child support: \$ _____ Spousal support: \$ _____ Family support: \$ _____ Other: \$ _____
- b. Interest is not computed and is not waived.
- c. Payable: \$ _____ on the: _____ day of each month
beginning (date): _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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- 19. d. Interest accrues on the entire principal balance owing and not on each installment as it becomes due.
- 20. No provision of this judgment can operate to limit any right to collect all sums owing in this matter as otherwise provided by law.
- 21. All payments, unless specified in items 14b, c, and d above, must be made to the State Disbursement Unit at:
California State Disbursement Unit, P.O. Box 989067, West Sacramento, CA 95798-9067.
- 22. **An earnings assignment order is issued.**
- 23. In the event that there is a contract between a **person receiving ordered 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 **person receiving ordered support, jointly.**
- 24. If "The parent ordered to pay support" box is checked in item 15, a health insurance coverage assignment must issue.
- 25. Job search. (*Specify name(s)*): _____ must seek employment for at least (*specify number*): _____ jobs per week and report those job applications and results to the court and the local child support agency at the continuance date. These job applications are to be made in person, not by phone, fax, or email.
- 26. For purposes of the licensing issue only, the parent ordered to pay support is found to be in compliance with the support order in this action. The local child support agency must issue a release of license(s).
- 27. Notwithstanding any noncompliance issues with the support order in this action, the court finds that the needs of the party ordered to pay support warrant a conditional release. The local child support agency must issue a release of license(s). Such release is effective only as long as the parent ordered to pay support complies with all payment terms of this order.
- 28. A warrant of attachment/bench warrant issues for (*specify name*):
 - a. Bail is set in the amount of: \$ _____
 - b. Service is stayed until (*date*): _____
- 29. The court retains jurisdiction to make orders retroactive to (*date*): _____
- 30. The court reserves jurisdiction over all issues the issues of (*specify*): _____
- 31. The parents must notify the local child support agency in writing within 10 days of any change in residence or employment.
- 32. **Notice of Rights and Responsibilities Regarding Child Support (form FL-192)** is attached and incorporated.
- 33. The following person (the "other parent/party") is added as a party to this action (*name*): _____
- 34. The court further orders (*specify*): _____

Number of pages attached: _____

Approved as conforming to court order.

Date: _____

(SIGNATURE OF PARENT ORDERED TO PAY SUPPORT OR THEIR ATTORNEY)

(SIGNATURE OF PERSON RECEIVING ORDERED SUPPORT OR THEIR ATTORNEY)

JUDICIAL OFFICER

Signature follows last attachment.

Approved as conforming to court order.

Date: _____

(SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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GUIDELINE FINDINGS ATTACHMENT

The court makes the following findings required by Family Code sections 4056, 4057, and 4065:

1. a. The parent ordered to pay support is: petitioner respondent other parent/party
- b. The person receiving ordered support is: petitioner respondent other parent/party

2. INCOME

- a. A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.

	<u>Gross monthly income</u>	<u>Net monthly income</u>	<u>Receiving TANF/CalWORKs</u>
b. Each parent's monthly income is as follows:			
Parent ordered to pay support:	\$ _____	\$ _____	<input type="checkbox"/>
Person receiving ordered support:	\$ _____	\$ _____	<input type="checkbox"/>

- c. **Earning capacity.** The court finds that the parent ordered to pay support person receiving ordered support has the ability to earn \$ _____ per month. The factors used to calculate earning capacity under Family Code section 4058(b) are stated

- (1) in *Earnings Capacity Factors Attachment* (form FL-302).
- (2) as follows (*specify*):

3. TAX FILING STATUS

- a. Parent ordered to pay support: Single HH/MLA MFJ MFS Number of exemptions: _____
- b. Person receiving ordered support:: Single HH/MLA MFJ MFS Number of exemptions: _____

4. CHILDREN OF THIS RELATIONSHIP

- a. Number of children who are the subjects of the support order (*specify*): _____
- b. Approximate percentage of time spent with the parent ordered to pay support: _____ %
- c. Approximate percentage of time spent with the person receiving ordered support: _____ %

5. HARDSHIPS

Hardships for the following have been allowed in calculating child support:

	<u>Parent ordered to pay support</u>	<u>Person receiving ordered support</u>	<u>Approximate ending time for the hardship</u>
a. <input type="checkbox"/> Other minor children:	\$ _____	\$ _____	_____
b. <input type="checkbox"/> Extraordinary medical expenses:	\$ _____	\$ _____	_____
c. <input type="checkbox"/> Catastrophic losses:	\$ _____	\$ _____	_____

6. THE COURT FINDS:

- a. Mandatory findings for orders that differ from the guideline:
 - (1) The guideline amount of child support calculated is \$ _____ per month.
 - (2) The reasons for departure from guideline support are (*specify*):

 - (3) The reasons the amount ordered is consistent with the best interests of the children are (*specify*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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6. b. *If requested*, mandatory findings for orders that differ from the guideline:

are contained in the attached declaration.

(1) The net monthly disposable income for each parent is:
 (a) Parent ordered to pay support: \$ _____ (b) Person receiving ordered support: \$ _____

(2) The actual federal income tax filing status for each parent is:
 (a) Parent ordered to pay support: _____ (b) Person receiving ordered support: _____

(3) The deductions from gross wages for each parent are:

<u>(a) Parent ordered to pay support:</u>	<u>(b) Person receiving ordered support:</u>
<u>Description of Deduction</u>	<u>Description of Deduction</u>
<u>Amount</u>	<u>Amount</u>
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
TOTAL \$ _____	TOTAL \$ _____

c. Other findings (*specify*):

7. STIPULATION TO NON-GUIDELINE ORDER

The child support agreed to by the parties is below above the statewide child support guideline. The amount of support that would have been ordered under the guideline formula is \$ _____ per month. The parties have been fully informed of their rights concerning child support. Neither party is acting out of duress or coercion. Neither party is receiving public assistance, and no application for public assistance is pending. The needs of the children will be adequately met by this agreed-upon amount of child support. The order is in the best interest of the children. If the order is below the guideline, no change of circumstances will be required to modify this order. If the order is above the guideline, a change of circumstances will be required to modify this order.

8. OTHER REBUTTAL FACTORS

Support calculation

a. The court finds by a preponderance of the evidence that rebuttal factors exist. The rebuttal factors result in an increase decrease in child support. The revised amount of support is \$ _____ per month.

b. The court finds the child support amount revised by these factors to be in the best interest of the child and that application of the formula would be unjust or inappropriate in this case. The revised amount remains in effect until further order until (*date*): _____ when guideline support of \$ _____ must commence.

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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8. c. **The factors are:**

- (1) The sale of the family residence is deferred under Family Code section 3800, and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowners insurance, and property taxes by: \$ _____ per month.

- (2) The parent paying support has extraordinarily high income, and the amount determined under the guideline would exceed the needs of the children.

- (3) The parent ordered to pay support person receiving ordered support is not contributing to the needs of the children at a level commensurate with that party's custodial time.

- (4) After application of the low-income adjustment, guideline child support would be greater than 50 percent of the net disposable income of the parent ordered to pay support.

- (5) Special circumstances exist in this case. The special circumstances are:
 - (a) The parents have different timesharing arrangements for different children.
 - (b) The parents have substantially equal custody of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.
 - (c) A child has special medical or other needs that require support greater than the formula amount. These needs are (*specify*):

 - (d) Other (*specify*):

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: February 7, 2024

Rules Committee action requested [Choose from drop down menu below]:
Circulate for comment (out of cycle)

Title of proposal: Civil Remote Proceedings: Standards for When a Judicial Officer may Preside Remotely

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Adopt Cal. Rules of Court, rule 3.674

Committee or other entity submitting the proposal:
 Trial Court Presiding Judges Advisory Committee

Staff contact (name, phone and e-mail): Michael Giden, (415) 865-7977, Michael.Giden@jud.ca.gov; Saskia Kim, (916) 643-6951, Saskia.Kim@jud.ca.gov; Grace DiLaura, (415) 865-4353, Grace.DiLaura@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:
 Annual agenda approved by Rules Committee on (date): Approved by Executive and Planning Committee on December 12, 2023.

Project description from annual agenda: As required by California Code of Civil Procedure [section] 367.10, consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom. The working group will provide preliminary recommendations on remote proceeding standards for judicial officers. Input on more substantive policy decisions will first be vetted by the Trial Court Presiding Judges Advisory Committee and then presented to the Judicial Council for final review.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

An out-of-cycle effective date of July 1, 2024, is requested to promptly comply with Code of Civil Procedure section 367.10's statutory mandate requiring a rule of court concerning when a judicial officer may preside over a remote court proceeding from a location other than a courtroom.

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

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP24-02

Title

Civil Remote Proceedings: When a Judicial Officer May Preside Remotely

Action Requested

Review and submit comments by March 15, 2024

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rule 3.674

Proposed Effective Date

July 1, 2024

Proposed by

Trial Court Presiding Judges Advisory Committee
Hon. Maria D. Hernandez, Chair

Contact

Saskia Kim, 916-643-6951
Saskia.Kim@jud.ca.gov
Grace DiLaura, 415-865-4353
Grace.DiLaura@jud.ca.gov

Executive Summary and Origin

The Code of Civil Procedure requires the Judicial Council to adopt a rule that includes “standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.” (Code Civ. Proc., § 367.10). The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 3.674 of the California Rules of Court to satisfy the statutory mandate.

The proposed rule applies only in civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in criminal proceedings, juvenile justice proceedings, or proceedings in matters identified in Code of Civil Procedure section 367.76 (civil commitments and other specified proceedings). The rule also does not apply when a judicial officer presides in person over a remote proceeding.

Background

Code of Civil Procedure section 367.10 requires the Judicial Council to adopt a rule establishing standards for when a judicial officer may preside over a remote proceeding from a location other than a courtroom. The statute provides that judicial officers may do so “in limited situations and in the interest of justice.” (Code Civ. Proc., § 367.10).

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

Code of Civil Procedure section 367.75 and rule 3.672¹ already establish standards governing remote appearances by parties. Currently, no statute or rule describes when a judicial officer may use remote technology to effectuate their own participation in a remote proceeding.

The Proposal

The Trial Court Presiding Judges Advisory Committee recommends adoption of proposed rule 3.674 to satisfy Code of Civil Procedure section 367.10's statutory mandate. As required by the statute, the rule sets out the limited circumstances under which, in the interest of justice, a judicial officer may preside remotely from a location other than a courtroom.

The rule in no way addresses the ability of any party or other participant to appear remotely. That option is governed by Code of Civil Procedure section 367.75 and rule 3.672. The rule also in no way limits the court's ability to conduct remote proceedings; in accordance with the statute, it limits only the location from which the judicial officer may preside over such proceedings.

Subdivision (a)—Purpose of the rule

Subdivision (a) describes the rule's purpose, consistent with the statutory mandate in section 367.10. The provision explains that the rule prescribes when, in limited situations and in the interest of justice, a judicial officer may use remote technology to effectuate their own participation in a proceeding—that is, preside remotely—from a location other than a courtroom. (Proposed Cal. Rules of Court, rule 3.674(a).)

Subdivision (b)—Application of the rule

Subdivision (b) describes the rule's scope, designating the circumstances and types of cases in which the rule applies.

With respect to the circumstances covered by the rule, the rule is limited to situations in which a judicial officer is using remote technology to effectuate their own participation in the proceeding (rule 3.674(b)(1)). This language clarifies that if a judicial officer is presiding in person but “using” remote technology to effectuate others' participation (such as admitting remote participants from a virtual waiting room or muting disruptive remote participants), the rule does not apply. The rule therefore does not affect the location of judicial officers presiding in person, even if one or more participants join a proceeding remotely.²

With respect to the types of cases to which the rule applies, paragraph (b)(3) establishes that the rule applies to civil cases subject to Code of Civil Procedure section 367.75. The rule therefore does not apply in juvenile justice proceedings or certain specific proceedings listed in section 367.76 that are expressly excised from section 367.75 (judicial commitments, involuntary

¹ All rule references are to the California Rules of Court.

² Accordingly, the rule does not affect existing authority to convene in-person hearings outside a courtroom. (See, e.g., Code Civ. Proc., § 651(a), (b) [authorizing site visits outside a courtroom, including the taking of evidence at such site visits, to aid a trier of fact in determining a case]; Gov. Code, § 68115(a)(1) [in times of specified emergencies, a presiding judge may request authorization to hold court sessions anywhere within the county].)

treatment and conservatorships, contempt proceedings, mentally disordered offender proceedings, commitment proceedings under the Penal Code, competency proceedings, outpatient placement and revocation proceedings, and involuntary medication and treatment hearings). Other statutory provisions already include requirements concerning the location of a judicial officer during a remote proceeding in these types of cases.³

The rule also does not apply in criminal proceedings. The omission of criminal proceedings from the rule is not intended to authorize a judicial officer to preside remotely over such proceedings where not otherwise allowed. Because the statutory authorization for criminal remote proceedings sunsets effective January 1, 2025, it would be premature to address criminal proceedings in the proposed rule while extension of that authority is pending in the Legislature. Paragraph (b)(4) clarifies that the rule does not otherwise limit any powers judicial officers have to perform certain judicial functions outside of a courtroom, as permitted by law. For example, the rule does not affect existing law permitting specific judicial acts to be performed at any place in the state.

Subdivision (c)—Definitions

Subdivision (c) defines several of the terms used in the rule. The rule incorporates existing definitions from rule 3.672(c) (which governs remote proceedings) and Government Code section 70301(d) (which defines “court facilities” under the Trial Court Facilities Act of 2002). Incorporating existing definitions is intended to maintain clarity and consistency within the law.

Subdivisions (d) and (e)—Situations in which a judicial officer may preside remotely from a location other than a courtroom

The statutory mandate directs the council to adopt a rule describing “limited situations” in which, “in the interest of justice,” a judicial officer may preside remotely from a location other than a courtroom. To comply with this mandate, rule 3.674 places clear limits on judicial officers presiding remotely from locations outside a courtroom.

To achieve appropriate limitations on judicial officers presiding remotely, the rule divides its strictures into two situations: when a judicial officer is in a court facility but not presiding from a courtroom, and when a judicial officer is outside a court facility. The rule provides graduated provisions for these two scenarios, recognizing that only the most extraordinary circumstances will justify a judicial officer presiding remotely from outside a court facility.

Two general limitations apply in all scenarios: (1) presiding remotely always requires the approval of the presiding judge, and (2) presiding remotely must be in the interest of justice. These requirements serve two functions. First, requiring presiding judge approval ensures that presiding judges have the necessary visibility and authority to exercise their assignment duties

³ See Welf. & Inst. Code, § 679.5(c), (d) (minor has the right to the physical presence of the defense counsel, any testifying prosecution witnesses, and the judicial officer, subject to the minor’s waiver); Code Civ. Proc., § 367.76(d) (if the subject person is physically present in court, absent exceptional circumstances and exempting certain state department counsel, specified other participants and the judicial officer must be physically present in the courtroom).

and maintain the proper administration of their courts in accordance with their responsibilities under rule 10.603. Their approval also ensures that the rule's limitations will be faithfully observed. Second, requiring that presiding remotely be in the interest of justice ensures consistency with the clear statutory mandate.

Under subdivision (d), a judicial officer may preside remotely from a location within a court facility that is not a courtroom if the presiding judge approves, presiding remotely is in the interest of justice, and either (1) the proceeding is fully remote because no parties are appearing in person, or (2) no courtrooms are available in the court facility. These limitations prioritize presiding over remote proceedings from a courtroom in most cases but permit some flexibility for particular circumstances. This is especially true when limited courtroom space may favor judicial officers presiding over remote proceedings from other parts of a court facility, such as a conference room, to keep courtrooms available for in-person proceedings.

Under subdivision (e), a judicial officer may preside remotely from a location outside a court facility only in very limited circumstances. Again, presiding remotely must be approved by the presiding judge and be in the interest of justice. But in addition, a judicial officer may preside remotely from a noncourt location only if either (1) hazardous conditions prevent the judicial officer from safely accessing a courtroom (proposed rule 3.674(e)(1)), or (2) presiding remotely in the matter is essential to preventing a significant delay that will substantially prejudice the litigants (proposed rule 3.674(e)(2)). These provisions allow cases to proceed even if external conditions prevent a judicial officer from using a court facility and give presiding judges necessary tools to prevent excessive case delays that harm litigants.

Alternatives Considered

Because Code of Civil Procedure section 367.10 mandates that the Judicial Council adopt a rule of court, the committee did not consider the alternative of taking no action or an alternative that did not include adopting a rule.

Fiscal and Operational Impacts

The committee does not anticipate substantial fiscal or operational impacts to the courts. Because judicial officers and courts gained experience with remote proceedings during the height of the COVID-19 pandemic, the committee anticipates that courts will not need to make substantial operational changes to implement this rule. Moreover, the rule does not create any mandatory actions a court must take. Rather, the rule establishes those limited situations in which a judicial officer may preside remotely, when in the interest of justice and with the presiding judge's authorization.

The committee anticipates no impact on litigants or other court participants because the rule addresses only the situations in which judicial officers may preside remotely; it has no bearing on whether or when parties or other participants may appear remotely.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should the proposed rule be located in Title 3 (Civil) of the California Rules of Court, or would it be more appropriate to locate it in another title (e.g., Title 10 (Judicial Administration))?

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

- What would the implementation requirements be for courts—for example, training staff (please identify positions and expected hours of training) and revising processes and procedures (please describe)?
- Would the proposal provide cost savings? If so, please quantify.
- Would 45 days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Cal. Rules of Court, rule 3.674, at pages 6–7
2. Link A: Code Civ. Proc., § 367.10,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=367.10&lawCode=CCP

Rule 3.674 of the California Rules of Court would be adopted, effective July 1, 2024, to read:

1 **Title 3. Civil Rules**

2
3 **Division 6. Proceedings**

4
5 **Chapter 3. Hearings, Conferences, and Proceedings**

6
7
8 **Rule 3.674. Limited situations in which a judicial officer may preside remotely from**
9 **a location other than a courtroom**

10
11 **(a) Purpose**

12
13 This rule prescribes when, in limited situations and in the interest of justice, a
14 judicial officer may use remote technology to effectuate their own participation in a
15 proceeding from a location other than a courtroom.

16
17 **(b) Application**

18
19 (1) This rule applies when a judicial officer presiding from a location other than
20 a courtroom uses remote technology to effectuate their own participation in
21 the proceeding.

22
23 (2) This rule does not apply when a judicial officer presides in person over a
24 proceeding convened in a location other than a court facility, even if another
25 participant appears remotely.

26
27 (3) This rule applies to all civil cases subject to Code of Civil Procedure section
28 367.75.

29
30 (4) Nothing in this rule limits a judicial officer from engaging in any other
31 judicial functions, duties, or actions authorized by law to be performed in a
32 location other than a courtroom.

33
34 **(c) Definitions**

35
36 As used in this rule:

37
38 (1) “Court facility” has the same meaning as that provided in Government Code
39 section 70301(d).

40
41 (2) The following terms have the same meaning as those provided in rule
42 3.672(c):

Rule 3.674 of the California Rules of Court would be adopted, effective July 1, 2024, to read:

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(A) “Proceeding.”

(B) “Remote proceeding.”

(C) “Remote technology.”

(d) Location of a judicial officer within a court facility

A judicial officer may preside remotely from a location within a court facility other than a courtroom only if doing so is in the interest of justice, the presiding judge approves, and either:

- (1) No parties are appearing in person at the proceeding; or
- (2) No courtrooms are available in the court facility.

(e) Location of a judicial officer outside a court facility

A judicial officer may not preside remotely from a location outside a court facility unless doing so is in the interest of justice, the presiding judge approves, and

- (1) The judicial officer cannot safely access or preside from a court facility because of hazardous conditions, including those resulting from:
 - (A) Natural disaster;
 - (B) Severe weather;
 - (C) Public emergency;
 - (D) Facilities failure;
 - (E) Security threats; or
 - (F) Other extraordinary circumstances as determined by the presiding judge; or
- (2) Presiding remotely in a matter is essential to prevent a significant delay that would substantially prejudice the litigants.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: February 7, 2024

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Title of proposal: Rules and Forms: Order for Debtor's Examination

Proposed rules, forms, or standards (include amend/revise/adopt/approve):
 Revise form AT-138/EJ-125

Committee or other entity submitting the proposal:
 Judicial Council staff

Staff contact (name, phone and e-mail): Jenny Grantz, (415) 865-4394, jenny.grantz@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): October 26, 2023

Project description from annual agenda: Item 3: Develop form recommendations as appropriate. AB 1119, which goes into effect January 1, 2025, creates a separate set of requirements and a new procedure for judgment creditors to examine judgment debtors with consumer debt. This new procedure includes different notices than what currently appears on the council forms and requires that the Judicial Council create an additional financial affidavit form for the judgment debtor to serve on the judgment creditor in lieu of appearing for an examination.

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Action must be taken out of cycle because the portion of AB 1119 implemented by this proposal took effect on January 1, 2024, so form AT-138/EJ-125 no longer reflects current law. The Forms Subcommittee discussed this issue at its January 30, 2024, meeting and agreed that it was appropriate for these proposed changes to form AT-138/EJ-125 to be made as an out-of-cycle proposal by staff.

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

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-082

For business meeting on March 14–15, 2024

Title

Rules and Forms: Order for Debtor's Examination

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form AT-138/EJ-125

Effective Date

April 1, 2024

Recommended by

Judicial Council staff
Anne M. Ronan, Supervising Attorney
Legal Services

Date of Report

January 29, 2024

Contact

Jenny Grantz, 415-865-4394
jenny.grantz@jud.ca.gov

Executive Summary

Judicial Council staff recommend revising the instructions on one Judicial Council form to implement a statutory change made by Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023. Staff recommend revising the form to ensure it conforms to existing law and to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective April 1, 2024, revise *Application and Order for Appearance and Examination* (form AT-138/EJ-125) to reflect the revised deadline set in AB 1119 for service of an order for examination of a judgment debtor.

The proposed revised form is attached at pages 3–5.

Relevant Previous Council Action

Form AT-138/EJ-125 was adopted effective July 1, 1984, and has been revised by the council several times since then. The most recent revision was made effective April 1, 2023, to correct a typographical error.

Analysis/Rationale

Prior law required a judgment creditor to serve a copy of an order to appear for a debtor’s examination on the judgment debtor no less than 10 days before the date of the examination. AB 1119¹ changes this deadline to 30 days for all judgment debtors.² This change in law became effective on January 1, 2024.

This deadline is stated in two places on *Application and Order for Appearance and Examination* (form AT-138/EJ-125): in a notice box in the middle of page 1, and in the “Information for Judgment Creditor Regarding Service” at the top of page 2. Staff recommend changing “10 days” and “10 calendar days” to “30 days” and “30 calendar days” in these places on the form to reflect the requirements of AB 1119.

Policy implications

The proposed revisions to the form implement an amended statute that changes the deadline for a judgment creditor to serve a judgment debtor with an order to appear for examination. Accordingly, the key policy implication is ensuring that this council form correctly reflects the law.

Comments

This proposal was not circulated for public comment because the changes are noncontroversial: they directly implement a change in statute and are therefore within the Judicial Council’s purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).) The Civil and Small Claims Advisory Committee will be asking to circulate other revisions to this form later this year as part of a proposal to implement other provisions in AB 1119, but the current changes are needed to ensure that the form is not stating incorrect law in the meantime.

Alternatives considered

The alternative of no action was not considered because without the proposed revisions, the form will not reflect current law.

Fiscal and Operational Impacts

Staff anticipate that this proposal will require courts to train court staff and judicial officers on the changes in law reflected in the revised form. Because the revisions reflect changes in statute, these operational impacts cannot be avoided.

Attachments and Links

1. Form AT-138/EJ-125, at pages 3–5
2. Link A: Assem. Bill 1119,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1119

¹ See Link A.

² Code Civ. Proc., § 708.110(d).

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT 01/23/2024 NOT APPROVED BY COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) <input type="checkbox"/> Judgment Debtor or <input type="checkbox"/> Third Person	CASE NUMBER: _____

ORDER TO APPEAR FOR EXAMINATION

1. TO (name): _____
2. YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
 - a. furnish information to aid in enforcement of a money judgment against you.
 - b. answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor.
 - c. answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date: _____	Time: _____	Dept. or Div.: _____	Rm.: _____
Address of court <input type="checkbox"/> is shown above <input type="checkbox"/> is: _____			

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name): _____

Date: _____

JUDGE

This order must be served not less than 30 days before the date set for the examination.
IMPORTANT NOTICES ON PAGES 2 AND 3

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION

4. Original judgment creditor Assignee of record Plaintiff who has a right to attach order applies for an order requiring (name): _____ to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
5. The person to be examined is
 - a. the judgment debtor.
 - b. a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
6. The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
7. This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
8. The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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 OF DECLARANT)

(Continued on pages 2 and 3)

Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 30 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER

APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined under this order has possession or control of property that is yours or owes you a debt. This property or debt is as follows (*describe the property or debt*):

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

**APPEARANCE OF A CORPORATION, PARTNERSHIP,
ASSOCIATION, TRUST, LIMITED LIABILITY COMPANY, OR OTHER ORGANIZATION**

If the order to appear for the examination on page 1 does not require the appearance of a specified individual:

- The organization has a duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with the organization's property and debts.
- Failure to designate such a person familiar with the organization's property and debts to appear for examination will result in the order to appear for the examination to be deemed to have been made to, and require the appearance of, the following:
 - If the organization is a corporation registered with the Secretary of State, a natural person named as the chief financial officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the chief executive officer in the corporation's most recent filing with the Secretary of State. If no one is so named, a natural person named as the secretary in the corporation's most recent filing with the Secretary of State.
 - If the organization is a limited liability company registered with the Secretary of State, the first natural person named as a manager or member in the limited liability company's most recent filing with the Secretary of State.
 - If the organization is a limited partnership registered with the Secretary of State, the first natural person named as a general partner in the limited partnership's most recent filing with the Secretary of State.
 - If the organization is not registered with the Secretary of State or the organization's filings with the Secretary of State do not identify a natural person as described above, a natural person identified by the judgment creditor as being familiar with the property and debts of the organization, together with an affidavit or declaration signed by the judgment creditor that sets forth the factual basis for the identification of the individual. The affidavit or declaration shall be served on the organization together with the order.
- Service of an order to appear for an examination upon an organization by any method permitted under the Code of Civil Procedure or the Corporations Code, including service on the agent of the organization for service of process, shall be deemed effective service of the order to appear upon the individuals identified above.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Disability Accommodation Request* (form MC-410). (Civil Code, § 54.8.)

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: February 7, 2024

Rules Committee action requested [Choose from drop down menu below]:

Submit to JC (without circulating for comment)

Title of proposal: Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines

Proposed rules, forms, or standards (include amend/revise/adopt/approve):

Revise forms FW-001, FW-001-GC, APP 015/FW-015-INFO, and JV-132

Committee or other entity submitting the proposal:

Judicial Council Staff

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@gmail.com

Kendall Hannon, 415-865-7653 kendall.hannon@jud.ca.gov

Daniel Richardson, 415-865-7619 daniel.richardson@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Annual agenda approved by Rules Committee on (date): Not on annual agenda--Technical change to conform forms to reflect updated federal poverty levels

Project description from annual agenda:

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Technical change to revise eligibility figures based on changes to federal poverty level, which are already in effect and thus the forms need to be updated as soon as possible.

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

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
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- **Form Descriptions** (for any proposal with new or revised forms)

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- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-079

For business meeting on March 15, 2024

Title

Rules and Forms: Technical Form Changes
to Reflect Federal Poverty Guidelines

Rules, Forms, Standards, or Statutes Affected

Revise forms FW-001, FW-001-GC,
APP-015/FW-015-INFO, and JV-132

Recommended by

Judicial Council staff
James Barolo, Attorney
Legal Services
Daniel Richardson, Attorney
Center for Families, Children & the Courts

Agenda Item Type

Action Required

Effective Date

April 1, 2024

Date of Report

January 30, 2024

Contact

James Barolo, 415-865-8928
james.barolo@jud.ca.gov
Kendall Hannon, 415-865-7653
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Executive Summary

Judicial Council staff recommend the revision of four Judicial Council forms containing figures that are based on the federal poverty guidelines. The federal government recently published updates to these guidelines, and the revised forms reflect these changes.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective April 1, 2024, revise the following documents to reflect increases in the federal poverty guidelines in 2024:

- *Request to Waive Court Fees* (form FW-001);
- *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC);
- *Information Sheet on Waiver of Appellate Court Fees—Supreme Court, Court of Appeal, Appellate Division* (form APP-015/FW-015-INFO); and
- *Financial Declaration—Juvenile Dependency* (form JV-132).

The revised forms are attached at pages 5–15.

Relevant Previous Council Action

The council last revised these forms effective April 1, 2023, to reflect changes in the federal poverty guidelines for 2023. In addition, *Financial Declaration—Juvenile Dependency* (form JV-132) was revised to reflect recent additions to the qualifying public benefits listed in the fee waiver statute, California Government Code section 68632(a), which had already been reflected on the other forms in a previous proposal. As discussed below, in 2023 the Judicial Council also updated the income levels provided in *Guidelines for the Juvenile Dependency Counsel Collections Program* (Appendix F of the California Rules of Court), which indicate whether responsible persons are presumed unable to pay for the cost of appointed counsel in dependency matters.

Analysis/Rationale

Judicial Council forms containing figures based on the federal poverty guidelines and listing qualifying public benefits need to be revised to conform to the current guidelines and current law.

Fee waiver forms

The eligibility of indigent litigants to proceed without paying filing fees or other court costs is determined by California Government Code section 68632. Section 68632(b) provides, among other things, that a fee waiver will be granted to litigants whose household monthly income is 200 percent or less of the current poverty guidelines established by the U.S. Department of Health and Human Services (HHS).

The Judicial Council has adopted rules of court and forms for litigants to obtain fee waivers. Three of the forms—*Request to Waive Court Fees* (form FW-001), *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC), and *Information Sheet on Waiver of Appellate Court Fees—Supreme Court, Court of Appeal, Appellate Division* (form APP-015/FW-015-INFO)—contain figures based on the monthly poverty guidelines. The tables in item 5b on form FW-001, in item 8b on form FW-001-GC, and on page 1 of form APP-015/FW-015-INFO provide monthly income figures on which a court may base a decision to grant a fee waiver in accordance with Government Code section 68632.

The monthly income figures currently on the three fee waiver forms reflect 200 percent of the 2023 poverty guidelines established by HHS. HHS released revised federal poverty guidelines in January 2024.¹ As a result, these items on the Judicial Council fee waiver forms must be revised to reflect the 2024 federal poverty guideline revisions. To determine the new monthly income

¹ The 2024 figures have been published in the Federal Register. See U.S. Department of Health and Human Services, Annual Update of the HHS Poverty Guidelines, 89 FR 2961. (See Link A.)

figures for the forms, the federal poverty guidelines must be multiplied by 200 percent and divided by 12.² The new figures are reflected in the revised tables on the attached forms.

Juvenile form

The Judicial Council administers a program under Welfare and Institutions Code section 903.47 to collect reimbursement of the cost of court-appointed counsel in dependency proceedings from liable persons found able to pay. (Cal. Rules of Court, App. F.) Legislation in 2009, Assembly Bill 131 (Stats. 2009, ch. 413), required the Judicial Council to establish a program to collect monetary reimbursements from parents and other responsible persons, to the extent they are able to pay, for the court cost of providing legal services to these persons and their children in juvenile dependency proceedings. Effective January 1, 2013, the Judicial Council adopted *Guidelines for the Juvenile Dependency Counsel Collections Program* as Appendix F of the California Rules of Court. As required by the statute, the guidelines include a statewide standard for determining an obligated person’s ability to pay reimbursement, as well as policies and procedures to allow courts to recover costs associated with implementing the counsel collections program. (§ 903.47(a)(1).)

In response to Assembly Bill 199 (Stats. 2022, ch. 57), which amended Government Code section 68632 to raise the fee waiver threshold from 125 percent or less of the HHS poverty guidelines to 200 percent or less of the HHS poverty guidelines, the *Guidelines for the Juvenile Dependency Counsel Collections Program* were amended by the Judicial Council in September 2023. The monthly income threshold in which an otherwise liable person is presumed to be unable to pay reimbursement was raised to 200 percent of the poverty guidelines to match the criteria for a fee waiver under Government Code section 68632(b)(1). (Cal. Rules of Court, App. F, § 6(d)(1)(A).) The effective date of this revision is April 1, 2024, to coincide with the annual updates addressed in this proposal.

Financial Declaration—Juvenile Dependency (form JV-132) contains figures based on the poverty guidelines: an individual with an income lower than what is listed in the applicable box in item 3 is presumed to be unable to pay reimbursement for the cost of court-appointed counsel. The monthly income figures on current form JV-132 reflect 125 percent of the 2023 poverty guidelines established by HHS. As a result, the figures in this item, like those on the fee waiver forms, must be revised to reflect 200 percent of the 2024 federal poverty guideline revisions. To determine the new monthly income figures for form JV-132, the federal poverty guidelines must be multiplied by 200 percent and divided by 12.³ The new figures are reflected in revised item 3 on attached form JV-132.

² See Attachment A: Computation Sheet. The monthly income figures in the tables on the forms slightly exceed 200 percent of the poverty guidelines because they are rounded up to the nearest cent. The language on the forms reflects this slight excess in stating that the item should be checked if the household income is “less than” the amount in the chart.

³ See footnote 2, *ante*, page 3.

Additionally, gender references have been removed from form JV-132, consistent with the Judicial Council’s commitment to use nongendered language in its forms.⁴

Policy implications

Staff monitor revisions to the poverty guidelines and ensure that the forms are revised as necessary and submitted to the council. Revised forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132 should take effect immediately to ensure that litigants and courts are provided with accurate monthly income guidelines on which a court may base a decision regarding fee waivers or financial liability. This rapid change is necessary because the revised poverty guidelines take effect immediately on release. Once adopted, the revised forms will be distributed to the courts and publishers of the forms and posted on the California Courts website.

Comments

These proposed revisions were not circulated for public comment because they are minor and noncontroversial revisions that reflect changes in law 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

The alternative to updating the income tables using the 2024 federal poverty guidelines would be to not update them. Staff did not consider this option because of the provisions in Government Code section 68632 and in the Judicial Council standard for determining ability to pay.

Fiscal and Operational Impacts

If a court provides free copies of these forms to parties, it will incur costs to print or duplicate the forms. However, the revisions are required to make the forms consistent with current law.

Attachments and Links

1. Forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132, at pages 5–15
2. Attachment A: Computation Sheet
3. Link A: Annual Update of the HHS Poverty Guidelines,
www.federalregister.gov/documents/2024/01/17/2024-00796/annual-update-of-the-hhs-poverty-guidelines

⁴ Similar changes have also been made to form FW-001-GC.

Clerk stamps date here when form is filed.

DRAFT
1/31/2024
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees.

- You cannot give the court proof of your eligibility,
Your financial situation improves during this case, or
You settle your civil case for \$10,000 or more.

1 Your Information (person asking the court to waive the fees):

Name:
Street or mailing address:
City: State: Zip:
Phone:

2 Your Job, if you have one (job title):

Name of employer:
Employer's address:

3 Your Lawyer, if you have one (name, firm or affiliation, address, phone number, and State Bar number):

a. The lawyer has agreed to advance all or a portion of your fees or costs (check one): Yes No

b. (If yes, your lawyer must sign here) Lawyer's signature:
If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

4 What court's fees or costs are you asking to be waived?

- Superior Court (See Information Sheet on Waiver of Superior Court Fees and Costs (form FW-001-INFO).)
Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See Information Sheet on Waiver of Appellate Court Fees (form APP-015/FW-015-INFO).)

5 Why are you asking the court to waive your court fees?

- I receive (check all that apply; see form FW-001-INFO for definitions):
Food Stamps Supp. Sec. Inc. SSP Medi-Cal County Relief/Gen. Assist. IHSS
CalWORKS or Tribal TANF CAPI WIC Unemployment
My gross monthly household income (before deductions for taxes) is less than the amount listed below. (If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)

Table with 6 columns: Family Size, Family Income, Family Size, Family Income, Family Size, Family Income. Values include 1, 2, 3, 4, 5, 6 and income amounts like \$2,510.00, \$4,303.34, \$6,096.67, \$3,406.67, \$5,200.00, \$6,993.34.

- I do not have enough income to pay for my household's basic needs and the court fees. I ask the court to:
waive all court fees and costs
waive some of the court fees
let me make payments over time

6 Check here if you asked the court to waive your court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check here):

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date:

Print your name here

Sign here

Your name: _____

If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you must fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

7 Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 Your Gross Monthly Income

a. List the source and amount of any income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

- (1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____

b. Your total monthly income: \$ _____

9 Household Income

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

Table with columns: Name, Age, Relationship, Gross Monthly Income. Rows (1) through (4) with blank lines for entry.

b. Total monthly income of persons above: \$ _____

Total monthly income and household income (8b plus 9b): \$ _____

10 Your Money and Property

- a. Cash \$ _____
b. All financial accounts (List bank name and amount):
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

Table for cars, boats, and other vehicles with columns: Make / Year, Fair Market Value, How Much You Still Owe. Rows (1) through (3).

Table for real estate with columns: Address, Fair Market Value, How Much You Still Owe. Rows (1) through (2).

Table for other personal property with columns: Describe, Fair Market Value, How Much You Still Owe. Rows (1) through (2).

11 Your Monthly Deductions and Expenses

- a. List any payroll deductions and the monthly amount below:
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____

- b. Rent or house payment & maintenance \$ _____
c. Food and household supplies \$ _____
d. Utilities and telephone \$ _____
e. Clothing \$ _____
f. Laundry and cleaning \$ _____
g. Medical and dental expenses \$ _____
h. Insurance (life, health, accident, etc.) \$ _____
i. School, child care \$ _____
j. Child, spousal support (another marriage) \$ _____
k. Transportation, gas, auto repair and insurance \$ _____

- l. Installment payments (list each below):
Paid to:
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

m. Wages/earnings withheld by court order \$ _____

- n. Any other monthly expenses (list each below).
Paid to: How Much?
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

Total monthly expenses (add 11a - 11n above): \$ _____

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

Check here if you attach another page.

Important! If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.

Clerk stamps date here when form is filed.

DRAFT

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This form must be used by a guardian or conservator, or by a petitioner for the appointment of a guardian or conservator, to request a waiver of court fees in the guardianship or conservatorship court proceeding or in any other civil action in which the guardian or conservator represents the interests of the ward or conservatee as a plaintiff or defendant.

If the ward or conservatee (including a proposed ward or conservatee if a petition for appointment of a guardian or conservator has been filed but has not yet been decided by the court) directly receives public benefits or is supported by public benefits received by another for their support, is a low-income person, or does not have enough income to pay for their household's basic needs and the court fees, you may use this form to ask the court to waive the court fees.

The court may order you to answer questions about the finances of the ward or conservatee. If the court waives the fees, the ward or conservatee, **their** estate, or someone with a duty to support the ward or conservatee, may still have to pay later if:

- You cannot give the court proof of the ward's or conservatee's eligibility,
- The ward's or conservatee's financial situation improves during this case, or
- You settle the civil case on behalf of the ward or conservatee for **\$10,000** or more. The trial court that waives fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge the ward or conservatee, or their estate, any collection costs.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information (*guardian or conservator, or person asking the court to appoint a guardian or conservator*):

Name: _____ Phone: _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

2 Your Lawyer (*if you have one*): Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: _____

City: _____ State: _____ Zip: _____ Email: _____

a. The lawyer has agreed to advance all or a portion of court fees or costs (*check one*): Yes No

b. (*If yes, your lawyer must sign here.*) Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your or the ward's or conservatee's low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

3 Ward's or Conservatee's Information (*file a separate Request for each ward in a multiward case*):

Name: _____ Age and date of birth (*ward only*): _____

Street or mailing address: _____

City: _____ State: _____ Zip: _____

Phone: _____

4 Ward's or Conservatee's Lawyer, if any: Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: _____

City: _____ State: _____ Zip: _____ Email: _____

5 Ward or Conservatee's Job (*job title; if not employed, so state*): _____

Name of employer: _____

Employer's address: _____ State: _____ Zip: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

6 What court's fees or costs are you asking to be waived?

- Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
- Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

7 Check here if you asked the court to waive court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check here):

8 Why are you asking the court to waive the ward's or conservatee's court fees?

- a. The ward or one or both of the ward's parents, or the conservatee or the conservatee's spouse or registered domestic partner, receive (check all that apply):
- Supplemental Security Income (SSI) State Supplemental Payment (SSP) SNAP (Food Stamps)
 - IHSS (In-Home Supportive Services) CalWORKS or Tribal TANF Medi-Cal
 - County Relief/General Assistance CAPI (Cash Assistance Program for Aged, Blind, and Disabled)
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program)
 - Unemployment Compensation

(Names and relationships to ward or conservatee of persons who receive the public benefits listed above): _____

b. The gross monthly income of the ward's or conservatee's household (before deductions for taxes) is less than the amount listed below. (If you check 8b, you **must** fill out items 14, 15, and 16 on page 4 of this form.)*

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$896.67 for each extra person.
1	\$2,510.00	3	\$4,303.34	5	\$6,096.67	
2	\$3,406.67	4	\$5,200.00	6	\$6,993.34	

c. The ward's or conservatee's household does not have enough income to pay for its basic needs and the court fees. I ask the court to (check one, and you **must** fill out items 14, 15, 16, 17, and 18 on page 4):*

- (1) Waive all court fees and costs.
- (2) Waive some court fees and costs.
- (3) Let the (proposed) guardian or conservator, on behalf of the (proposed) ward or conservatee, make payments over time.

* (Do not include income of guardian or conservator living in the household in 8b or 8c or count **them** in family size in 8b, unless **they are** a parent of the ward or the spouse or registered domestic partner of the conservatee.)

Guardians or petitioners for their appointment must complete items 9 and 10.

9 Ward's Estate: Person only, no estate. Inventory or petition estimated value:

Source (e.g., gift, inheritance, settlement, judgment, insurance): _____ Est. collection date: _____

10 Ward's Parents' Information:

a. Name of ward's parent: _____ Deceased (date of death): _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Phone: _____

b. Name of ward's parent: _____ Deceased (date of death): _____
Street or mailing address: _____
City: _____ State: _____ Zip: _____
Phone: _____

c. Ward's parents are (check all that apply): married living together separated divorced
Support order for ward? No Yes Payable to (name): _____
Payor (name): _____
Court: _____ Case Number: _____
Date of order (if multiple, date of latest): _____ Monthly amount: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

Conservators or petitioners for their appointment must complete items 11–13.

11 Conservatee's Estate: Person only, no estate.

Inventory or petition estimated value:

Est. collection date: _____

12 Conservatee's Spouse's or Registered Domestic Partner's Information:

Name of conservatee's spouse or registered domestic partner: _____ Spouse Partner

Date of marriage or partnership: _____ Deceased (date of death): _____

Street or mailing address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Name of employer (if none, so state): _____

Employer's address: _____ State: _____ Zip: _____

The conservatee's spouse or partner is is not managing, or following appointment of a conservator is planning to manage, some or all of the couple's community property outside the conservatorship estate.

If you selected "is" above: The income, money, and property shown on page 4 includes does not include the income and property managed, or expected to be managed, by the spouse/partner outside the estate.

Divorced (date of final judgment or decree): _____

Court: _____

Case Number: _____ Support order for conservatee? No Yes

Date of support order (if multiple, date of latest): _____ Monthly amount: _____

13 The Conservatee and Trusts:

The conservatee:

a. is is not a trustor or settlor of a trust.

b. is is not a beneficiary of a trust.

If you selected "Is" to complete any of the above statements, identify and provide, in an attachment to this Request, the current address and telephone number of the current trustee(s) of each trust, describe the general terms of and value of each trust and the nature and value of the conservatee's interest in each trust, and the amount(s) and frequency of any distributions to or for the benefit of the conservatee prior to your appointment as conservator of which you are aware. (You may use Judicial Council form MC-025 for this purpose.)

All applicants who checked item 8b or item 8c on page 2 must continue to and follow the instructions for completion of items 14–16 or items 14–18 on page 4, before signing below.

The information I have provided on this form and all attachments about the (proposed) ward or conservatee is true and correct to the best of my information and belief. The information I have provided on this form and all attachments concerning myself is true and correct. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Print your name here

Sign here



Name of (Proposed) Ward or Conservatee:

Case Number:

If you checked 8a on page 2, do not fill out below. If you checked 8b, you must answer questions 14–16. If you checked 8c, you must answer questions 14–18. If you need more space, attach form MC-025 or attach a sheet of paper, and write "Financial Information" and the ward's or conservatee's name and case number at the top.

14 Check here if the ward's or conservatee's income changes a lot from month to month. If it does, complete the form based on their average income for the past 12 months.

15 Ward's or Conservatee's Gross Monthly Income

a. List the source and amount of any income the ward or conservatee gets each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

- (1) \$
(2) \$
(3) \$
(4) \$
(5) \$

b. Total monthly income: \$

16 Ward's or Conservatee's Household's Income

a. List the income of all other persons living in the ward's or conservatee's home who depend in whole or in part on them for support, or on whom they depend in whole or in part for support.

Table with columns: Name, Age, Relationship, Gross Monthly Income. Rows 1-10.

b. Total monthly income of persons above: \$

Total monthly income and household income (15b plus 16b): \$

17 Ward's or Conservatee's Household's Money and Property

a. Cash \$

b. All financial accounts (list bank name and amount):

- (1) \$
(2) \$
(3) \$

c. Cars, boats, and other vehicles

Table with columns: Make / Year, Fair Market Value, How Much You Still Owe. Rows 1-3.

d. Real estate Address Fair Market Value How Much You Still Owe

- (1) \$
(2) \$

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

Table with columns: Describe, Fair Market Value, How Much You Still Owe. Rows 1-2.

18 Ward's or Conservatee's Household's Monthly Deductions and Expenses

a. List any payroll deductions and the monthly amount below:

- (1) \$
(2) \$
(3) \$
(4) \$

b. Rent or house payment and maintenance \$

c. Food and household supplies \$

d. Utilities and telephone \$

e. Clothing \$

f. Laundry and cleaning \$

g. Medical and dental expenses \$

h. Insurance (life, health, accident, etc.) \$

i. School, child care \$

j. Child, spousal support (another marriage) \$

k. Transportation, gas, auto repair and insurance \$

l. Installment payments (list each below):

- Paid to:
(1) \$
(2) \$
(3) \$

m. Wages/earnings withheld by court order \$

n. Any other monthly expenses (list each below).

- Paid to: How Much?
(1) \$
(2) \$
(3) \$

Total monthly expenses (add 18a – 18n above): \$

To list any other facts you want the court to know, such as the (proposed) ward's or conservatee's unusual medical expenses, etc, attach form MC-025 or attach a sheet of paper and write "Financial Information" and the (proposed) ward's or conservatee's name and case number at the top.

Check here if you attach another page. []

Important! If the ward's or conservatee's financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010-GC.

Do not include income of guardian or conservator living in the household in item 16, their money and property in item 17, or their deductions and expenses in item 18 unless they are a parent of the ward or the spouse or registered domestic partner of the conservatee.

Not approved by the Judicial Council

**INFORMATION SHEET ON WAIVER OF APPELLATE COURT FEES—
SUPREME COURT, COURT OF APPEAL, APPELLATE DIVISION**

If you file an appeal, a petition for a writ, or a petition for review in a civil case, such as a family law case or a case in which you sued someone or someone sued you, you must generally pay a filing fee to the court. If you are a party other than the party who filed the appeal or the petition, you must also generally pay a fee when you file your first document in a case in the Court of Appeal or Supreme Court. You and the other parties in the case may also have to pay other court fees in these proceedings, such as fees to prepare or get a copy of a clerk’s transcript in an appeal. However, if you cannot afford to pay these court fees and costs, you may ask the court to issue an order saying you do not have to pay these fees (this is called “waiving” these fees).

1. Who can get their court fees waived? The court will waive your court fees and costs if:

- **You are getting public assistance**, such as Medi-Cal; Food Stamps; Supplemental Security Income (not Social Security); State Supplemental Payment; County Relief/General Assistance; In-Home Supportive Services; CalWORKS; Tribal Temporary Assistance for Needy Families; Cash Assistance Program for Aged, Blind, and Disabled; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program); or unemployment compensation.
- **You have a low income level.** Under the law you are considered a low-income person if the gross monthly income (before deductions for taxes) of your household is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income
1	\$2,510.00	3	\$4,303.34	5	\$6,096.67
2	\$3,406.67	4	\$5,200.00	6	\$6,993.34

If more than 6 people at home, add \$896.67 for each extra person.

- **You do not have enough income to pay for your household’s basic needs and your court fees.**

2. What fees and costs will the court waive? If you qualify for a fee waiver, the Supreme Court, Court of Appeal, or Appellate Division will waive the filing fee for the notice of appeal, a petition for a writ, a petition for review, or the first document filed by a party other than the party who filed the appeal or petition, and any court fee for participating in oral argument by telephone. The trial court will also waive costs related to the clerk’s transcript on appeal, the fee for the court to hold in trust the deposit for a reporter’s transcript on appeal under rule 8.130(b) or rule 8.834(b) of the California Rules of Court, and the fees for making a transcript or copy of an official electronic recording under rule 8.835. If you are the appellant (the person who is appealing the trial court decision), the fees waived include the deposit required under Government Code section 68926.1 and the costs for preparing and certifying the clerk’s transcript and sending the original to the reviewing court and one copy to you. If you are the respondent (a party other than the appellant in a case that is being appealed), the fees waived include the costs for sending you a copy of the clerk’s transcript. You can also ask the trial court to waive other necessary court fees and costs.

The court **cannot** waive the fees for preparing a reporter’s transcript in a civil case. A special fund, called the Transcript Reimbursement Fund, may help pay for the transcript. (See www.courtreportersboard.ca.gov/consumers/index.shtml#trf and Business and Professions Code sections 8030.2 and following for more information about this fund.) If you are unable to pay the cost of a reporter’s transcript, a record of the oral proceedings can be prepared in other ways, by preparing an agreed statement or, in some circumstances, a statement on appeal or settled statement.

3. How do I ask the court to waive my fees?

- **Appeal in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** In a limited civil case, if the trial court already issued an order waiving your court fees *and that fee waiver has not ended* (fee waivers automatically end 60 days after the judgment), the fees and costs identified in item 2 above are already waived; just give the court a copy of your current fee waiver. If you do not already have an order waiving your fees or you had a fee waiver but it has ended, you must complete and file a *Request to Waive Court Fees* (form FW-001). If you are the appellant (the party who is appealing), you should check both boxes in item 4 on FW-001 and file the completed form with your notice of appeal. If you are the respondent (a party other than the appellant in a case that is being appealed), the completed form should be filed in the court when the fees you are requesting to be waived, such as the fee for the clerk’s transcript or telephonic oral argument, are due.

- **Writ Proceeding in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** If you want the Superior Court to waive the fees in a writ proceeding in a limited civil case, you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box. The completed form should be filed with your petition for a writ.
- **If You Are a Guardian or Conservator.** If you are a guardian or conservator or a petitioner for the appointment of a guardian or conservator, special rules apply to your request for a fee waiver on an appeal from an order in the guardianship or conservatorship proceeding or in a civil action in which you are a party acting on behalf of your ward or conservatee. Complete and submit a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC) to request a fee waiver. See California Rules of Court, rule 7.5.
- **Appeal in Other Civil Cases.** If you want the court to waive fees and costs in an appeal in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box to ask the Court of Appeal to waive the fee for filing the notice of appeal or, if you are a respondent (a party other than the one who filed the appeal), the fee for the first document you file in the Court of Appeal. Check both boxes if you also want the trial court to waive your costs for the clerk’s transcript (if the trial court already issued an order waiving your fees *and that fee waiver has not ended*, you do not need to check the first box; the fees and costs identified in item 2 above are already waived, just give the court a copy of your current fee waiver). If you are the appellant, the completed form should be submitted with your notice of appeal (if you check both boxes in item 4, the court may ask for two signed copies of this form). If you are the respondent, the completed form should be submitted at the time the fee you are asking the court to waive is due. For example, file the form in the trial court with your request for a copy of the clerk’s transcript if you are asking the court to waive the transcript fee or file the form in the Court of Appeal with the first document you file in that court if you are asking the court to waive the fee for filing that document. To request waiver of a court fee for telephonic oral argument, you should file the completed form in the Court of Appeal when the fee for telephonic oral argument is due.
- **Writ Proceeding in Other Civil Cases.** If you want the Supreme Court or Court of Appeal to waive the fees and costs in a writ proceeding in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner (the party filing the petition), the completed form should be submitted with your petition for a writ in the Supreme Court or Court of Appeal clerk’s office. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court or Court of Appeal.
- **Petition for Review.** If you want to request that the Supreme Court waive the fees in a petition for review proceeding, you must complete a *Request to Waive Court Fees* (form FW-001) or a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you are the petitioner, you should submit the completed form with your petition for review. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court.

IMPORTANT INFORMATION!

- **Fill out your request completely and truthfully.** When you sign your request for a fee waiver, you are declaring under penalty of perjury that the information you have provided is true and correct.
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court immediately if your finances improve or if you become able to pay court fees or costs during this case (file form FW-010 with the court). You may be ordered to repay any amounts that were waived after your eligibility ended. If the trial court waived your fees and costs and you settle your case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees.
- **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or when the court finds that you are not eligible for a fee waiver.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILDREN'S NAMES:	
FINANCIAL DECLARATION—JUVENILE DEPENDENCY	CASE NUMBER:

1. Personal Information:

Name:		Social Security Number:	
Other names used:			
I.D. or Driver's License Number:		Date of Birth:	Age:
Relationship to Child: <input type="checkbox"/> Parent <input type="checkbox"/> Other Responsible Person (specify):			
Street or Mailing Address:			
City:	State:	Zip:	Phone: Alternate Phone:
Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Domestic partner <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
Name of Spouse/Partner:		Number of dependents living with you:	
Names and ages of dependents:			

2. I receive (check all that apply): Medi-Cal SNAP (food stamps) SSI SSP
- County Relief/General Assistance CalWORKS or Tribal TANF (Temporary Assistance for Needy Families)
- IHSS (In-Home Supportive Services) CAPI (Cash Assistance Program for Aged, Blind, and Disabled)
- California Special Supplemental Nutrition Program for Women, Infants, and Children (WIC Program)
- Unemployment compensation

3. My gross monthly household income (before deductions for taxes) is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$896.67 for each extra person.
1	\$2,510.00	3	\$4,303.34	5	\$6,096.67	
2	\$3,406.67	4	\$5,200.00	6	\$6,993.34	

4. I have been reunified with my child(ren) under a court order (attached).

5. I am receiving court-ordered reunification services.

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

6. Employment:

Your Employment				Your Spouse/Partner's Employment			
Employer:				Employer:			
Address:				Address:			
City and Zip Code:		Phone:		City and Zip Code:		Phone:	
Type of Job:				Type of Job:			
How long employed:	Working now?	Monthly salary:	Take home pay:	How long employed:	Working now?	Monthly salary:	Take home pay:
If not now employed, who was your last employer? <i>(name, address, city, and zip code):</i>				If not now employed, who was this person's last employer? <i>(name, address, city, and zip code):</i>			
Phone number of last employer:				Phone number of last employer:			

7. Other Monthly Income and Assets:

Other Income	Assets: What Do You Own?
Unemployment \$	Cash \$
Disability \$	Real Property/Equity \$
Social Security \$	Cars and Other Vehicles \$
Workers' Compensation \$	Life Insurance \$
Child Support Payments \$	Bank Accounts <i>(list below)</i> \$
Foster Care Payments \$	Stocks and Bonds \$
Other Income \$	Business Interest \$
Total \$	Other Assets \$
	Total \$
	Name and branch of bank:
	 Account numbers:

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

8. Expenses:

Monthly Household Expenses	Reunification Plan: Monthly Cost of Required Services
Rent or Mortgage Payment \$	Parenting Classes \$
Car Payment \$	Substance Abuse Treatment \$
Gas and Car Insurance \$	Therapy/Counseling \$
Public Transportation \$	Medical Care/Medications \$
Utilities (Gas, Electric, Phone, Water, etc.)... \$	Domestic Violence Counseling \$
Food \$	Batterers' Intervention \$
Clothing and Laundry \$	Victim Support \$
Child Care \$	Regional Center Programs \$
Child Support Payments \$	Transportation \$
Medical Payments \$	In-Home Services \$
Other Necessary Monthly Expenses \$	Other \$
Total \$	Total \$

9. Loan/Expense Payments (other than mortgage or car loan):

Name of lender and type of loan/expense	Monthly payment	Balance owed
	\$	\$
	\$	\$
	\$	\$
	\$	\$

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF DECLARANT)

FOR FINANCIAL EVALUATION OFFICER USE ONLY

TOTAL INCOME	\$	COST OF LEGAL SERVICES	\$
TOTAL EXPENSES	\$	MONTHLY PAYMENT	\$
NET DISPOSABLE INCOME	\$	TOTAL COST ASSESSED	\$

The above-named responsible person is presumed unable to pay reimbursement for the cost of legal services in this proceeding and is eligible for a waiver of liability because

- they receive qualifying public benefits
- their household income falls below 200% of the current federal poverty guidelines
- they have been reunified with the child(ren) under a court order and payment of reimbursement would harm their ability to support the child(ren).

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF FINANCIAL EVALUATION OFFICER)

Computation Sheet

Number in Family	2024 Federal Poverty Guidelines (A)	200% of Poverty Guidelines (B) (B = A x 200%)	2024 California Monthly Income (C) (C = B / 12)*
1	\$15,060.00	\$30,120.00	\$2,510.00
2	20,440.00	40,880.00	3,406.67
3	25,820.00	51,640.00	4,303.34
4	31,200.00	62,400.00	5,200.00
5	36,580.00	73,160.00	6,096.67
6	41,960.00	83,920.00	6,993.34
For each additional person, add:	5,380.00	10,760.00	896.67

* These amounts have been rounded up to the nearest whole cent. Language on the forms reflects this slight excess by stating that the household income is “less than” the amounts in the chart.

RULES COMMITTEE ACTION REQUEST FORM

Rules Committee Meeting Date: February 7, 2024

Rules Committee action requested [Choose from drop down menu below]:
Submit to JC (without circulating for comment)

Title of proposal: Rules and Forms: Adjustments to Dollar Amounts of Civil Penalty

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

Committee or other entity submitting the proposal:
Judicial Council Staff

Staff contact (name, phone and e-mail): James Barolo, 415-865-8928, james.barolo@gmail.com

Identify project(s) on the committee's annual agenda that is the basis for this item:
Annual agenda approved by Rules Committee on (date): Not on annual agenda--Technical change to conform forms as required by law
Project description from annual agenda:

Out of Cycle: *If requesting September 1 effective date or out of cycle, explain why:*

Tehcnical change to revise civil penalty figures based on changes to California Consumer Price Index. Health and Safety Code section 25249.7(k)(2)(B)(ii). requires this change be made every five years, effective April 1.

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

The California Consumer Price Index (CCPI) amounts that are used in the calculation to determine the civil penalty figures on Appendix H will not be available until mid-February. Staff requests that the Rules Committee approve the text of the report and appendix and will recirculate both items for email approval once the CCPI amounts are released.

Additional Information for JC Staff (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-080

For business meeting on March 15, 2024

Title

Rules and Forms: Adjustments to Dollar
Amounts of Civil Penalty

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, Appendix H

Effective Date

April 1, 2024

Recommended by

Judicial Council staff
James Barolo, Attorney
Legal Services

Date of Report

January 30, 2024

Contact

James Barolo, 415-865-8928
james.barolo@jud.ca.gov

Executive Summary

Judicial Council staff recommend that the Judicial Council amend Appendix H of the California Rules of Court to reflect changes in the California Consumer Price Index as required by Health and Safety Code section 25249.7(k)(2)(B)(ii). Appendix H sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective April 1, 2024, amend Appendix H of the California Rules of Court to reflect changes in the California Consumer Price Index.

The amended Appendix H is attached at page 4.

Relevant Previous Council Action

The council adopted Appendix H of the California Rules of Court in 2019, which was the first time the adjustment to the amount of civil penalty for an alleged violation of Health and Safety Code section 25249.6 was required under section 25249.7(k)(2)(B)(ii).¹

Analysis/Rationale

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from knowingly discharging or releasing such a chemical into water or any source of drinking water, except as specified. A person may bring an action in the public interest for violation of the act but only after certain notices have been provided to the alleged violator and to the Attorney General.

In 2013, the Legislature amended the statute to require that, when the alleged violations were based on failure to provide certain warnings, a private exemption action is prohibited if the alleged violator, within 14 days after receipt of the required notice, corrects the alleged violation and pays a civil penalty in the amount of \$500 per facility or premises. (See § 25249.7(k).) At the same time, the Legislature mandated that the Judicial Council adjust the amount of that civil penalty every five years, beginning April 1, 2019, based on changes to the California Consumer Price Index over the prior five years. (§ 25249.7(k)(2)(B)(ii).)

Based on the recently published 2023 California Consumer Price Index figure, as set out in the formula in Appendix H of the California Rules of Court, the adjusted dollar amount of the exemptions that will be effective on April 1, 2024, is \$XXX.² The calculation and adjusted dollar amount are included in the amended Appendix H.³

Policy implications

There are no policy implications of this proposal as the amendment of Appendix H is required by statute.

Comments

This proposal was not circulated for public comment because minor, noncontroversial revisions are being made to implement changes in law and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

¹ Unless otherwise noted, all statutory references hereafter are to the California Health and Safety Code.

² The California Department of Labor has published the figures on its website, at www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF.

³ As adopted in 2019, Appendix H inadvertently cites to section 26249.7(k) instead of section 25249.7(k). This proposal also amends Appendix H to cite to the correct statute.

Alternatives considered

The alternative to amending Appendix H to include the adjusted dollar amount based on changes in the California Consumer Price Index would be to not update it. Staff did not consider this option because section 25249.7(k)(2)(B)(ii) mandates that the council adjust the figures.

Fiscal and Operational Impacts

The implications of this proposal for the trial courts should be minimal. The figure in Appendix H of the California Rules of Court is information for the use of potential litigants, before any case has been filed, and should not impact court processes.

Attachments and Links

1. Cal. Rules of Court, Appendix H, at page 4
2. Link A: 2023 Consumer Price Index–California: All Urban Consumers, State of California, Department of Industrial Relations, www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF

Appendix H of the California Rules of Court is amended, effective April 1, 2024, to read:

Appendix H

Amount of Civil Penalty to Cure Alleged Violation of Proposition 65 for Failure to Provide Certain Warnings (Health & Saf. Code, § ~~26249.7(k)~~ 25249.7(k))

Formula

Under Health and Safety Code section ~~26249.7(k)~~ 25249.7(k), the amount of civil penalty per facility or premises that an alleged violator may agree to pay within 14 days of service of a notice of violation under that section will be computed and adjusted as follows:

$$\text{Adjusted penalty amount} = \left[\frac{\text{annual CCPI (Dec. } \del{2018} \text{ } \underline{2023}) - \text{annual CCPI (Dec. } \del{2013} \text{ } \underline{2018})}{\text{annual CCPI (Dec. } \del{2013} \text{ } \underline{2018})} + 1 \right] \times \text{Previous dollar amount}$$

Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers, as established by the California Department of Industrial Relations.

Calculation and adjustment

Effective April 1, ~~2019~~ 2024, the amount of civil penalty that an alleged violator may agree to pay within 14 days of service of a notice of violation under Health and Safety Code section ~~26249.7(k)(2)(B)(ii)~~ 25249.7(k)(2)(B)(ii) is ~~\$565~~ \$XXX per facility or premises where the alleged violation occurred.

The calculation is as follows:

$$\del{\$563.92} \underline{\$XXX.XX} = \left[\frac{\del{272.51} \underline{XXX.XX} - \del{241.623} \underline{272.51}}{\del{241.623} \underline{272.51}} + 1 \right] \times \$500$$

Under Health and Safety Code section ~~26249.7(k)(2)(B)(ii)~~ 25249.7(k)(2)(B)(ii), the adjusted penalty amount is rounded to the nearest \$5, so the dollar amount of the adjusted limit is rounded to ~~\$565~~ \$XXX.