



JUDICIAL COUNCIL OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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RULES AND PROJECTS COMMITTEE

OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING RECORDED

Date: Thursday, December 14, 2017
Time: 12:10 – 1:40 p.m.
Location: Conference Call
Public Call-In Number 1-877-820-7831/Participant Access Code: 8083403 (listen only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. DISCUSSION AND POSSIBLE ACTION ITEMS

JUDICIAL ADMINISTRATIONS

Item 01

Court Administration: Judicial Sabbaticals (Action required – approval for circulation for comment)

Presenter: Patrick O'Donnell

CIVIL AND SMALL CLAIMS

Item 02

Civil Form: Enforcement of Judgment Exemption (revise form EJ 155) (Action required – approval for circulation for comment)

Presenter: Susan McMullan

Item 03

Civil Forms: Name Change and Gender Change Forms (revise forms NC-100, NC-110, NC-130, NC-130G, NC-200, NC-230, NC-300, and NC-330; adopt forms NC-125/NC-225, NC-350, and NC-360; approve forms NC-100-INFO, NC-150, and NC-350-INFO; and revoke forms NC-210/NC-310, NC-220, and NC-320) (Action required – approval for circulation for comment)

Presenter: Ann Ronan

CRIMINAL

Item 04

Criminal Procedure: Felony Waiver and Plea Form (revise form CR-101) (Action required – approval for circulation for comment)

Presenter: Eve Hershcopf

FAMILY AND JUVENILE

Item 05

Juvenile Delinquency: Information for Parents (revise forms JV-060, JV-600, and JV-625) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

Item 06

Juvenile Law: Sealing of and Access to Records (adopt rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO) (Action required – approval for circulation for comment)

Presenter: Tracy Kenny

Item 07

Juvenile Law: Presumptive Transfer of Specialty Mental Health Services (adopt rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212) (Action required – approval for circulation for comment)

Presenter: Daniel Richardson

PROBATE

Item 08

Probate Conservatorships: Interstate Transfer (approve forms GC-363, GC-364, GC-365, and GC-366) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

Item 09

Probate Law: Appointment of Counsel (approve form GC-005) (Action required – approval for circulation for comment)

Presenter: Corby Sturges

III. ADJOURNMENT

Adjourn

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Court Administration: Judicial Sabbaticals

Committee or other entity submitting the proposal:

Executive and Planning Chair

Staff contact (name, phone and e-mail): Susan McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: NA

Project description from annual agenda:

If requesting July 1 or out of cycle, explain:

This proposal should be effective immediately after council approves amendment to correct inaccuracies in the rule. The rule amendment will not affect courts.

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

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W18-01

Title	Action Requested
Court Administration: Judicial Sabbaticals	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.502	May 29, 2018
Proposed by	Contact
Hon. Douglas P. Miller, Chair Executive and Planning Committee	Susan McMullan, susan.mcmullan@jud.ca.gov , 415-865-7990

Executive Summary and Origin

Judicial sabbaticals are addressed in the Government Code and the California Rules of Court. Current law and practices provide for only unpaid sabbaticals on approval of the Judicial Council. The council's Executive and Planning Committee proposes amending rule 10.502 to make it consistent with current law and practices and to eliminate outdated provisions on paid sabbaticals. The amendments would also eliminate the role of the Judicial Sabbatical Review Committee.

Background

Current Government Code section 68554¹ authorizes the Judicial Council to provide for unpaid judicial sabbaticals. Specifically the council may "grant any judge a leave of absence" for up to one year to permit "study, which will benefit the administration of justice and the individual's performance of judicial duties, upon a finding that the absence will not work to the detriment of the court."

Former section 77213 established the Judicial Administration Modernization and Efficiency Fund (Mod Fund) and authorized use of money therein for paid judicial sabbaticals. It provided in part as follows:

(b) Moneys deposited into this fund shall be administered by the Judicial Council, subject to appropriation by the Legislature. . . . Moneys in the fund may

¹ If not specified, further references to "section" are the Government Code.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

be expended to implement projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects. Projects approved by the Judicial Council may include, but are not limited to, the following:

(3) Retain experienced jurists by establishing incentives of enhanced judicial benefits and educational sabbaticals, not to exceed 120 days every five years, as provided for by rules of court adopted by the Judicial Council.

Few paid sabbaticals were granted under this authority and section 77213 was repealed in 2012, when legislation also amended section 77209, which effectively combined the former Mod Fund with the former Trial Court Improvement Fund to create the new State Trial Court Improvement and Modernization Fund as a successor to both.² No monies have been set aside in this fund for paid sabbaticals since the funds merged. The amended statutory language of section 77209 omitted the list of example projects (including judicial sabbaticals) that had been contained in former section 77213. These statutory changes created uncertainty as to whether the council could grant paid judicial sabbaticals.

Current rule 10.502 sets out the procedures for considering requests for both paid and unpaid judicial sabbatical and includes provisions that are no longer accurate due, in part, to statutory changes.

The Proposal

Rule 10.502 would be amended to:

- Eliminate the reference to Government Code section 77213 in subdivision (b) and cross references elsewhere in the rule to the requirements of section 77213;
- Align the rule's language on the purpose of a sabbatical with that in section 68554;
- Eliminate the reference to the Judicial Sabbatical Review Committee and authorize the council's Executive and Planning Committee to evaluate and make recommendations to the council on judicial sabbatical applications; and
- Make stylistic changes and change the order of subdivisions (h) and (i).

Paid judicial sabbaticals were authorized by former section 77213. With its repeal, it is unclear whether the Judicial Council may grant an unpaid sabbatical. This proposal would delete from rule 10.502, current subdivision (b)(1), which provides as follows:

² Senate Bill 1021

Eligibility

A judge or justice is eligible to apply for a paid sabbatical under Government Code section 77213 if:

- (A) He or she has served for at least seven years as a California judicial officer, including service as a subordinate judicial officer;
- (B) He or she has not taken a sabbatical within seven years of the date of the proposed sabbatical; and
- (C) He or she agrees to continue to serve as a judicial officer for at least three years after the sabbatical.

With this amendment, the rule would provide for unpaid sabbaticals only. Other references in rule 10.502 to section 77213 or to the requirements for a paid sabbatical, which are in subdivisions (c)(2), (f)(1), (g), (h), and (j), would be deleted from the rule. In addition, minor stylistic changes would be made: Administrator Director of the Courts would be changed to “Administrative Director.” The order of current subdivision (h), on the judge’s report following a sabbatical leave, and subdivision (i), on retirement and benefits, would be switched for improved continuity.

The objective of sabbatical leave set out in subdivision (a) would be shortened and made consistent with section 68554, which provides that a sabbatical is for “study, which will benefit the administration of justice and the individual’s performance of judicial duties.” Accordingly, in subdivision (a) of rule 10.502, the words “teaching, research, or another activity” would be removed from the following sentence:

The objective of sabbatical leave is to facilitate study, teaching, research, or another activity that will benefit the administration of justice and enhance judges’ performance of their duties.

Subdivision (d), concerning the Judicial Sabbatical Review Committee would be amended to remove references to that committee and its membership and add that the Executive and Planning Committee will make recommendation to the council regarding sabbatical requests with support from the council’s human resources staff. Subdivision (e) would replace “Judicial Sabbatical Review” with “Executive and Planning.” The Judicial Sabbatical Review Committee no longer exists and, because of the infrequency of requests for a judicial sabbatical, it is more efficient to transfer the duty to review and make recommendations on such requests to a council standing committee; the Executive and Planning Committee is the most appropriate committee to take on this role.

These changes are necessary to make the rule consistent with statutory changes and current practices concerning judicial sabbaticals. The rule amendment will make clear that only unpaid sabbaticals may be granted and accurately set out the responsibility for reviewing and recommending sabbatical requests.

Alternatives Considered

No alternatives were considered, as the inconsistency between current rule 10.502 and current law and practices cannot be corrected by education, training, guidelines, or best practices.

Implementation Requirements, Costs, and Operational Impacts

This proposal has no implementation requirements or costs. Amending the rule to provide that paid judicial sabbaticals are not authorized is likely to have a positive operational impact by eliminating ambiguity.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Executive and Planning Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

Cal. Rules of Court, rule 10.502 at pages 5–6

Rule 10.502 of the California Rules of Court would be amended, effective May 29, 2018, to read:

1 **Rule 10.502. Judicial sabbatical ~~pilot~~ program**

2
3 **(a) Objective**

4
5 Sabbatical leave is a privilege available to jurists by statute. The objective of
6 sabbatical leave is to facilitate study, ~~teaching, research, or another activity~~ that will
7 benefit the administration of justice and enhance judges' performance of their
8 duties.

9
10 **(b) Eligibility**

11
12 ~~(1) A judge or justice is eligible to apply for a paid sabbatical under Government~~
13 ~~Code section 77213 if:~~

14
15 ~~(A) He or she has served for at least seven years as a California judicial~~
16 ~~officer, including service as a subordinate judicial officer;~~

17
18 ~~(B) He or she has not taken a sabbatical within seven years of the date of~~
19 ~~the proposed sabbatical; and~~

20
21 ~~(C) He or she agrees to continue to serve as a judicial officer for at least~~
22 ~~three years after the sabbatical.~~

23
24 ~~(2) Any judge is eligible to apply for an unpaid sabbatical under Government~~
25 ~~Code section 68554.~~

26
27 **(c) Application**

28
29 ~~(1) An eligible judge may apply for a sabbatical by submitting a sabbatical~~
30 ~~proposal to the Administrative Director of the Courts with a copy to the~~
31 ~~presiding judge or justice.~~

32
33 (2) The sabbatical proposal must include:

34
35 ~~(A) The judge's certification that he or she meets the eligibility~~
36 ~~requirements established in (b);~~

37
38 ~~(B) The beginning and ending dates of the proposed sabbatical;~~

39
40 ~~(C) A description of the sabbatical project, including an explanation of how~~
41 ~~the sabbatical will benefit the administration of justice and the judge's~~
42 ~~performance of his or her duties; and~~

1 (~~DC~~) A statement from the presiding judge or justice of the affected court,
2 indicating approval or disapproval of the sabbatical request and the
3 reasons for such approval or disapproval, forwarded to the ~~Judicial~~
4 ~~Sabbatical Review~~ Executive and Planning Committee with a copy to
5 the judge.

6
7 **(d) ~~Judicial Sabbatical Review Committee~~ Review of applications**

8
9 ~~A Judicial Sabbatical Review~~ The Executive and Planning Committee will be
10 ~~appointed to~~ make recommendations to the Judicial Council regarding sabbatical
11 ~~requests, with support from the council's human resources staff.~~

12
13 (1) — *Membership*

14
15 ~~The committee must include at least one member from each of the following~~
16 ~~groups:~~

17
18 (A) — ~~Administrative Presiding Justices Advisory Committee;~~

19
20 (B) — ~~Trial Court Presiding Judges Advisory Committee;~~

21
22 (C) — ~~Court Executives Advisory Committee;~~

23
24 (D) — ~~Governing Committee of the Center for Judicial Education and~~
25 ~~Research;~~

26
27 (E) — ~~Judicial Service Advisory Committee; and~~

28
29 (F) — ~~California Judges Association (liaison).~~

30
31 (2) — *Staffing*

32
33 ~~The committee will be staffed by the Human Resources Division of the~~
34 ~~Administrative Office of the Courts and may elect its chair and vice chair.~~

35
36 **(e) Evaluation**

37
38 (1) The Administrative Director ~~of the Courts~~ must forward all sabbatical
39 requests that comply with (c) to the ~~Judicial Sabbatical Review~~ Executive and
40 Planning Committee.

1 (2) The ~~Judicial Sabbatical Review~~ Executive and Planning Committee must
2 recommend granting or denying the sabbatical request after it considers the
3 following factors:

4
5 (A) Whether the sabbatical will benefit the administration of justice in
6 California and the judge's performance of his or her duties; and

7
8 (B) Whether the sabbatical leave will be detrimental to the affected court.

9
10 (3) ~~The Judicial Sabbatical Review Committee may recommend an unpaid~~
11 ~~sabbatical if there is insufficient funding for a paid sabbatical.~~

12
13 **(f) Length**

14
15 ~~(1) A paid sabbatical taken under Government Code section 77213 may not~~
16 ~~exceed 120 calendar days. A judge may be allowed to add unpaid sabbatical~~
17 ~~time onto the end of a paid sabbatical if the purpose of the unpaid sabbatical~~
18 ~~is substantially similar to the work of the paid sabbatical.~~

19
20 ~~(2) An unpaid judicial sabbatical taken under Government Code section 68554~~
21 ~~may not exceed one year.~~

22
23 **(g) Ethics and compensation**

24
25 A judge on unpaid sabbatical leave is subject to the California Code of Judicial
26 Ethics and, ~~while on a paid sabbatical, must not accept~~ may receive compensation
27 and reimbursement for expenses for activities performed during that sabbatical
28 leave ~~but may receive reimbursement for the expenses~~ as provided in canon 4H(2)
29 of the Code of Judicial Ethics.

30
31 **~~(h)~~ (h) Judge's report**

32
33 ~~On completion of a sabbatical leave, the judge must report in writing to the Judicial~~
34 ~~Council on how the leave benefited the administration of justice in California and~~
35 ~~on its effect on his or her official duties as a judicial officer.~~

36
37 **~~(i)~~ (h) Retirement and benefits**

38
39 ~~(1) A judge on a paid sabbatical leave under Government Code section 77213~~
40 ~~continues to receive all the benefits of office and accrues service credit~~
41 ~~toward retirement.~~

1 (2)—A judge on unpaid sabbatical leave under Government Code section 68554
2 receives no compensation, and the period of absence does not count as
3 service toward retirement. The leave does not affect the term of office.
4

5 **(h)(i) Judge's report**
6

7 On completion of a sabbatical leave, the judge must report in writing to the Judicial
8 Council on how the leave benefited the administration of justice in California and on its
9 effect on his or her official duties as a judicial officer.
10

11 ~~**(j) Judicial assignment replacement**~~
12

13 ~~Funds must be made available from the Judicial Administration Efficiency and~~
14 ~~Modernization Fund to allocate additional assigned judges to those courts whose~~
15 ~~judges' requests for paid sabbaticals are approved.~~

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Forms: Enforcement of Judgment Exemption

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Susan McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Exemptions from Enforcement of Money Judgements

Project Summary Assembly Bill 688 provides for a new exemption, for contributions to ABLE bank accounts, which will need to be added to the forms which list exemptions and amounts of exemptions.

If requesting July 1 or out of cycle, explain:

Legislation effective September 1, 2018 creates a new exemption from enforcement of a money judgment. This form is proposed to be effective at the same time.

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

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INVITATION TO COMMENT

W18-02

Title	Action Requested
Forms: Enforcement of Judgment Exemption	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form EJ-155	September 1, 2018
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Ann I. Jones, Chair	susan.mcmullan@jud.ca.gov

Executive Summary and Origin

Assembly Bill 688 (Calderon; Stats. 2017, ch. 529) amended Welfare and Institutions Code section 4880 to provide an exemption from enforcement of judgments for funds in special savings accounts for persons with disabilities. The amount exempted is \$100,000. To assist court users and to help implement this legislation, the exemption must be added to Judicial Council forms that list exemptions to enforcement of judgments.

The Proposal

The Civil and Small Claims Advisory Committee (CSCAC) recommends that *Exemptions From the Enforcement of Judgments* (form EJ-155) be revised to add an exemption from enforcement of judgments, not to exceed \$100,000, for funds in savings accounts established under the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act). The ABLE Act encourages and assists individuals and families to save private funds in a tax-advantaged savings account to support persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income money used for disability expenses by a beneficiary of a qualified ABLE program established and maintained by a state.

California has a qualified ABLE program (CalABLE) to implement the federal ABLE Act. Effective September 1, 2018, Welfare and Institutions Code section 4880(c) will provide that “moneys in an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall be exempt from enforcement of a money judgment without making a claim.”

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Exemptions From the Enforcement of Judgments (form EJ-155) is an optional form that lists assets that may be exempt from levy on a judgment, including the type of property and the particular statute that provides the exemption. This proposal would revise form EJ-155 to add ABLÉ accounts, consistent with recent legislation. It adds the words “ABLE Accounts” in two places on the form: at the top of the list of types of property that are exempt (because the list is in alphabetical order and “ABLE” comes before any other type of property) and under “Deposit Accounts,” which is a current heading on the form. Certain other types of property are listed on the form more than once (e.g., “Building Materials (Residential)” and “Home: Building Materials”), and the committee is interested in comments about where ABLÉ accounts should be listed and whether they should be listed in both places shown in this proposal.

Revising this form to add ABLÉ accounts will inform individuals with these accounts, judges, court personnel, and other parties of this exemption without the need for the person claiming the exemption to file a claim of exemption. (New Welfare and Institutions Code section 4880(c) provides for the exemption up to \$100,000 without the need to file a claim of exemption.)

The form would also be revised to update information in a box discussing the amount of exemptions. It would reference another form, *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which lists the amount of exemptions under certain statutes and provides information on amounts that are amended every three years. The current version of the form states the amount of the exemptions is available from the clerk of the court and on the California Courts website. The revision to this box would remove that statement, as the information is now contained in form EJ-156.

Alternatives Considered

Because of the need to assist court users with accurate information on exemptions from enforcement of judgments and the enactment of legislation that adds ABLÉ accounts to the assets that are exemptions from enforcement of judgments, the CSCAC did not consider alternatives. The CSCAC determined that revising this form to refer court users to form EJ-156 for a list of the amount of certain exemptions was preferable to leaving a statement on the form that such a list is available from the clerk of the court and on the California Courts website.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are anticipated. Courts that provide paper copies of this form will incur production costs.

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 ABLE accounts be listed in two places on the form, including under the heading “Deposit Accounts” as shown in this proposal?
- Does the box on “Amount of Exemptions” provide sufficient information about where to find information on the amount of certain exemptions?

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 position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Form EJ-155, at p. 4–5
2. Link A: Assembly Bill 688 at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB688

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

The following is a list of assets that may be exempt from levy on a judgment.

Exemptions are found in the United States Code (USC) and in the California codes, primarily the Code of Civil Procedure (CCP).

Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some are not available after a certain period of time. You or your attorney should read the statutes.

If you believe the assets that are being levied on are exempt, file a claim of exemption form, which you can get from the levying officer.

AMOUNT OF EXEMPTIONS: The amount of an exemption is generally stated in the statute that corresponds to each exemption listed below. The current amounts of certain exemptions are listed in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156). The amounts of some of the exemptions are amended every three years and become effective immediately on April 1 under the provisions of Code of Civil Procedure section 703.150.

<u>Type of Property</u>	<u>Code and Section</u>	<u>Type of Property</u>	<u>Code and Section</u>
ABLE Accounts	Welf & I C § 4880(c)	Benefit Payments (cont.)	
Accounts (See Deposit Accounts)		Relocation Benefits	CCP § 704.180
Appliances	CCP § 704.020	Retirement Benefits and Contributions:	
Art and Heirlooms	CCP § 704.040	Private	CCP § 704.115
Automobiles	CCP § 704.010	Public	CCP § 704.110
BART District Benefits	CCP § 704.110	Segregated Benefit Funds	Ins C § 10498.5
	Pub Util C § 28896	Social Security Benefits	42 USC § 407
Benefit Payments:		Strike Benefits	CCP § 704.120
BART District Benefits	CCP § 704.110	Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110
Charity	Pub Util C § 28896		Pub Util C § 25337
Civil Service Retirement Benefits (Federal)	CCP § 704.170	Unemployment Benefits and Contributions	CCP § 704.120
County Employees Retirement Benefits	CCP § 704.110	Veterans Benefits	38 USC § 3101
Disability Insurance Benefits	Govt C § 31452	Veterans Medal of Honor Benefits	38 USC § 562
Fire Service Retirement Benefits	CCP § 704.130	Welfare Payments	CCP § 704.170
Fraternal Organization Funds Benefits	CCP § 704.130		Welf & I C § 17409
Health Insurance Benefits	CCP § 704.170	Workers Compensation	CCP § 704.160
Irrigation System Retirement Benefits	CCP § 704.130	Boats	CCP § 704.060
Judges Survivors Benefits (Federal)	CCP § 704.110	Books	CCP § 704.710
Legislators Retirement Benefits	28 USC § 376(n)	Building Materials (Residential)	CCP § 704.030
Life Insurance Benefits:		Business:	
Group	CCP § 704.110	Licenses	CCP § 695.060
Individual	Govt C § 9359.3	Tools of Trade	CCP § 699.720(a)(1)
Lighthouse Keepers Widows Benefits	CCP § 704.100	Cars and Trucks (including proceeds)	CCP § 704.010
Longshore & Harbor Workers Compensation or Benefits	CCP § 704.100	Cash	CCP § 704.070
Military Benefits:		Cemeteries:	
Retirement	10 USC § 1440	Land Proceeds	Health & SC § 7925
Survivors	10 USC § 1450	Plots	CCP § 704.200
Municipal Utility District Retirement Benefits	33 USC § 916	Charity	CCP § 704.170
Peace Officers Retirement Benefits	CCP § 704.110	Claims, Actions and Awards:	
Pension Plans (and Death Benefits):	CCP § 704.110	Personal Injury	CCP § 704.140
Private	Pub Util C § 12337	Worker's Compensation	CCP § 704.160
Public	CCP § 704.110	Wrongful Death	CCP § 704.150
Public Assistance	CCP § 704.170	Clothing	CCP § 704.020
	Welf & I C § 17409	Condemnation Proceeds	CCP § 704.720(b)
		County Employees Retirement Benefits	CCP § 704.110
			Govt C § 31452
		Damages (See Personal Injury and Wrongful Death)	
		Deposit Accounts:	
		ABLE Accounts	Welf & I C § 4880(c)
		Escrow or Trust Funds	Fin C § 17410
		Social Security Direct Deposits	CCP § 704.080

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

(Continued)

<u>Type of Property</u>	<u>Code and Section</u>	<u>Type of Property</u>	<u>Code and Section</u>
Direct Deposit Account:		Municipal Utility District	
Social Security	CCP § 704.080	Retirement Benefits	CCP § 704.110
Disability Insurance Benefits	CCP § 704.130	Peace Officers Retirement	Pub Util C § 12337
Dwelling House	CCP § 704.740	Benefits	CCP § 704.110
Earnings	CCP § 704.070	Pension Plans:	Govt C § 31913
	CCP § 706.050	Private	CCP § 704.115
	15 USC § 1673(a)	Public	CCP § 704.110
Educational Grant	Ed C § 21116	Personal Effects	CCP § 704.020
Employment Bonds	Lab C § 404	Personal Injury Actions	
Financial Assistance:		or Damages	CCP § 704.140
Charity	CCP § 704.170	Prisoner's Funds	CCP § 704.090
Public Assistance	CCP § 704.170	Property Not Subject to	
	Welf & I C § 17409	Enforcement of Money	
Student Aid	CCP § 704.190	Judgments	CCP § 704.210
Welfare (See Public		Prosthetic and Orthopedic	
Assistance)		Devices	CCP § 704.050
Fire Service Retirement	CCP § 704.110	Provisions (for Residence)	CCP § 704.020
	Govt C § 32210	Public Assistance	CCP § 704.170
Fraternal Organizations		Public Employees:	Welf & I C § 17409
Funds and Benefits	CCP § 704.130	Death Benefits	CCP § 704.110
	CCP § 704.170	Pension	CCP § 704.110
Fuel for Residence	CCP § 704.020	Retirement Benefits	CCP § 704.110
Furniture	CCP § 704.020	Vacation Credits	CCP § 704.113
General Assignment for		Railroad Retirement Benefits	45 USC § 2281
Benefit of Creditors	CCP § 1801	Railroad Unemployment	
Health Aids	CCP § 704.050	Insurance	45 USC § 352(e)
Health Insurance Benefits	CCP § 704.130	Relocation Benefits	CCP § 704.180
Home:		Retirement Benefits and	
Building Materials	CCP § 704.030	Contributions:	
Dwelling House	CCP § 704.740	Private	CCP § 704.115
Homestead	CCP § 704.720	Public	CCP § 704.110
	CCP § 704.730		Ins C § 10498.5
Housetrailer	CCP § 704.710	Segregated Benefit Funds	Ins C § 10498.6
Mobilehome	CCP § 704.710	Servicemembers Property	50 USC § 523(b)
Homestead	CCP § 704.720	Social Security	42 USC § 407
	CCP § 704.730	Social Security Direct Deposit	
Household Furnishings	CCP § 704.020	Account	CCP § 704.080
Insurance:		Strike Benefits	CCP § 704.120
Disability Insurance	CCP § 704.130	Student Aid	CCP § 704.190
Fraternal Benefit Society	CCP § 704.110	Tools of Trade	CCP § 704.060
Group Life	CCP § 704.100	Transit District Retirement	
Health Insurance Benefits	CCP § 704.130	Benefits (Alameda and Contra	
Individual	CCP § 704.100	Costa Counties)	CCP § 704.110
Insurance Proceeds—			Pub Util C § 25337
Motor Vehicle	CCP § 704.010	Travelers Check Sales Proceeds	Fin C § 1875
Irrigation System	CCP § 704.040	Unemployment Benefits and	
Retirement Benefits	CCP § 704.110	Contributions	CCP § 704.120
Jewelry		Uniforms	CCP § 704.060
Judges Survivors Benefits		Vacation Credits (Public	
(Federal)	28 USC § 376(n)	Employees)	CCP § 704.113
Legislators Retirement		Veterans Benefits	38 USC § 3101
Benefits	CCP § 704.110	Veterans Medal of Honor	
	Govt C § 9359.3	Benefits	38 USC § 562
Licenses	CCP § 695.060	Wages	CCP § 704.070
	CCP § 720(a)(1)		CCP § 706.050
Lighthouse Keepers Widows		Welfare Payments	CCP § 706.051
Benefits	33 USC § 775		CCP § 704.170
Longshore and Harbor Workers			Welf & I C § 17409
Compensation or Benefits	33 USC § 916	Workers Compensation	
Military Benefits:		Claims or Awards	CCP § 704.160
Retirement	10 USC § 1440	Wrongful Death Actions or	
Survivors	10 USC § 1450	Damages	CCP § 704.150
Military Personnel—Property	50 USC § 523(b)		
Motor Vehicle (Including			
Proceeds)	CCP § 704.010		
	CCP § 704.060		

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: Decenber 14, 2018

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Forms: Name Change and Gender Change Forms

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail): Anne M. Ronan, 15-865-8933

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: 10/24/17

Project description from annual agenda: Project Summary Senate Bill 179 adds a third gender alternative for California residents: nonbinary in addition to male or female, and amends the procedures for seeking name changes to conform to gender (Code Civ. Proc. § 1277.5) and the procedures and legal requirements for seeking changes of gender on birth certificates (Health and Safety Code § 103430). The new law will require revisions to several of the council's Name Change forms, both to add the nonbinary option and to reflect the amendments to procedures for obtaining name changes to reflect gender and changes to birth certificates. Senate Bill 310 will also require amending Name Change forms, to remove the items re status of petitioner being under jurisdiction of Department of Corrections and Rehabilitation and to add information about the additional service of documents that will now be required of those under that jurisdiction.

Pending issues regarding Name Change forms that the committee will consider at the same time, include the following:

- Whether form NC-220 should be revised to include language from Code of Civil Procedure section 1277(a)(1) directing interested persons to file in writing any objections to the granting of the petition (suggested by court research attorney)
- Whether form NC-110 should be revised to correct an ambiguity in the declaration box, to address a recurring problem for clerks in processing the form (suggested by judicial officer)
- Whether date of birth should be removed from the petition form, addressing privacy concerns (suggested by an attorney).

If requesting July 1 or out of cycle, explain:

Amended statutes go into effect Sept 1, so need to have items approved/adopted by council before then.

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

JUDICIAL COUNCIL OF CALIFORNIA

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www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

W18-03

Title	Action Requested
Civil Forms: Name Change and Gender Change Forms	Review and submit comments by February 12, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms NC-100, NC-110, NC-130, NC-130G, NC-200, NC-230, NC-300, and NC-330; adopt forms NC-125/NC-225, NC-350, and NC-360; approve forms NC-100-INFO, NC-150, and NC-350-INFO; and revoke forms NC-210/NC-310, NC-220, and NC-320	September 1, 2018
	Contact
	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov
Proposed by	
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	

Executive Summary and Origin

Senate Bill 179, recently signed into law by Governor Brown, includes several new and amended provisions that require revisions to the Judicial Council’s Name Change form series. The new law changes the process for seeking name changes to conform to gender (new Code Civ. Proc., § 1277.5); changes the process for adults seeking recognition of a gender change, including by adding “nonbinary” as one of the genders that can be recognized (amended Health & Saf. Code, §§ 103425 and 103430(a)–(b)); and adds a new process for minors seeking recognition of gender changes (new Health & Saf. Code, § 103430(e)). In addition, Senate Bill 310 eliminates the prohibition on name changes for persons under the jurisdiction of the Department of Corrections and Rehabilitation (those in state prison or on parole) and those in county jail, while at the same time adding a service requirement for such petitions. The relevant portions of both new laws will go into effect September 1, 2018. This proposal is to amend, revise, or revoke various Judicial Council forms effective that same date to reflect the statutory changes.

Background

The new legislation changes current name change and gender change statutes in several ways. The primary changes that affect Judicial Council forms are described below. The legislation:

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

1. Alters the process for changing names to conform to gender so that it no longer parallels the process for other name changes. See new Code of Civil Procedure section 1277.5. The petitions for name changes to conform to gender are not to be set automatically for a hearing, but instead set only if objections are filed showing good cause to oppose the name change, within six weeks of issuance of an order to show cause (OSC). Therefore, a new OSC form and new instructions about it are needed to be used for these name change petitions, and for name change petitions combined with petitions for recognition of gender change. As is currently the law, there is no requirement to publish this OSC or to serve it on anyone.
2. Allows name change petitions by prisoners in county jail or state prison as well as those on parole (i.e., those under jurisdiction of the California Department of Corrections and Rehabilitation (CDCR); see new Code Civ. Proc., § 1279.5). The statute also adds service requirements for those petitions. This amendment requires changes to the final name change orders—which no longer require finding that a petitioner is not under CDCR jurisdiction—and to the instructions for name change forms.
3. Adds a third gender, nonbinary, to the genders to which a court may issue an order recognizing a change of gender. See new Health and Safety Code sections 103425 and 103430(a). This amendment requires revisions to the petitions and orders that address court recognition of gender change, to add this third gender.
4. Changes the process for obtaining an order recognizing a change of gender and for issuance of new birth certificate. There is no longer a requirement for a declaration from a doctor stating that a party has undergone clinically appropriate treatment for a gender transition; instead, all that is required is an affidavit from the petitioner seeking the order stating that the change is not for fraudulent reasons. In addition, the court is no longer to set a hearing on all such petitions; instead, a hearing is to be set only if timely objections are filed, within 28 days of the filing of the petition. See new Health and Safety Code section 103430(b). These changes require revisions to the gender change recognition petitions and orders (to add the third gender), and revocation of the forms for the doctor's declaration. In addition, the notice of hearing is revised so that it may be issued by the court after timely objections have been filed, should the court choose to use the form.
5. Adds a process for a minor requesting an order recognizing a change of gender and for issuance of a new birth certificate. The text of the statute assumes that a minor can bring the petition,¹ but also requires it be signed either by one or both parents or the minor's guardian, or, if there is no living parent and no guardian, then by a near

¹ Minors generally cannot file an action on their own in civil proceedings. See Code Civ. Proc., § 372(a), requiring guardian ad litem, and (b) providing for certain exceptions.

relative or friend. If not signed by all living parents, the petition must be served on any living parent who did not sign it. The OSC on these petitions is to set a hearing date.

The Proposal

In order to implement the statutory changes, the Civil and Small Claims Advisory Committee proposes that the forms listed below go into effect September 1, 2018.

The advisory committee proposes that the following existing forms be revised:

- *Petition for Change of Name* (form NC-100)
- *Attachment to Petition for Change of Name* (form NC-110)
- *Decree Changing Name* (form NC-130)
- *Decree Changing Name (Change of Name of Minor by Guardian)* (form NC-130G)
- *Petition for Change of Name and Gender* (form NC-200)
- *Decree Changing Name and Gender* (form NC-230)
- *Petition for Change of Gender and Issuance of New Birth Certificate* (NC-300)
- *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330)

The advisory committee proposes that the following new forms be adopted:

- *Order to Show Cause for Change of Name to Conform to Gender* (form NC-125/NC-225)
- *Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate (Name Change)* (form NC-350)
- *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate (and Change of Name)* (form NC-360)

The advisory committee proposes that the following new forms be approved:

- *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO)
- *Notice of Setting of Hearing on Petition* (form NC-150)
- *Instructions for Filing Petition for Minor's Change of Gender and Issuance of New Birth Certificate (and Change of Name)* (form NC-350-INFO)

The advisory committee proposes that the following forms be revoked:

- *Declaration of Physician—Attachment to Petition* (form NC-210/NC-310)
- *Order to Show Cause for Change of Name* (form NC-220)
- *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320)

The proposed revisions are highlighted on the forms attached here, and are described generally below.

Forms for Name Changes Only

Petition for Change of Name (form NC-100)

This form is used to request a name change. The proposed revisions include:

- Revising the wording of the request for an OSC to include OSCs on petitions to change names to conform to gender, which do not include an order to appear at a hearing, but only to file objections by a certain deadline. **Item 3.**
- Changing the wording of “mother only” or “father only” to a single item “one parent only,” to eliminate confusion for families in which there are two mothers or two fathers. **Item 5.**
- Adding space for the name of a minor or ward who is seeking the name change to conform the name to the person’s gender identity (when the petition is brought by a parent or guardian). **Item 6.** Also revising the wording of that item to be inclusive of nonbinary-gendered individuals.

Instructions for Filing a Petition for Change of Name (form NC-100 INFO)

The Instructions for Filing currently on the back of form NC-100 are being moved into a separate information sheet, as they have become too extensive to fit on the back of this form. Revisions² to the instructions include:

- Adding references to and instructions for filing the new OSC form to be used for name changes to conform to gender. (See items 4c, 6, and 10.)
- Adding a note in item 8 that the service provisions for minors do not apply to petitions to conform name to gender. (The new law, Code of Civil Procedure, section 1277.5, does not require any service of these petitions, even for minors.)
- Adding new instructions for individuals who are within the jurisdiction of the Department of Corrections and Rehabilitation (CDCR) or are in county jail, who may now file petitions for name change. The instructions include the requirement that the petitioner must serve the petition on the CDCR or the county sheriff.³

Attachment to Petition for Change of Name (form NC-110)

This form is attached to all name change petitions, with information about the petitioner and about any minors or others whose names are to be changed. Only minor changes have been made, including changing “Father” and “Mother” to “Parent” in item 7e.

² Note that only the new material is highlighted on the proposed form attached here. The non-highlighted text is all currently contained on the second page of form NC-100.

³ The advisory committee is trying to learn if CDCR is developing statewide rules on this and, if so, will add or reference those here.

The Declaration set out in its own box regarding petitioners being under the jurisdiction of CDCR has been revised to add “or in county jail.” Although this information is no longer needed for court *findings* on a name change decree, because the general prohibition against name changes for these individuals without a showing of good cause has been eliminated, it is needed for the court to determine whether the additional service requirement placed on such individuals has been complied with. Note that, because the whole form is signed under penalty of perjury, leaving this item in the Declaration box does not accord the answer any additional weight.

Order to Show Cause for Change of Name to Conform to Gender (form NC-125/NC-225)

A new OSC form has been developed for proceedings for a name change that the petitioner states is for the purpose of conforming the name to the petitioner’s gender. It is similar to the *Order to Show Cause for Change of Name* (form NC-120) but without any notice of hearing. It orders that any objections be filed within a certain time frame and, as required by statute, it warns that if no timely objections showing good cause are filed, no hearing may be held. It also includes the statement from the statute that objections based on concern over gender identity do not constitute good cause.

Decree Changing Name (form NC-130) and Decree Changing Name of Minor (By Guardian) (form NC-130G)

These forms have only a minor revision, removing the finding currently in item 2b that each person whose name is being changed is not within the jurisdiction of the CDCR. That finding is no longer required, because even those under that department’s jurisdiction may now change their names. The finding in item 2a, that all notices required by law have been given, will cover the requirement that such persons served the petition on the sheriff or CDCR, just as it currently covers service of the OSC on parents/grandparents and publication.

The advisory committee concluded that there was no need to develop a separate decree form for name changes to conform to gender, as there are no additional findings required on such petitions.

Notice of Setting of Hearing on Petition (form NC-150)

This is a new form that courts may use for providing notice of a hearing to petitioners and objectors, should one be set following the receipt of timely objections. It may also be used for setting hearings on petitions seeking recognition of gender change and issuance of new birth certificates, for which, like petitions for change of name to conform to gender, no hearing date is to be set at the time the petition is filed.

Forms for Recognition of Gender Change

Health and Safety Code section 103430 et seq. provide a process for seeking court recognition of a change of gender and an order to amend the birth certificate to reflect that change (referred to hereafter as “gender change recognition”). In addition, Health and Safety Code section 103435 mandates that gender change recognition requests may be made jointly with a name change

request, with a single petition for both requests. Therefore, there are currently two sets of forms for those seeking gender change recognition: one set for that alone (the forms in the NC-300 series), and another set for those seeking a name change along with the gender change recognition (the NC-200 series).

Both sets of forms are being revised to reflect the new non-binary gender option and the new procedures in the amended laws. In addition to revising those forms, a parallel set of forms has been developed for minors seeking recognition of a change of gender, because the new provisions for petitions by minors (1) provide for different procedures; i.e., mandating that the court issue an OSC setting a hearing date if there are nonconsenting parents, and (2) present an issue of how the minor should appear in the pleadings.⁴

Forms for Gender Change Recognition Petitions by Adults

The NC-200 form series, for individuals seeking both name change and gender change recognition at the same time (combined petition) is revised as follows:

- *Petition for Change of Name, Recognition of Change of Gender, and Issuance of New Birth Certificate* (form NC-200). The title has been revised to more correctly reflect the purpose of the petition as stated in the statute (currently called “Petition for Change of Name and Gender”). Item 1 has been revised to include a statement that the petitioner is an adult, and instructions on the back of the form have been revised to add a note that minors must use a different form. Item 3 has been revised to add nonbinary as an option for changed gender, and to eliminate the assumption of only two genders.⁵ The item in the current form regarding an attached doctor’s declaration has been removed and instead there is now an affidavit by the petitioner affirming the change in gender—and that it is not for fraudulent purposes—using the text from Health and Safety Code section 103430(a).

There is also a minor revision to item 2, to clarify that a request for a name change made as part of this petition is for the purpose of changing one’s name to conform to one’s gender identity. The instructions on these forms have always been based on this interpretation of the statute, i.e., that any name change request brought combined with a petition for gender change recognition is for the purpose of conforming the name to gender identity, but a statement to that effect has now been expressly included as part of the petition.

- *Declaration of Physician—Attachment to Petition* (form NC-210/NC-310) will be revoked, as it is no longer necessary.

⁴ The new law assumes that the minor will be the person bringing the petition.

⁵ Currently this item provides choices of changing from “from male to female” or “from female to male”; the proposed form simply indicates a change “to female,” “to male,” or “to nonbinary.”

- *Order to Show Cause for Change of Name* (form NC-220), which set a hearing date, will also be revoked, to be replaced with a new *Order to Show Cause for Change of Name to Conform to Gender* (form NC-125/NC-225) which does not set a hearing date; just a deadline for objections will be used in its place. This form is identical to form NC-125, the OSC form to be used on a petition for name change to conform to gender identity. Health and Safety Code section 103435 provides that the procedures for the name change request on the combined petition should be the same as for other name change petitions, as set out in the Code of Civil Procedure. Since the Code of Civil Procedure provisions now provide for an OSC to be issued on petitions for name changes to conform to gender with only a deadline for objections (Code Civ. Proc., § 1277.5), that same OSC with just a deadline for objections is being used for these joint petitions.⁶
- *Decree Changing Name and Order Recognizing Change of Gender and for Issuance of New Birth Certificate* (form NC-230). The title of the form has been revised to match the revised title of the petition. The finding currently in item 2b that a party is or is not under the jurisdiction of the Department of Corrections has been removed, and nonbinary has been added to the list of genders in item 4.

The NC-300 form series, for individuals seeking only gender change recognition (with no name change order requested) is revised as follows:

- *Petition for Recognition of Change of Gender and for Issuance of New Birth Certificate* (form NC-300) has been revised parallel to the revisions to form NC-200: a minor change in title, addition of a statement that the petitioner is 18 years or older, addition of nonbinary to the list of genders, deletion of a reference to a doctor's declaration, and addition of the affidavit language for the petitioner to affirm changed gender under penalty of perjury.
- *Declaration of Physician—Attachment to Petition* (form NC-210/NC-310) will be revoked, as it is no longer necessary.
- *Setting of Hearing on Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-320) will be revoked because no hearing is to be set at the time of filing the petition. Courts may use the new *Notice of Setting of Hearing on Petition* (form NC-150) should they want to use a form for setting a hearing after objections have been filed.

⁶ Two numbers are assigned to the form, NC-125 and NC-225, to make it easier for clerks and parties to know it can be issued on both types of petitions, a form NC-100 petition, or a form NC-200 petition. Note that for combined petitions, there has only ever been an OSC issued regarding the name change part of the petition, and not for the gender change portion, because the law expressly states that the OSC for the combined petitions shall not include the petition for change of gender. Health & Saf. Code, § 103435.

Petition for Recognition of Change of Gender and for Issuance of New Birth Certificate (form NC-300) has been revised to allow for the situation of no hearing prior to issuance (previously, a hearing was required) and to add the nonbinary gender to the list in item 3. There is also a minor change to the title of the form.

Forms for Gender Change Recognition Petitions by Minors

The advisory committee has developed a single set of forms for minors seeking gender change recognition: a new petition, OSC, and information sheet. The orders to be issued would be the same as those issued for adults, so no new forms are required.

Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate (Name Change) (form NC-350)

This form will be used by a minor seeking a gender change recognition order, either by itself or with an accompanying name change decree. The form starts with a box containing a warning that it is for petitions for minors only, and instructions regarding which items on the form must be completed by everyone, and which additional items are to be completed (including an additional form) if a name change is sought at the same time as the gender change recognition.

Because the amended statute assumes that minors themselves may bring petitions seeking recognition of change of gender and issuance of birth certificates (see Health & Saf. Code, § 103430(e)),⁷ the proposed item 1 calls for two (or more) individuals to be named as petitioners: the minor and one or more adults. The list of potential adults comes from the statute, but is also based on the list on the current name change petition.

Items 2 through 5 are applicable to all petitioners, as the items address the gender change recognition order. Item 5 requires either identifying all living parents who did not sign, or indicating that the minor has no living parents, or that the only living parent or parents signed the petition. This information will be needed by the court to determine whether an OSC should issue on the petition for gender change recognition and a hearing date set. The OSC is directed only to living parents who did not sign the petition, if any. If there are no living parents other than those who signed the petition, there is no hearing and the court is to grant the petition. (Health & Saf. Code, § 103430(e)(2).)

As noted in the box at the top of the form, and in the new Information Sheet, items 6 through 8 are applicable only if a name change is sought along with the gender change recognition. These are the same items that would be required for a standalone name change petition, along with the

⁷ Minors generally cannot file an action on their own in civil proceedings. See Code Civ. Proc., § 372(a), requiring filing be by a guardian ad litem, and (b), providing for certain exceptions, none of which covers these petitions. It is unclear whether the new Health & Saf. Code provision will be amended, either to provide a further exception to the general rule and allow minors to file these petitions on their own or to amend this new provision to state that it is directed to petitions brought on behalf of, rather than by, minors. Because the new provision does require an adult signature, the committee believes the proposed form, which requires that an adult be named as the petitioner along with the minor, will meet the legal requirements.

supplemental form that must be attached to each name change petition, *Name and Information About the Person Whose Name is to Be Changed* (form NC-110); and, if a guardian is a petitioner, *Supplemental Attachment to Petition for Change of Name (Declaration of Guardian)* (form NC-110G). The instruction box at the top of the form, item 7, and the new information sheet all note that the NC-110 form and possibly the NC-110G form must be completed and attached.

At the end of the form is the affidavit regarding gender change required by statute, to be signed by the minor, and signature lines for the adult or adults joining in the petition.

Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate and Change of Name (form NC-360)

While the combined petition allowing the option of a name change request at the same time as a gender change request is fairly straightforward, the order to show cause for a combined petition is a bit more complex.

The statute regarding the OSC for the petition for gender change recognition requires that, if the minor has a living parent who did not sign the petition, the nonsigning parent must be served with an OSC with a hearing date, served in a manner set out by statute. (See Health & Saf. Code, § 103430(e)(1)(A); the instructions for service are included in form NC-350-INFO.) The OSC is to be set from 6 to 12 weeks in the future and any objections must be made at least 2 days before the hearing date. The OSC is to warn the parent that if objections are not timely filed or if the objecting parent does not appear, the court may grant the petition without further hearing. (See Health & Saf. Code, § 103430(e)(1)(B) and (2).)

First, an issue arises in that the statute actually states that service shall be “no less than 30 days after the petition was filed.” That provision does not actually make sense, because it could result in no meaningful notice whatsoever. If the petition is served 90 days after the petition is filed (which is “no less than 30 days after the petition was filed”), it may well be served *after* the date of the OSC hearing. Because this appears to be a drafting error, this point will be included in the suggestions for clean-up legislation. The forms as proposed assume that it will be corrected and instruct the parties to serve the OSC, if it is needed, within 30 days of the filing of the petition.

Second, the statute provides that a party may bring a single petition for both name change and gender change recognition (Health & Saf. Code, § 103435). It expressly states that the OSC issued in such a joint proceeding “shall not include the petition for change of gender.” This statute was originally enacted when no OSC would issue on the change of gender petition, and when the OSC on the name change petition would be published. It was not amended as part of the recent amendments, even though the new law expressly calls for issuance of an OSC on certain petitions for gender change. The advisory committee has construed the new amendment as controlling on petitions for gender change by minors, as the law is newer and more specific, and expressly calls for OSCs to issue on certain petitions for gender change by minors. If the older statute should prevail—mandating no gender change OSCs on combined petitions—the

newer one mandating OSCs on certain gender change petitions would be impossible to implement.

Finally, the time period for objections is different for gender change recognition petitions by minors—up to 2 days before the hearing, which is to be set 6 to 12 weeks from the date of the OSC—and for petitions by minors, or anyone, for a name change to conform to gender identity (within 6 weeks from the date of the OSC; see Code Civ. Proc., § 1277.5).⁸ If the hearing on the gender change petition is set out farther than 6 weeks after the filing, as permitted by statute, the time for objections on the name change will have run before the time for objections on the gender change is up. Therefore the proposed OSC to be issued on the minor’s petition has two separate orders in it: one directed to nonconsenting parents in regard to the gender change petitions (with a hearing date set), and one—with an optional checkbox in front of it, to be issued only if a name change has been requested—directed to all interested persons in regard to the name change petition (with a deadline for filing objections, but no hearing date set). The different time frames for objecting are highlighted in bold in both orders.

If no OSC is required on the minor’s gender change petition because there is no nonconsenting parent living and a name change is requested, a different OSC is to be used (form NC-125/NC-225, the OSC for a name change to conform to gender), which does not mention gender change and so would be in compliance section 103435.

Instructions for Filing Petition for Minor’s Change of Gender and Issuance of New Birth Certificate (and Change of Name) (form NC-350-INFO)

A new information sheet has been developed to assist parties in completing the petition for minors and, if necessary, having an OSC issued and served. It is directed to the minor, and sets out where the petition may be filed, who should complete or sign it, and how to complete it. The instructions tell petitioners not seeking a name change that they should skip items 6, 7, and 8, and tell those who do want a name change to complete those items as well as the additional form or forms with information about the person whose name is to be changed. As noted above, it also has instructions about the OSCs, when needed, and how to serve.

Alternatives Considered

The advisory committee did not consider the alternative of not revising the forms, because the current forms are not consistent with the new legislation.

The committee did consider, but reject, one additional change: to eliminate the date of birth item from the *Attachment to Petition for Change of Name* (form NC-110), the form attached to all name change petitions, with information about the petitioner or any minors or others whose

⁸ This time frame for the name change portion of the petition is based on the interpretation that a name change being sought as part of a petition for gender change recognition is a name change to conform to gender identity, and so falls within section 1277.5. As noted earlier, there are no separate provisions regarding minors on such petitions—no different OSC or service requirements than those for adults.

name is to be changed. (Item 7(b)3.) A member of the public had recently requested that the date of birth item be eliminated for privacy reasons. The advisory committee considered the request, but concluded that the date of birth is needed, along with the place of birth, as an identifier for the specific individual whose name is being changed. The committee believes that removing the date of birth could lead to confusion.

Implementation Requirements, Costs, and Operational Impacts

The new statutes will require additional training of court clerks and judicial officers on the amended requirements relating to OSCs, hearings on objections, and findings required. Training on the new forms can be incorporated into that training. Any electronic case management system incorporating the forms will need to be revised to reflect the revised OSCs and orders.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. NC-100, NC-100 INFO, NC-110, NC-125/NC-225, NC-130, NC-130G, NC-150, NC-200, NC-210/NC-310, NC-220, NC-230, NC-300, NC-320, NC-330, NC-350, NC-350-INFO, and NC-360, at pages 12–33.
2. Link A: Senate Bill 179 at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB179
3. Link B: Senate Bill 310 at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB310

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (Name):	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 20px 0 0 0;">11/07/17</h2> <p style="margin: 0;">Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (Name of each petitioner):	
PETITION FOR CHANGE OF NAME	CASE NUMBER:

Before you complete this petition, you should read the *Instructions for Filing a Petition for Change of Name* (form NC-100-INFO). You must answer all questions and check all boxes that apply to you on this petition. You must file this petition in the superior court of the county where the person whose name is to be changed resides.

1. Petitioner (name): _____ resides in this county.

2. Petitioner requests that the court decree the following name changes (list every name that you are seeking to change):

<u>Present name</u>		<u>Proposed name</u>
a. _____	changed to	_____
b. _____	changed to	_____
c. _____	changed to	_____
d. _____	changed to	_____

Continued (if you are seeking to change additional names, you must prepare a list and attach it to this petition as Attachment 2.)

3. Petitioner requests that the court issue an order directing all interested persons to appear or file objections to show cause why this petition for change of name of the persons identified in item 2 should not be granted.

4. The number of persons under 18 years of age whose names are to be changed is (specify):

5. If this petition requests the change of name of any person or persons under 18 years, this request is being made by

- a. both parents.
- b. one parent.
- c. near relative (name and relationship):
- d. guardian (name):
- e. other (specify):

6. This petition seeks to conform name of (check one) petitioner (name):
to that person's gender identity.

7. For each person whose name is to be changed, petitioner provides the following information (you must attach a completed copy of the attachment Name and Information About the Person Whose Name Is to Be Changed (form NC-110) for each person identified in item 2):

- a. The number of attachments included in this petition is (specify number):
- b-f. (Attachment page or pages)

INSTRUCTIONS FOR FILING A PETITION
FOR CHANGE OF NAME

NC-100-INFO

1. **Where to File**

The petition for change of name must be filed in the superior court of the county where the person whose name is to be changed presently lives.

2. **Whose Name May Be Changed**

The petition may be used to change one's own name and, under certain circumstances, the names of others (e.g., children under 18 years of age).

3. **Confidentiality of Certain Names**

In cases in which the petitioner is a participant in the Secretary of State's address confidentiality program (Safe at Home), petitioner's current and proposed names may be kept confidential. (Code Civ. Proc., § 1277(b).) See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO) for additional instructions.

4. **What Forms Are Required**

Prepare an original and two copies of each of the following documents:

- a. *Petition for Change of Name* (form NC-100)
- b. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition)* (form NC-110) (attach as many copies as necessary)
- c. *Order to Show Cause for Change of Name* (form NC-120) or, if applicable, *Order to Show Cause for Change of Name to Conform to Gender* (form NC-125)
- d. *Decree Changing Name* (form NC-130 or, for guardians, form NC-130G)

In addition, a guardian must prepare and attach a *Declaration of Guardian (Supplemental Attachment to Petition)* (form NC-110G) for each child whose name is to be changed.

5. **Filing and Filing Fee**

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Application for Waiver of Court Fees and Costs* (form FW-001); *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO); and *Order on Application for Waiver of Court Fees and Costs* (form FW-003).

6. **Requesting a Court Hearing Date and Obtaining the Order to Show Cause**

You should request a date for the hearing on the *Order to Show Cause* (form NC-120) at least six weeks in the future. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy.

If you are changing your name to conform to gender, you need not request a hearing date. Instead, complete the *Order to Show Cause for Change of Name to Conform to Gender* (form NC-125) and take to the clerk's office, obtain the judicial officer's signature, and file the original.

7. **Publishing the Order to Show Cause**

In most cases, a copy of the *Order to Show Cause* must be published in a local newspaper of general circulation once a week for **at least four consecutive weeks** before the date of the hearing. The petitioner selects the newspaper from among those newspapers legally qualified to publish orders and notices. The newspaper used must file a Proof of Publication with the superior court before the hearing. If no newspaper of general circulation is published in the county, the court may order the *Order to Show Cause* to be posted by the clerk. But petitioners **do not have to publish** the order if they are seeking to change a name to conform to a change of gender identity or are participants in (1) the State Witness Program or (2) the address confidentiality program and the petition alleges that they are (a) petitioning to avoid domestic violence, or (b) petitioning to avoid stalking, or (c) a victim of sexual assault or petitioning on behalf of one.

8. Name Change for Children

- a. If a petitioning parent is requesting the name change for a child under 18 years of age, and one of the parents, if living, does not join in consenting to the name change, the petitioning parent must have a copy of the *Order to Show Cause* or notice of the time and place of the hearing served on the nonconsenting parent. Service must be made **at least 30 days prior to the hearing** under Code of Civil Procedure sections 413.10, 414.10, 415.10, or 415.40.
- b. If the nonconsenting parent resides in California, the order or notice must be personally served on the nonconsenting parent. The petitioning parent cannot personally serve this document.
- c. If the nonconsenting parent resides outside California, he or she may be served by sending a copy of the order or notice by first-class mail, postage prepaid, return receipt requested.
- d. If a petition to change the name of a child has been filed by a guardian, the guardian must (1) provide notice of the hearing to any living parent of the child by personal service at least 30 days before the hearing, or (2) if either or both parents are deceased or cannot be located, serve notice of the hearing on the child's grandparents, if living, not less than 30 days before the hearing under Code of Civil Procedure sections 413.10, 414.10, 415.10, or 415.40.

If you have served a parent or grandparents, file a copy of the completed *Proof of Service of Order to Show Cause* (form NC-121) with the court before the hearing.

These notices are not required if the minor's name is being changed to conform to gender.

9. Name Change for Person in Prison or on Parole

A person in county jail, or on parole under the jurisdiction of the Department of Corrections and Rehabilitation (in state prison, or on parole) may change their name, but must serve the petition on a government agency. If in county jail, the petitioner must provide a copy of the petition to the county sheriff's department. If in state prison or on parole, the petitioner must provide a copy of the petition to the Department of Corrections and Rehabilitation.

After you have provided a copy to the sheriff or DCR, file a copy of the completed *Proof of Service By Mail* (form POS-030) with the court.

10. Court Hearing

If no written objection is filed at least two court days before the hearing, the court may grant the petition without a hearing. Check with the court to find out if a hearing will be held. If there is a hearing, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original decree.

If you filed a petition for name change to conform to gender, and timely objections were filed, the court may set a hearing date after receiving the objections. If it does, you will be sent a notice of the hearing date. Check with the court after the deadline for filing objections to see if a hearing date has been set.

11. If you want to amend a birth certificate to show the name change, you should contact the following office:

California Department of Public Health, Vital Records- MS 5103, P.O. Box 997410, Sacramento, CA 95899-7410
Phone: 916-445-2684; Website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name change petitions, the times when petitions are heard, and the newspapers that may be used to publish the *Order to Show Cause*.

PETITION OF <i>(Name of petitioner or petitioners):</i>	CASE NUMBER:
FOR CHANGE OF NAME	

**NAME AND INFORMATION ABOUT THE PERSON
WHOSE NAME IS TO BE CHANGED** Attachment of
Attachment to Petition (form NC-100, form NC-200 or form NC-350)

(You must use a separate attachment for each person whose name is to be changed. If petitioner is a guardian of a minor, a supplemental attachment, Declaration of Guardian (form NC-110G), must also be completed and attached for each minor whose name is to be changed.)

7. (Continued) Petitioner applies for a decree to change the name of the following person:

- b. Self Other
- (1) Present name *(specify):*
 - (2) Proposed name *(specify):*
 - (3) Born on *(date of birth):*
and presently under 18 years of age over 18 years of age
 - (4) Born at *(place of birth):*
 - (5) Sex *(as stated on original birth certificate):* Male Female
 - (6) Current residence address *(street, city, county, and zip code):*

c. Reason for name change *(explain):*

- d. Relationship of the petitioner to the person whose name will be changed:
- (1) self
 - (2) parent
 - (3) guardian
 - (4) near relative *(indicate relationship):*
 - (5) Other *(specify):*

e. If the person whose name will be changed is under 18 years of age, provide the names and addresses, if known, of the following persons:

- (1) Parent *(name):* _____ *(address):* _____
- (2) Parent *(name):* _____ *(address):* _____
- (3) *(Only if neither parent is living)* Near relatives *(names, relationships, and addresses):*

f. If the person whose name will be changed is 18 years of age or older, that person must sign the following declaration:

DECLARATION	
<p>I declare under penalty of perjury under the laws of the State of California that <i>(check one)</i> <input type="checkbox"/> I am not <input type="checkbox"/> I am under the jurisdiction of the California Department of Corrections and Rehabilitation (in state prison or on parole) or in county jail and <i>(check one)</i> <input type="checkbox"/> I am not <input type="checkbox"/> I am required to register as a sex offender under Penal Code section 290.</p>	
Date:	
_____	_____
(TYPE OR PRINT NAME OF PERSON WHOSE NAME IS TO BE CHANGED)	(SIGNATURE OF PERSON WHOSE NAME IS TO BE CHANGED)

(If petitioner is represented by an attorney, the attorney's signature follows):

Date:	
_____	_____
(TYPE OR PRINT NAME)	(SIGNATURE OF ATTORNEY)

(Each petitioner must sign this petition in the space provided below or, if additional pages are attached, at the end of the last attachment.) I declare under penalty of perjury under the laws of the State of California that the information in the foregoing petition is true and correct.

Date:	
_____	_____
(TYPE OR PRINT NAME)	(SIGNATURE OF PETITIONER)
Date:	
_____	_____
(TYPE OR PRINT NAME)	(SIGNATURE OF PETITIONER)

<input type="checkbox"/> ADD ADDITIONAL SIGNATURE LINES FOR ADDITIONAL PETITIONERS	<input type="checkbox"/> SIGNATURE OF PETITIONERS FOLLOWS LAST ATTACHMENT
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ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (<i>Name</i>):	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 0 0;">11-07-17</h2> <h3 style="margin: 10px 0 0 0;">Not approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name of each petitioner</i>): <div style="text-align: right;">FOR CHANGE OF NAME</div>	
DECREE CHANGING NAME	CASE NUMBER:

1. The petition was duly considered:
- a. at the hearing on (*date*): _____ in Courtroom: _____ of the above-entitled court.
 - b. without hearing.

THE COURT FINDS

2. a. All notices required by law have been given.
- b. Each person whose name is to be changed identified in item 3 below
 is not is required to register as a sex offender under section 290 of the Penal Code.
 This determination was made (*check one*) by using CLETS/CJIS based on information provided to the clerk of the court by a local law enforcement agency.
- c. No objections to the proposed change of name were made.
 - d. Objections to the proposed change of name were made by (*name*): _____
 - e. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
 - f. Other findings (*if any*): _____

THE COURT ORDERS

3. The name of
- | | <u>Present name</u> | <u>New name</u> |
|----|---------------------|-----------------|
| a. | | is changed to |
| b. | | is changed to |
| c. | | is changed to |
| d. | | is changed to |
| e. | | is changed to |
- Additional name changes are listed on Attachment 3.

Date: _____

 JUDGE OF THE SUPERIOR COURT
 SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (<i>Name</i>):	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 0 0;">11-07-17</h2> <h1 style="margin: 10px 0 0 0;">Not approved by the Judicial Council</h1>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name of each petitioner</i>): <p style="text-align: right;">FOR CHANGE OF NAME</p>	
DECREE CHANGING NAME OF MINOR (BY GUARDIAN)	CASE NUMBER:

1. The petition was duly considered:
- a. at the hearing on (*date*): _____ in Courtroom: _____ of the above-entitled court.
 - b. without hearing.

THE COURT FINDS

2. a. All notices required by law have been given.
- b. The person whose name is to be changed (*specify present name*): _____ is a minor.
- c. The petition for change of name was filed on behalf of the minor by the minor's guardian (*name*): _____
- d. The minor whose name is to be changed is likely to remain in the guardian's care until the age of majority.
- e. The minor whose name is to be changed is not likely to be returned to the custody of his or her parents.
- f. The minor whose name is to be changed _____ is not is required to register as a sex offender under section 290 of the Penal Code. This determination was made (*check one*) by using CLETS/CJIS based on information provided to the clerk of the court by a local law enforcement agency.
- g. No objections to the proposed change of name were made.
- h. Objections to the proposed change of name were made by (*name*): _____
- i. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient, that the proposed name change is in the best interest of the minor, and that the petition should be granted.
- j. Other findings (if any): _____

THE COURT ORDERS

3. The name of (*present name*): _____ is changed to (*new name*): _____

Date: _____

 JUDGE OF THE SUPERIOR COURT
 SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 0;">11/13/17</h2> <p style="margin: 0;">Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
NOTICE OF SETTING OF HEARING ON PETITION	CASE NUMBER:

Objections having been filed to petitioner's request for:

- a decree changing name to conform to gender
- an order for the issuance of a new birth certificate reflecting the change of petitioner's gender
- both of the above

a hearing will take place at the time and place below, at which time the court may consider the objections that have been filed.

NOTICE OF HEARING

(To be completed by clerk.)

a.	Date:	Time:	Dept.:	Room:
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b. The address of the court is

- same as noted above
- other

(specify):

Date: _____ Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STATE BAR NO:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO. :
E-MAIL ADDRESS:
ATTORNEY FOR (Name):

DRAFT

11-17-17

**Not approved by
the Judicial Council**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

PETITION OF (Name):

PETITION FOR CHANGE OF NAME, RECOGNITION OF CHANGE OF GENDER, AND ISSUANCE OF NEW BIRTH CERTIFICATE

CASE NUMBER:

Before you complete this petition, you should read the *Instructions for Filing* on the next page. You must answer all questions and check all boxes that apply to you on this petition. You must file this petition in the superior court of the county where the person whose name is to be changed resides.

- Petitioner (present name): _____ is 18 years old or older and a resident of this county.
- Petitioner requests that the court decree that petitioner's name is changed to conform to petitioner's gender identity to (proposed name): _____
- Petitioner requests a decree that the petitioner's gender is changed:
 - to female.
 - to male.
 - to nonbinary.
- Petitioner requests that the court order that a new birth certificate be issued reflecting the gender and name changes sought by this petition.
- Petitioner requests that the court issue an order directing any interested persons to file written objections to show cause why the petition for change of name should not be granted.
- Petitioner provides the following information in support of this petition:
 - The declaration below.
 - The information contained in the attachment (attach a completed copy of the attachment Name and Information About the Person Whose Name Is to Be Changed (form NC-110)).

AFFIDAVIT

I (name): _____ attest under penalty of perjury under the laws of the state of California that the request for a change in gender to (check one) female male nonbinary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Date: _____

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

(Instructions on next page)

INSTRUCTIONS FOR FILING A PETITION FOR CHANGE OF NAME AND GENDER

1. Where to File

The petition for change of name and gender must be filed in the superior court in the county where the petitioner presently lives.

2. Whose Name May Be Changed

The petition may be used to change your name and to obtain a court order recognizing a change of gender and for issuance of a new birth certificate, if you are 18 or older. (Minors must use form NC-350.)

3. What Forms Are Required

You need an original and two copies of each of the following documents:

- a. *Petition for Change of Name, Recognition of Change of Gender, and Issuance of new Birth Certificate* (form NC-200)
- b. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition)* (form NC-110)
- c. *Order to Show Cause for Change of Name to Conform to Gender* (form NC-125)
- d. *Decree Changing Name and Order Recognizing Change of Gender and for Issuance of a New Birth Certificate* (form NC-230)
- e. *Civil Case Cover Sheet* (form MC-010)

4. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO).)

5. Filing the Order to Show Cause

Ask the court clerk to obtain a judge's signature on the *Order to Show Cause*, then file the original order in the clerk's office and obtain filed-endorsed copies of the order.

6. Domestic Violence Confidentiality Program

In cases where the petitioner is a participant in the state address confidentiality program (Safe at Home), the petition, the order to show cause, and the decree should, instead of giving the proposed name, indicate that the name is confidential and on file with the Secretary of State. See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program (Safe at Home)* (form NC-400-INFO).

7. Court Hearing

A hearing date will be set if timely objections have been filed. If there is a hearing, you will be sent a notice by the court. Bring copies of all documents to the hearing. If the judge grants the name and gender change petition, the judge will sign the original decree.

8. Birth Certificate

To obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

California Department of Public Health
Vital Records – MS 5103
P.O. Box 997410
Sacramento, CA 95899-7410
Phone: 916-445-2684
Website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name and gender change petitions, and the times when petitions are heard.

PETITION OF (Name):	CASE NUMBER:
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Page of

**DECLARATION OF PHYSICIAN DOCUMENTING CHANGE OF GENDER THROUGH
CLINICALLY APPROPRIATE TREATMENT UNDER HEALTH AND SAFETY CODE SECTIONS
103425 AND 103430**

Attachment to *Petition for Change of Name and Gender* (form NC-200) or *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300)

REVOKED

I declare under penalty of perjury under the laws of the State of California that the information in the foregoing declaration is true and correct.

Date: _____

(TYPE OR PRINT NAME OF PHYSICIAN)

 _____
(SIGNATURE OF PHYSICIAN)

PETITIONER OR ATTORNEY (<i>Name, State Bar number, and address</i>): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (<i>Name</i>):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name of petitioner</i>): <p style="text-align: center;">FOR CHANGE OF NAME AND GENDER</p>	
ORDER TO SHOW CAUSE FOR CHANGE OF NAME	CASE NUMBER:

TO ALL INTERESTED PERSONS:

1. Petitioner (*present name*): _____ has filed a petition with this court for a decree changing petitioner's name to (*proposed name*): _____
2. THE COURT ORDERS that all persons interested in this matter shall appear before this court at the hearing indicated below to show cause, if any, why the petition should not be granted.

NOTICE OF HEARING

a. Date:	Time:	<input type="checkbox"/>	Dept.:	<input type="checkbox"/>	Room:
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b. The address of the court is same as noted above other (*specify*):

3. Other (*specify*):

Date:

JUDGE OF THE SUPERIOR COURT

PETITIONER OR ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 11-07-17 Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
PETITION OF (Name of petitioner): <div style="text-align: right;">FOR CHANGE OF NAME AND GENDER</div>	
DECREE CHANGING NAME AND ORDER RECOGNIZING CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

1. The petition was duly considered:
- a. at the hearing on (date): _____ in Courtroom: _____ of the above-entitled court.
 - b. without hearing.

THE COURT FINDS

2. a. All notices required by law have been given.
- b. Each person whose name is to be changed identified in item 3 below
- is not is required to register as a sex offender under section 290 of the Penal Code.
- This determination was made by using CLETS/CJIS based on information provided to the clerk of the court by a local law enforcement agency.
- c. No objections to the proposed change of name were made.
 - d. Objections to the proposed change of name were made by (name): _____
 - e. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
 - f. Other findings (if any): _____

THE COURT ORDERS

3. The name of (present name): _____ is changed to (new name): _____

THE COURT FURTHER ORDERS

4. The gender of (new name): _____ is changed:
- a. to female.
 - b. to male.
 - c. to nonbinary.

THE COURT FURTHER ORDERS

5. A new birth certificate shall be issued reflecting the changes in name and gender.

Date: _____

 JUDGE OF THE SUPERIOR COURT
 SIGNATURE OF JUDGE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (Name):	<p style="text-align: center; font-size: 2em; font-weight: bold;">DRAFT</p> <p style="text-align: center; font-size: 3em; font-weight: bold;">11-17-2017</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (Name):	CASE NUMBER:
PETITION FOR RECOGNITION OF CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE	

Before you complete this petition, you should read the instructions on the next page. Note that you do not need to file this petition or obtain a court order in order for the State Registrar to issue a new birth certificate reflecting a change of gender. See Health and Safety Code section 103426.

1. Petitioner (name): _____ is 18 years old or older and requests an order for the issuance of a new birth certificate reflecting the change of petitioner's gender
 - a. to female.
 - b. to male.
 - c. to nonbinary.

2. Petitioner has has not already obtained a decree of change of name. (If petitioner has obtained a decree of change of name, attach a certified copy of the decree to this petition.)

3. I attest under penalty of perjury under the laws of the state of California that the request for a change in gender to (check one) female male nonbinary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Date: _____

(TYPE OR PRINT NAME OF PETITIONER) ▶ (SIGNATURE OF PETITIONER)

INSTRUCTIONS FOR FILING PETITION FOR RECOGNITION OF CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE

(This instruction page is for the information of petitioner seeking a court order. It is not part of the petition and does not need to be filed.)

1. Where to File

The petition for a court order for the issuance of a new birth certificate reflecting a change in gender may be filed in the superior court of any county in California. **Note that you do not need to file this petition or obtain a court order in order for the State Registrar to issue a new birth certificate reflecting a change of gender.** See Health and Safety Code section 103426. You may make the request directly to the State Registrar at the California Department of Public Health. (See contact information below.)

2. Who May File

This petition form may only be used by individuals 18 or older. Minors must use form NC-350.

3. What Forms Are Required

You will need an original and a copy of each of the following documents:

- a. *Petition for Change of Gender and Issuance of New Birth Certificate* (form NC-300)
- b. *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330)

In addition, if you have already obtained a decree of change of name, attach a certified copy of the decree to the petition.

4. Filing

Prepare an original *Civil Case Cover Sheet* (form CM-010). Complete the original petition and file that form and the *Civil Case Cover Sheet* with the clerk of the court and obtain a filed-endorsed copy of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001–INFO).)

5. Court Hearing

A hearing date will only be set if timely objections have been filed. If there is a hearing, you will be sent a notice by the court. Bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original order and decree. Bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the *Order for Change of Gender and Issuance of New Birth Certificate* (form NC-330).

6. New Birth Certificate

To obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

**California Department of Public Health
Vital Records – MS 5103
P.O. Box 997410
Sacramento, CA 95899-7410
Phone: 916-445-2684
Website: www.cdph.ca.gov**

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles these petitions and the times when petitions are heard.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (<i>Name</i>):	
SETTING OF HEARING ON PETITION FOR CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

Petitioner having filed a petition requesting an order for the issuance of a new birth certificate reflecting the change of petitioner's gender, a hearing will take place at the time and place below, at which time the court may examine the petitioner and any other person having knowledge of facts relevant to this petition.

(To be completed by clerk.)

a.	Date:	Time:	Dept.:	Room:
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b. The address of the court is

- same as noted above
 other

(specify):

REVOKED

Date: _____ Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 0;">11-07-2017</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (name):	
ORDER RECOGNIZING CHANGE OF GENDER AND FOR ISSUANCE OF NEW BIRTH CERTIFICATE	CASE NUMBER:

1. The petition was duly considered:
- a. at the hearing on (date): _____ in Courtroom: _____ of the above-entitled court.
 - b. without hearing.

THE COURT FINDS

2. a. It appears to the satisfaction of the court that all the allegations in the petition are true and sufficient and that the petition should be granted.
- b. Other findings (if any): _____

THE COURT ORDERS

3. The gender of the petitioner has been changed
- a. to female.
 - b. to male.
 - c. to nonbinary.

THE COURT FURTHER ORDERS

4. A new birth certificate reflecting the change of gender described in item 3 shall be issued.
5. A certified copy of this order shall be filed within 30 days with the State Registrar. When the State Registrar receives a certified copy of this order and payment of the applicable fees, the State Registrar shall establish for the petitioner a new birth certificate reflecting the gender of the petitioner as it has been altered.

Date: _____ _____ JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO. : E-MAIL ADDRESS: ATTORNEY FOR (Name):	<p style="font-size: 24px; font-weight: bold;">DRAFT</p> <p style="font-size: 24px; font-weight: bold;">11-17-17</p> <p style="font-size: 24px; font-weight: bold;">Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF (Name of each petitioner):	
<p style="text-align: center; font-weight: bold;">PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE</p> <input type="checkbox"/> and CHANGE OF NAME	CASE NUMBER:

Use this form only for a petition relating to a minor. (Petitioners 18 years or older must use form NC-200 or NC-300.) Before you complete this petition, read the *Instructions for Filing*, form NC-350-INFO. Everyone must complete items 1 through 5 and the affidavit on the back. If you are seeking a name change in addition to recognition of gender change, you must also complete items 6,7, and 8, and form NC-110 or NC-110G.

1. This request is being made by (*minor's present name*): _____ and (*check one of the following*)
 - a. both parents (*names*):
 - b. one parent (*name*):
 - c. near relative (*name and relationship*):
 - d. guardian (*name*):
 - e. other (*specify*):

2. Petitioning minor requests a decree that petitioning minor's gender is changed:
 - a. to female.
 - b. to male.
 - c. to nonbinary.

3. Petitioners request that the court order that a new birth certificate be issued reflecting the gender change sought by this petition.

4. Petitioners request that the court issue an order directing any living parent who did not sign this petition to file written objections and appear to show cause why the petition for change of name should not be granted.

5. Living parents of petitioning minor who did not sign this petition are (*specify names and addresses, or check a box below*):

Petitioner has no living parent. Petitioner has no living parent other than the parent or parents who signed this petition

- 6 Petitioners request that the court decree that the petitioning minor's name is changed to conform to gender identity to (*proposed name*): _____
 (*If petitioner has already obtained a decree of change of name, attach a certified copy of the decree to this petition. If no name change is requested, skip items 6, 7, and 8 and go to Affidavit.*)

7. Petitioners provide the following information in support of this petition:
 - a. The affidavit on page 2 of this form.
 - b-f. The information contained in the attachment (*if seeking a name change, you must attach a completed copy of the attachment Name and Information About the Person Whose Name Is to Be Changed (form NC-110). If adult petitioner is a guardian, also attach form NC-110G*).

**PETITION FOR RECOGNITION OF MINOR'S CHANGE OF
GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE
(Name Change)**

Petition of:	CASE NUMBER:
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8. Petitioning minor is a resident of this county. *(This must be checked if a name change is requested.)*

AFFIDAVIT

I (*minor's name*): _____ attest under penalty of perjury under the laws of the state of California that the request for a change in gender to (*check one*) female male nonbinary is to conform my legal gender to my gender identity and is not for any fraudulent purpose.

Date:

(TYPE OR PRINT NAME OF PETITIONING MINOR)



(SIGNATURE OF PETITIONING MINOR)

Date:

(TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)



(SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date:

(TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)



(SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date:

(TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)



(SIGNATURE OF PETITIONING PARENT/GUARDIAN)

Date:

(TYPE OR PRINT NAME OF PETITIONING PARENT/GUARDIAN)



(SIGNATURE OF PETITIONING PARENT/GUARDIAN)

PETITION FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE (Name Change)

**INSTRUCTIONS FOR FILING
PETITION FOR MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE**

1 Where to File

You may file a petition for a court order for recognition of a change of gender and issuance of a new birth certificate reflecting that change in the superior court of any county in California. If your petition **includes a request to change your name**, you must file in the superior court where you (the minor whose name it to be changed) presently live.

2 What Forms Are Required

You need an original and two copies of each of the following forms:

- a. *Petition for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-350)
 - b. *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-360)
 - c. *Order for Recognition of Change of Gender and Issuance of New Birth Certificate* (form NC-330)
 - d. *Civil Case Cover Sheet* (form CM-100)
- If you are also seeking a name change, you also need an original and two copies of the forms listed at e, f, and possibly g below.
- e. *Name and Information About the Person Whose Name Is to Be Changed (Attachment to Petition)* (form NC-110 and, if a guardian is signing the petition, form NC-110G).
 - f. *Decree Changing Name and Order for Recognition of Change of Gender and Issuance of New Birth Certificate* (form NC-230)
 - g. *Order to Show Cause for Change of Name to Conform to Gender* (form NC-225)

3 Completing the Petition

Use form NC-350 only if you are under 18. (Adults seeking an order recognizing change of gender must use form NC-200 or NC-300.)

- Fill out the top left side of the form with your name, address, phone, and e-mail address (or your attorney's, if you have one) and the name and address of the court in which you are filing the form.
- In item 1, put your name (the name of the minor asking for the court order) and the name and relationship of the adult who is also signing the petition. One or both of your parents or your guardian should sign. If neither parent is alive, and you do not have a guardian, a near relative or friend can sign. Check one of the boxes to show whether the person signing is parent, guardian, near relative, or other (and describe what the "other" relationship is).
- Item 2 asks the court for a decree reflecting your new gender. Check the box to indicate what gender you (the minor) have changed to.
- Items 3 asks the court for an order that a new birth certificate be issued to reflect your change of gender.
- Item 4 asks the court to issue an order that will give notice to any living parent who did not sign the petition that any objections must be filed with the court. (This order is required by Health & Safety Code section 103435(e).)
- In item 5, put the name and address of any living parent you (the minor) have who is not signing the petition. If you have no parents living, or none other than the person or persons signing the petition, check the appropriate box in item 5.
- If you are **not asking to change your name**, you can skip items 6, 7, and 8 on the form and go to the Affidavit and signatures required at the end of the form. (see Affidavit and Signatures instruction below.)
- If you are asking the court to **change your name** in this petition, you must complete the following items also:
 - You should check the box in the title of the form, in front of "and CHANGE OF NAME".
 - You must check item 6, and put your proposed new name in that item. (If you have already obtained a name change decree from a court that you want to have reflected in your new birth certificate, you do not need to get another decree or to check this box, but should attach a certified copy of that name change decree to this form.)
 - You must check the box in item 7 and you must also complete an additional form, *Name and Information About the Person Whose Name Is To Be Changed* (form NC-110; and if a guardian is the adult signing the petition, form NC-110G). That form must be signed by the same adult signing this petition.
 - You must check item 8, stating that you (the minor whose name is to be changed) are a resident of the county in which you are filing the petition.
- Affidavit and Signatures. You (the minor) must complete (check the box identifying your new gender) and sign the Affidavit on the second page of the petition. Be sure to read it carefully, because you are signing under penalty of perjury. The adult named in item 1 must also sign the form.

4. Filing and Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition (with attached form NC-110 or NC-110G if you are seeking a name change) and *Civil Case Cover Sheet* with the clerk of the court and obtain two filed-endorsed copies of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Request to Waive Court Fees* (form FW-001) and *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO).)

5. Requesting a Court Hearing Date and Serving the Order to Show Cause

A. Petition not signed by all living parents.

If any of your parents now living has not signed the petition, that parent has to be given notice and the right to object to the petition. You should request a date for a hearing on the *Order to Show Cause for Recognition of Minor's Change of Gender and Issuance of New Birth Certificate* (form NC-360) at least six weeks in the future. Take the completed form to the clerk's office. The clerk will provide the hearing date and location, obtain the judicial officer's signature, file the original, and give you a copy. You must have a copy of the completed *Order to Show Cause* showing the time and place of the hearing served on the non-signing parent within 30 days after you file the petition.

- If a non-signing parent lives in California, the form must be served on the parent in person.
- If a non-signing parent lives outside California, the form may be served either in person or by first-class mail requiring return receipt.
- If such service is not possible or if a non-signing parent lives outside the United States, then you may ask the court may order that service be done in another way.

B. Petition signed by all living parents, or none of your parents are living

If all your parents now living have signed the petition, or if neither of your parents is alive and another adult signed, then you need not request a hearing date and one of the following will apply:

If you are not requesting a name change, you need not do anything further unless the court asks you to. The court will make the decision based on the petition you filed.

If you are requesting a name change in this petition, you must complete a different form, *Order to Show Cause for Change of Name to Conform to Gender* (form NC-225), take it to the clerk's office to obtain the judicial officer's signature, and file the original. You do not need to serve this form on anyone. If objections are filed within six weeks of the issuance of that form, the court will set a hearing date and send you and the objectors notice of the date, time, and place. If no objections are filed, the court will make the decision based on the petition you filed.

6. Court Hearing

If a hearing date was set, but no written objection is filed at least two court days before the hearing, the court may grant the petition without a hearing. Check with the court to find out if a hearing will be held. If a hearing is held, bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the original order, form NC-230 if your petition included a request for a name change and form NC-330 if it did not ask for a name change.

7. Domestic Violence Confidentiality Program

In cases where the petitioner is a participant in the state address confidentiality program (Safe at Home), the petition, the order to show cause, and the decree should, instead of giving the proposed name, indicate that the name is confidential and on file with the Secretary of State. See *Information Sheet for Name Change Proceedings Under Address Confidentiality Program* (Safe at Home) (form NC-400-INFO).

8. Birth Certificate

To obtain a new birth certificate reflecting the change of gender, or name, file a certified copy of the order within 30 days with the Secretary of State and the State Registrar and pay the applicable fees. You may write or contact the State Registrar at:

California Department of Public Health

Vital Records – MS 5103

P.O. Box 997410

Sacramento, CA 95899-7410

Phone: 916-445-2684

Website: www.cdph.ca.gov

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information identifying the department that handles name and gender change petitions, and the times when petitions are heard.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	<h1 style="margin: 0;">DRAFT</h1> <h2 style="margin: 10px 0 0 0;">11-20-17</h2> <p style="margin: 0;">Not approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITION OF <i>(Name of each petitioner)</i> : <p style="text-align: right;">FOR CHANGE OF GENDER (Minor)</p>	
ORDER TO SHOW CAUSE FOR RECOGNITION OF MINOR'S CHANGE OF GENDER AND ISSUANCE OF NEW BIRTH CERTIFICATE <input type="checkbox"/> and CHANGE OF NAME	CASE NUMBER: _____

TO ALL LIVING PARENTS OF PETITIONING MINOR:

1. Petitioners *(name of petitioning minor)*:
 (name of petitioning adult):
 filed a petition for an order recognizing change of gender and issuance of a new birth certificate.

2. THE COURT ORDERS that any living parent interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition should not be granted. Any person objecting to the gender or name changes described above must file a written objection that includes the reasons for the **objection at least two court days before the matter is scheduled** to be heard and must appear at the hearing to show cause why the petition should not be granted. If no written objection is timely filed or, even if filed timely, the objector does not appear on the hearing date, the court may grant the petition without a hearing.

NOTICE OF HEARING

a. Date: _____	Time: _____	<input type="checkbox"/> Dept.: _____	<input type="checkbox"/> Room: _____
b. The address of the court is <input type="checkbox"/> same as noted above <input type="checkbox"/> other <i>(specify)</i> : _____			

TO ALL INTERESTED PERSONS:

3. A petition has been filed seeking change of name from *(minor's current name)* to *(proposed name)*

4. THE COURT ORDERS that any person objecting to the name changes described above must file a written objection that includes the reasons for the **objection within six weeks of the date this order is issued**. If no written objection is timely filed, the court will grant the petition without a hearing.

A hearing date may be set only if an objection is timely filed and shows good cause for opposing the name change. Objections based solely on concerns over the petitioner's actual gender identity shall not constitute good cause. (See Code of Civil Procedure section 1277.5 (b).)

Date: _____

JUDGE OF THE SUPERIOR COURT

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: 12/14/2017

Title of proposal (include amend/revise/adopt/approve + form/rule numbers):

Criminal Procedure: Felony Waiver and Plea Form

Committee or other entity submitting the proposal:

Criminal Law Advisory Committee

Staff contact (name, phone and e-mail): Eve Hershcopf, 415-865-7961

eve.hershcopf@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: 12/15/16

Project description from annual agenda: Revise Plea Form, With Explanations and Waiver of Rights – Felony (Criminal), CR-101: respond to recent case law that confirmed the scope of the advisement regarding the court's approval of the plea agreement and underscored the importance of accurately conveying the advisement on form CR-101. (See *People v. Vaene Sivongxxay* (Cal., June 19, 2017, No. S078895) 2017 WL 268158.

If requesting July 1 or out of cycle, explain:

Because form CR-101 was already in the process of being revised and had circulated for public comment for other revisions when *People v. Vaene Sivongxxay* was decided, the Judicial Council, at its September 2017 meeting, approved the proposed revisions to form CR-101, including the revision to the advisement regarding court approval of the plea agreement in response to the case, with the understanding that the committee would seek circulation for public comment on that revision in the winter 2018 cycle.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

W18-04

Title	Action Requested
Criminal Procedure: Felony Waiver and Plea Form	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form CR-101	September 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes revisions to the Judicial Council *Plea Form with Explanations and Waiver of Rights—Felony* (form CR-101) in response to recent case law that provided guidance regarding trial courts' determinations whether jury trial waivers were knowing, intelligent, and voluntary and the information that must be conveyed to defendants to make these determinations. In conjunction with other proposed revisions to form CR-101 that had circulated for public comment, the proposed revisions regarding jury trial waiver were approved by the Judicial Council effective January 1, 2018, without a prior period of public comment but with Judicial Council direction that the committee circulate the proposed jury trial waiver revisions for public comment in the winter 2018 cycle.

Background

The *Plea Form, With Explanation and Waiver of Rights—Felony*, form CR-101, is an optional form approved by the Judicial Council effective January 1, 2007. The form was substantially revised in 2012 in response to criminal justice realignment legislation, and was most recently revised effective January 1, 2018. The form is designed to include all necessary waivers, the direct consequences of a plea, and the most common advisements and warnings.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Recent case law¹ provides guidance regarding trial courts' determinations whether jury trial waivers were knowing, intelligent, and voluntary and the information that must be conveyed to defendants to make this determination. The current advisement in item 5.a. on form CR-101 does not include all of the required information. Though it addresses waiver of the right to a jury trial, it does not currently state that the jury must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, nor does it include an advisement regarding the defendant's right to participate, through counsel, in jury selection. In response to the Supreme Court's guidance in this recent case, the committee proposes addressing these elements by adding appropriate language to item 5.a. The proposed revisions have already been approved by the Judicial Council, effective January 1, 2018, but may be further revised based upon comments received, to be effective September 1, 2018.

The Proposal

This proposal revises item 5.a. in *Plea Form, With Explanation and Waiver of Rights—Felony* (form CR-101) to indicate that in waiving the right to trial by jury the rights a defendant waives include (1) a jury trial in which 12 impartial jurors chosen from the community must be *unanimously* convinced beyond a reasonable doubt in order to render a guilty verdict, and (2) the defendant's right to participate, through counsel, in jury selection.

The proposed revised form is attached at pages 4–10.

Alternatives Considered

The committee considered whether to recommend circulation of this proposal without prior council revision of form CR-101 item 5.a., as is typical. The committee concluded that the form should be revised to be responsive to recent case law and recommended that the council first approve the revision to item 5.a. and then circulate for public comment on this change.

Implementation Requirements, Costs, and Operational Impacts

As optional forms, expected costs are limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

¹ [*People v. Vaene Sivongxxay*](#) (Cal., June 19, 2017, No. S078895) 2017 WL 2628158

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed revised form CR-101, at pages 4–10
2. Link A: [People v. Vaene Sivongxxay](#) (Cal., June 19, 2017, No. S078895) 2017 WL 2628158

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
PEOPLE OF THE STATE OF CALIFORNIA v. Defendant:	
PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY	CASE NUMBER:

- INSTRUCTIONS:**
- (1) Fill out this form only if you want to plead guilty or no contest.
 - (2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
 - (3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
 - (4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
AGGREGATE MAXIMUM TIME OF IMPRISONMENT							

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

- a. Check one: **State Prison** (or the Division of Juvenile Justice) **County Jail** for
- (1) years and months or
- (2) Not less than years and months and/or not more than years and months.
- (3) Other (*specify*):
- b. **Probation** for years under conditions to be set by the court, including:
- days in the **county jail** or
- up to days in the **county jail**.

INITIALS

I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the "**Aggregate Maximum Time of Imprisonment**" specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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INITIALS

2. c. **Split Sentence (1170(h)(5)(B)):** years and days in the county jail and years and days on mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence.

d. Narcotics Addiction Confinement

I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. Open Plea

1. I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
2. I understand that I am not eligible for probation.
3. I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. Restitution, Statutory Fees, and Assessments

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the \$); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1. \$ **to the Victim Restitution Fund**
2. \$ **restitution to actual victims**
3. \$ **restitution to the State of California, Victims of Crime Fund**
4. \$ **court operations assessment**
5. \$ **court facilities assessment**
6. \$ **base fine plus any applicable penalties, assessments, and surcharges**
7. \$ **other (specify):**
8. \$ **other (specify):**
9. An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. Parole Revocation or Probation Revocation Fine

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. Dismissal of Other Counts

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

i. Other Terms (specify):

PEOPLE OF THE STATE OF CALIFORNIA v.

CASE NUMBER:

Defendant(s):

3. CONSEQUENCES OF MY PLEA

INITIALS

a. No Contest ("Nolo Contendere") Plea

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. Parole and Postrelease Community Supervision

I understand that if I am sentenced to state prison or a narcotics treatment facility

(1) I will be placed on parole or postrelease community supervision for up to years after my release.

(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.

(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. Effect of Conviction on Other Cases

I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. Registration

I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

(1) an arson offender

(4) a sex offender (this registration is a lifelong requirement)

(2) a gang member

(5) other (specify):

(3) a narcotics offender

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. Prints and DNA Samples

I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. Serious or Violent Felony

(1) I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my conviction in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.

(2) I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will not exceed 15%.

(3) I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.

(4) I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count is such an offense.

g. Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)

I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. Driver's License and Vehicle Forfeiture

I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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3. i. **Immigration Consequences** INITIALS

I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense.

j. **Firearms**

I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.

k. **Other Consequences** (*specify*):

4. **RIGHT TO AN ATTORNEY**

I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

I hereby give up my right to be represented by an attorney.

5. **OTHER CONSTITUTIONAL RIGHTS**

I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):

a. **Right to a Jury Trial**

I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were **unanimously** convinced beyond a reasonable doubt that I am guilty. **I have a right, through my counsel, to participate in jury selection.**

b. **Right to a Court Trial**

I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.

c. **Right to Confront and Cross-Examine Witnesses**

I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.

d. **Right to Remain Silent and Not to Incriminate Myself**

I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.

e. **Right to Produce Evidence and to Present a Defense**

I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**

a. **Discussion With My Attorney**

Before entering this plea, I have had a full opportunity to discuss the following with my attorney:

- (1) The facts of my case;
- (2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
- (3) Any defenses that I may have;
- (4) My constitutional and statutory rights and waiver of those rights;
- (5) The consequences of this plea, including the immigration consequences; and
- (6) Anything else I think is important to my case.

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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6. **b. Questions** INITIALS
 I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. **Stipulation to Commissioner**
 I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commissioner, sitting as a temporary judge, take my plea and sentence me.

d. **Medications or Controlled Substances**
 I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following:

e. **Court Approval of Plea Agreement**
 I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.)

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**
 I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable cause to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).

8. **WAIVER OF CONSTITUTIONAL RIGHTS**
 I give up, for each of the charges and allegations listed in item 1 (on page 1), my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA**
 I freely and voluntarily plead GUILTY NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:**

- (a) Preliminary hearing transcript
- (b) Police report
- (c) Probation report
- (d) Welfare investigator's declaration
- (e) Court documents regarding any alleged prior offenses
- (f) Other (*specify*):
- (g) (Specify facts):

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) INITIALS

10. AFTER THE PLEA

a. Surrender

I understand that the court is allowing me to surrender at a later date to begin serving time in custody.

I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law.

b. Sentencing Court

I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me.

c. Sentencing Date

I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

11. MANDATORY WARNING

I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.

DEFENDANT'S STATEMENT

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

DEFENDANT'S SIGNATURE

DATE

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the police report preliminary hearing transcript probation report other (*specify*): (*People v. West* (1970) 3 Cal.3d 595.)

ATTORNEY'S SIGNATURE

DATE

PEOPLE OF THE STATE OF CALIFORNIA v. Defendant(s):	CASE NUMBER:
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INTERPRETER'S STATEMENT

I, having been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents of the form and then initialed and signed the form.

Language: Spanish Other (*specify*):

INTERPRETER'S SIGNATURE	DATE
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INTERPRETER'S NAME (TYPE OR PRINT)

DISTRICT ATTORNEY'S STATEMENT

I have read this form and understand the terms of the plea agreement.

I agree do not agree with the terms of the plea agreement and the indicated sentence.

ATTORNEY'S SIGNATURE	DATE
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COURT'S FINDINGS AND ORDER

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

JUDGE'S SIGNATURE	DATE
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RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Delinquency: Information for Parents (revise forms JV-060, JV-600, JV-625)

Committee or other entity submitting the proposal:

Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: 2. Implementation of Legislative Changes from the 2017–2018 Legislative Session As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

p) AB 529 (Stone): Juveniles: sealing of records Ch. 685, Statutes of 2017 Would require, if a person who has been alleged to be a ward of the juvenile court and has his or her petition dismissed or if the petition is not sustained by the court after an adjudication hearing, the court to seal all records pertaining to that dismissed petition that are in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.

q) SB 312 (Skinner): Juveniles: sealing of records Ch. 679, Statutes of 2017 Expands the exception to sealing of juvenile court records to include those cases where a finding on a serious or violent offense is reduced to a misdemeanor.

If requesting July 1 or out of cycle, explain:

The committee is requesting circulation for a September 1, 2018, effective date because of the current and ongoing public interest in fines and fees, especially in the juvenile justice system. SB 190, which eliminates liability for court and county costs of child services and support, administrative fees, and fees for legal assistance to a child imposed in juvenile justice proceedings, takes effect January 1, 2018. Sections 11 and 12 of the bill amend the advisements of liability required on form JV-600 by section 656 of the Welfare and Institutions Code and form JV-625 by section 659 of the code. Because these forms are used in at least once every juvenile justice proceeding, the committee concluded that it is vital to correct the advisements at the earliest opportunity. Likewise, because form JV-060 is distributed to parents in every juvenile justice proceeding, it should be updated to provide accurate information as soon as possible.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

W18-05

Title	Action Requested
Juvenile Delinquency: Information for Parents	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms JV-060, JV-600, JV-625	September 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, 415-865-4507 corby.sturges@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends revising three Judicial Council forms to inform parents whose children are the subject of juvenile court wardship proceedings about recent changes to the law that affect their rights and the rights of those children.

Background

Effective January 1, 2018, California law will change the treatment of children and families involved in the juvenile justice system in several significant ways. First, Senate Bill 190 (Mitchell; Stats. 2017, ch. 678) eliminates almost all parental liability to pay fees or repay the cost of services provided to the parents' children in juvenile justice or delinquency proceedings. Parents remain liable for victim restitution, as well as for any fines or penalties assessed by the court.¹

Second, SB 395 (Lara; Stats. 2017, ch. 681) requires a child 15 years old or younger held in custody to consult with an attorney before any custodial interrogation and before waiving his or her constitutional rights. The child may not waive this consultation.

Third, the Legislature has continued to modify the law governing sealing of juvenile case records. This year, two bills modify the sealing laws:

¹ Links to the affected code sections highlighting the amendments are included for ease of reference.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

- AB 529 (Stone; Stats. 2017, ch. 685) amends Welfare and Institutions Code section 786 to require the court to seal records for any case that it dismisses on the motion of the prosecution, on its own motion, or because the petition is not sustained after an adjudication hearing. The bill also adds section 786.5, which requires the probation department to seal the records of any juvenile who successfully completes a prepetition diversion program. Sealing the record results in the arrest being deemed not to have occurred. If the probation department determines that the diversion program was not successfully completed, section 786.5 requires the department to provide notice of that determination to the individual, who must then have an opportunity to petition the court for review.
- SB 312 (Skinner; Stats. 2017, ch. 679) clarifies that records for Welfare and Institutions Code section 707(b) offenses can be sealed under section 786 if the offense was reduced to a misdemeanor and authorizes courts to seal other 707(b) records—but not those for registerable sex offenses under Penal Code section 290.008—under section 781, provided that access to those records be provided under specified circumstances (thus no destruction), and after age 21 for any petitioner who was committed to the Division of Juvenile Justice.

The Proposal

This proposal would revise three Judicial Council forms to give current, legally accurate, and accessible information to parents about the rights and responsibilities they and their children may have in a juvenile justice proceeding.

- *Juvenile Court Information for Parents* (form JV-060) would be revised to add information about the limits on parental liability established by SB 190, the attorney consultation requirement for children 15 years old and younger in SB 395, and the changes to the law governing sealing of records in AB 529 and SB 312, as well as to make clarifying and technical changes.
- *Juvenile Wardship Petition* (form JV-600) would be revised to update the parental advisement required by section 656 of the Welfare and Institutions Code to reflect the limits on parental liability for fees and costs added by SB 190.
- *Notice of Hearing—Juvenile Delinquency Proceeding* (form JV-625) would be revised to update the statements required by Welfare and Institutions Code section 659(e), (f) & (g) to reflect the limits on parental liability for fees and costs added by SB 190.

Alternatives Considered

The committee considered addressing these legislative changes through education and technical assistance; however, the judicial branch is not in a position to provide education to parents in

juvenile justice proceedings. In addition, the advisements on forms JV-600 and JV-625 are required by statute.

Implementation Requirements, Costs, and Operational Impacts

This proposal will result in some printing costs to produce hard copies of revised form JV-060. These costs may be reduced by increased reliance on electronic versions of the form. Courts may need to incorporate the revised advisements on forms JV-600 and JV-625 into their case management systems.

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 revisions to form JV-060 include any additional information for parents of a child in a juvenile wardship proceeding? If so, please describe that information.

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 courts need to do—for example, train staff (please identify position and expected hours of training), revise processes and procedures (please describe), change docket codes in case management systems, or modify case management systems—to implement the proposed changes?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms JV-060, JV-600, and JV-625 at pages 4–18
2. [Sen. Bill 190 \(Mitchell; Stats. 2017, ch. 678\)](#)
3. [Sen. Bill 395 \(Lara; Stats. 2017, ch. 681\)](#)
4. [Assem. Bill 529 \(Stone; Stats. 2017, ch. 685\)](#)
5. [Sen. Bill 312 \(Skinner; Stats. 2017, ch. 679\)](#)

_____ County

JUVENILE JUSTICE COURT
INFORMATION FOR PARENTS

The purposes of the delinquency juvenile court are to protect, give guidance to guides, and rehabilitates children who commit delinquent acts break the law, and to protect helps keep the community safe. This brochure tells you what to expect if your child gets arrested, taken to a probation officer, or needs to go to juvenile court.

If your child becomes a ward of the juvenile court as a juvenile delinquent, the court will make orders for you and your child so that your child and the community will be protected.

As a ward of the delinquency court:

1. Your child may be allowed to live keep living in your home under court supervision; or
2. Your child may be removed from placed outside of your home and sent to live in a foster home or an unlocked or locked facility, depending upon your child's age, the seriousness of the offense, and your child's history of delinquency breaking the law.

The petition and other papers you may have received say accuse your child is accused of having done certain delinquent acts that are against the law. The petition does not prove anything, but it is important for you to know what your child is accused of having done. You have the right to receive a copy of the petition. If you have not received a copy of the petition, ask the probation officer or the court clerk for one.

PLEASE READ THE PETITION CAREFULLY. The petition does not prove anything, but it is important for you to know what your child is accused of having done.

1. My child came home after being arrested. What will happen now?

Your county's A probation department officer will probably contact you and ask you and your child to come in for a meeting with a probation officer.

You may receive a Notice to Appear or citation (giving a specific date, time, and place and time you and your child must show up at the probation department need to go for a meeting). In some cases, your child may receive a Notice to Appear directly in juvenile court.

If you or your child receives a Notice to Appear or a citation, pay attention to the date, time, and place to appear. If no one contacts you, you and your child still need to show up as directed.

2. My child was arrested and taken into custody. What can the arresting officer do?

DRAFT—Not approved by Judicial Council

The arresting officer may:

- a. Let your child go ~~home to you or bring your child home or back to the place of arrest, and maintain a record of the contact.~~
- b. Bring Take or refer your child to a community agency providing shelter, care, diversion, or counseling.
- c. ~~In some counties, require your child to return to the police station rather than to the probation department (this is sometimes called being “cited back”).~~
- c. Give you and your child a Notice to Appear, telling you why your child was arrested, what you and your child must do, and when and where you must do it.
- d. ~~Shortly after the arrest, lock up your child in~~ Take your child to the probation officer at the juvenile hall. This is called *detention in custody*.

If your child is ~~locked up or held somewhere~~ detained, the arresting officer must take immediately steps try to notify you that your child is in custody and where your child is being held. ~~When you are notified, the officer must also tell you about each of the your child’s~~ Miranda rights that your child has.

A child who is ~~locked up or held by an officer~~ detained has the right to make at least two phone calls within one hour after arrest. One of the phone calls must be a completed call to a parent, guardian, responsible relative, or employer. The other call must be a completed call to an attorney.

If the any officer is going to ~~question~~ ask your child about what happened, the officer must also first tell your child that ~~he or she~~ the child has the right to remain silent, that anything your child says will be used against ~~him or her~~ the child in court, that ~~he or she~~ your child has a right to be represented by a lawyer, and that the court will appoint a lawyer if you or your child cannot afford one. These are called *Miranda* rights. ~~If the officer is not going to question your child, the officer will not have to explain these rights.~~ The probation officer must also tell you about your child’s *Miranda* rights.

NOTE: If your child is 15 years old or younger and in custody, your child *must* talk to an attorney in person, by phone, or by video conference (like Skype) before answering any questions or giving up any rights. Your child cannot decide not to talk to an attorney.

~~If your child is locked up or held somewhere detained, the officer must take immediately steps try to notify you that your child is in custody and where your child is being held. When you are~~

notified, the officer must also tell you about each of the your child's *Miranda* rights that your child has.

3. If we get a Notice to Appear, what will happen at the meeting with the probation officer? What should I do?

If your child doesn't already have a lawyer, you may wish to contact the public defender or a private attorney for advice.

One of three things **may can** happen at the meeting:

- a. The probation officer can **reprimand** your child and then let your child go, **home without getting the juvenile court involved.**
- b. The probation officer **may can** offer your child a voluntary program instead of going to court. Each county is different and programs vary. **For example, the program might include attending special classes or substance abuse counseling, performing community service, cleaning graffiti, or going to a youth or peer court. Generally, but generally if your son or daughter child successfully completes the program (for example, attending special classes or substance abuse counseling, performing community service, cleaning graffiti, or going to a youth or peer court if your county has one), the probation officer will not ask the prosecuting attorney or the juvenile court does not need to become involved. If you and your child agree to a voluntary program, the probation department may ask you to sign an informal contract describing what you and your child must do. If The program can last up to six months.**
- c. The probation officer can refer your child's case to the district attorney, who will decide whether or not to file a petition.

4. Do I need a lawyer for myself?

No, not usually. **But the court can order you to do things to help you be a better parent for your child. If And if** your child has a lawyer, the lawyer represents **only** your child, **and** not you.

5. Does my child need a lawyer?

Yes, **and Y**our child has a right to a lawyer who is both effective and prepared. If you cannot afford to hire a lawyer for your child, the court will appoint a lawyer to represent your child. California Rules of Court, rule 5.664, requires any attorney the court appoints to represent your child to have education and training specifically **to about** representing children in **delinquency juvenile justice** cases.

6. My child’s probation officer told me that the district prosecuting attorney will be filing a petition. What does that mean?

A petition asks the juvenile court to become involved in your child’s life. The petition says what the state believes your child did that violated the law. Later, a judge will decide if what the petition says is true.

There are two types of petitions. They are named after numbered sections of California law:

- a. A **601 Petition** is filed by the probation department to say a child has run away, skipped school, violated curfew, or regularly disobeyed his or her a parents. If the court finds the petition is true, the child may become a “ward” of the court and is known as a “status offender.”
- b. A **602 Petition** is filed by the district attorney’s office to say a child has committed an offense, that is, an act that would be considered a crime if an adult had done it. This includes felonies such as auto theft, burglary, selling a controlled substance (drugs), rape, and murder, and misdemeanors such as simple assault and drunk driving. If the court finds the petition is true, the child may become a “ward” of the court as a delinquent.

Section 602 of the Welfare and Institutions Code covers any act that is against the law when an adult does it. This includes felonies such as auto theft, burglary, selling a controlled substance (drugs), rape, and murder, and misdemeanors such as simple assault and drunk driving.

The penalty for the an offense depends on the type and seriousness of the offense.

7. What will happen if my child is taken to juvenile hall after the arrest?

The probation officer can decide whether to keep your child in custody or let your child go home without asking the district attorney to file a petition. The probation officer can also let your child go home and still refer the case to the district attorney, who will decide whether to file a petition. Restrictions may be placed on your child as a condition of being allowed to -go home.

If the probation officer keeps your child ~~locked up~~ in custody, a petition must be filed very quickly, usually within 48 hours from the time the police arrested the child. A detention hearing must be held the next day the court is in session. The courts are closed on Saturdays, Sundays, and holidays.

8. How long could my child have to stay in juvenile hall?

At the detention hearing, the judge could decide your child must be kept in juvenile hall until the next hearing. The different hearings are described in question 12. The judge may continue to order your child to remain in juvenile hall until the case is finished.

9. Can I visit my child in juvenile hall?

Usually, but you should contact the probation officer to find out when you can see your child.

10. What is the role of does the probation officer do for the court?

The probation officer must writes a report to the juvenile court judge about your child. The report says what the probation department thinks would be best for your child if the judge finds that your child committed the crime listed act described in the petition. The report may include your child's prior arrest record; a description of the current offense; statements from your child, his or her your family, and other people who know your child well; a school report; and a statement by the victim. The probation officer presents this report at the disposition hearing.

If your child is placed on probation, the probation officer will enforce the court's orders. This means monitoring your child supervise and work with your child to make sure he or she obeys that your child follows the law, the court's orders, and follows the terms of probation. The probation officer will also encourage your child to do well in school and participate in job training, counseling, and community programs.

Depending on the situation, the probation officer could meet with your child as often as twice a week or as little as once a month.

If your child is in custody and the judge decides your child should not go home right after the case is finished, the probation officer must find an appropriate placement for your child. This could be with a relative, in a foster or group home, or in a private institution.

11. How will my child and I find out about the court hearings?

If your child is locked up in custody, you should get the petition and notice of the hearing, delivered personally or by certified mail, as soon as possible after the petition is filed and at least 5 days before the hearing. If the hearing will be held less than 5 days after the petition is filed, you will get notice at least 24 hours before the hearing. Your child has the right to get notice if he or she is 8 years old or older.

If your child is not in custody, you should get the petition and notice of the hearing, delivered personally or by first-class mail, at least 10 calendar days before the hearing.

12. What hearings will my child go to in juvenile court?

There are several types of hearings:

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- a. **The Detention Hearing.** If your child is kept in juvenile hall for more than 48 hours, a detention hearing will be held within 72 hours, counting only court days (no Saturdays, Sundays, or holidays). At the detention hearing, the judge will decide whether to let your child go home before the next hearing.
- b. **The Pretrial or Settlement Conference.** In many counties, a court appearance is scheduled to try to resolve the matter without a trial.
- c. **Hearings on Motions.** There may be court appearances for the court to hear additional matters decide legal questions that come up before the matter is resolved.
- d. **The Hearing on Transfer to Criminal Court Jurisdiction.** If your child is 14 years or older, the district attorney may ask that your child’s case be tried in adult court for some serious and violent offenses. At this hearing, the judge will decide whether your child’s case will be transferred to adult court or heard in juvenile court. If your child is younger than 14, he or she cannot be transferred to adult court.
- e. **The Jurisdiction Hearing.** At the jurisdiction hearing, the judge will decide whether your child committed the offense(s) described in the petition.
- f. **The Disposition Hearing.** If the judge rules that your child committed the offense, then at the disposition hearing the judge will decide what orders should be made about your child. If the judge rules that your child did not commit the offense, there is no disposition hearing. Sometimes the disposition hearing is held right after the jurisdiction hearing, on the same day.
- g. **Review Hearings.** In some cases, the court may set hearings to review your child’s progress and performance under probation supervision.

13. What will happen at the jurisdiction hearing?

The court will ask your child to admit or deny the acts charged in the petition. Based on the evidence and the risk, your child’s attorney will advise your child whether to admit any charges. If your child does admit the charges, he or she will give up the right to a trial. The court will find that the petition is true. In many cases, the child will admit all or part of the petition.

Your child’s attorney will advise your child as to whether to make an admission.

If your child denies the charges, there is will be a trial, or a “contested hearing.”, or “trial.” The district prosecuting attorney will present the case against your child. Then your child’s attorney will present your child’s defense. Based on this all the evidence, the judge will decide whether your child committed the act(s) he or she is accused of.

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If the judge makes a “true finding,” decides, based on all the evidence, that the accusations are true this means there is enough evidence for the judge to find beyond a reasonable doubt, that your child did commit those acts.

After a “true finding,” the judge will schedule a disposition hearing to decide what the consequences will be. your child will face. The judge can order your child to stay in custody or be released until the disposition hearing.

If there is not enough evidence for a “true finding,” the judge to decide that the accusations are true beyond a reasonable doubt, the case will be dismissed. If your child is in custody, he or she your child will be released.

NOTE: If your child is arrested in one county, but you and your child live in a different county, the court may transfer the case back to the court in the county where you live before disposition. Ask your child’s lawyer whether it’s a good idea to ask the court to do that.

14. What will happen at the disposition hearing?

The judge will order one of the following:

- a. Your child stays at home on probation supervision for up to 6 months.
- b. Your child stays home under the formal supervision of a probation officer which is set up by the judge.
- c. Your child is placed on probation and ordered to live in a relative’s home, a foster home, a private residential group home, or an institutional a residential treatment program.
- d. Your child is placed on probation and sent committed to a probation county camp, home, or ranch.
- e. Your child is committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ). But if your child is tried as an adult, the adult criminal court could sentence your child to the California Department of Corrections and Rehabilitation, Division of Adult Operations (see questions 19, 20, and 22).
- f. As a parent, you may be ordered to take part in counseling, parent training, or other activities.

15. May I be present at the hearings?

Yes. In fact, state law requires you to be present. The judge must decide what will be best for your child. Depending on the offense, if you can show that your child will listen to you and

follow your rules, and that you will hold your child accountable and be supportive at home, the judge may order your child released to your custody.

16. May I speak at the hearings?

Yes, if the judge asks you questions or if you are called as a witness. You also may ask to speak to the judge. Generally, your child's lawyer will speak for your child. The district attorney will speak for the state. The probation officer may be called as a witness.

17. Do we have the right to an interpreter?

Your child has a constitutional right to an interpreter. You may also have a right to an interpreter and should ask for one if you need one.

18. May the victim attend and speak at the disposition hearing?

Yes. A crime victim has a right to come to the hearing. The victim, and, if the victim is a child, his or her the victim's parents if the victim is a child, will get notice of the hearing. You should not try to speak directly to the victim.

19. When can my child be tried as an adult?

For some felonies very serious offenses, your child can be tried and sentenced as an adult if your child is at least 14 years old. The case would be moved to adult court. There are major differences between juvenile and adult criminal court in how cases are handled. If the district attorney asks that your child be tried as an adult, it is extremely important to talk to your child's attorney about the very serious consequences of your child's situation.

20. What felonies offenses are likely to be tried in adult court?

A child can be tried in adult court for serious, violent and serious offenses, including murder and attempted murder, arson of an inhabited building, robbery with a dangerous or deadly weapon, some forms of rape, some forms of kidnapping and carjacking, some felonies offenses involving firearms, certain controlled substance drug offenses, and certain violent escapes from a juvenile detention facility.

21. Where will my child go if he or she is sent to the Division of Juvenile Justice (DJJ)?

Your child will first go to a reception center for 30 to 90 days. After that, your child will be sent to one of three correctional facilities or the Pine Grove Youth Conservation Camp. The correctional facilities are:

- a. N.A. Chaderjian Youth Correctional Facility in Stockton (for boys) (209-944-6400)

- b. O.H. Close Youth Correctional Facility in Stockton **(for boys)** (209-944-6391)
- c. Ventura Youth Correctional Facility **in Camarillo** (for girls) (805-485-7951)

You may visit your child during visiting hours, which are on Saturdays or Sundays for 2 to 3 hours at a time, depending on the reception center. The Ventura reception center for girls allows visits for up to 6½ hours at a time. You may not call your child at the reception center, but you may write to your child. Your child may make collect calls to you from a pay phone.

22. When would my child go to the Division of Adult Operations instead of the Division of Juvenile Justice (DJJ)?

Your child can be sentenced to adult prison (California Department of Corrections and Rehabilitation, Division of Adult Operations) if **he or she your child** is tried as an adult (see questions 19 and 20). If your child will be tried as an adult, it is extremely important to talk to your child’s attorney about the very serious consequences of your child’s situation.

Between the ages of 14 and 18, your child must stay at DJJ even if **he or she is** sentenced to adult prison.

Your child may serve the entire term at DJJ if the term will end before **he or she your child** reaches age 21. If your child’s term will last past the age of 21, your child could be at DJJ until age 18 and then be transferred to the Division of Adult Operations on **his or her your child’s** 18th birthday.

23. Do I have to pay money for my child’s acts?

Yes. **You may be required to pay any fines or penalties ordered by the court.** You may also have to pay restitution to the victim if your child is ordered to pay. Restitution is money to pay for the victim’s losses caused by your child’s illegal conduct. **Examples of Restitution** might include the value of stolen or damaged property, medical expenses, and lost wages. Restitution that remains to be paid when your child’s case is closed becomes a civil judgment, which can affect your credit score.

24. Will I be required to pay my child’s fees?

Yes. Unless you are the victim of your child’s crime, you may receive a bill from the county for all or a portion of your child’s attorney’s fees.
You will be billed for probation department services fees (such as food and laundry while your child was in juvenile hall) and placement costs for keeping your child in a state placement such as the Division of Juvenile Justice, a probation camp, or an out-of-home placement.

These costs can be high. You will have a chance to show how much, if any, of these costs you are able to pay. (The Juvenile Court does not make this decision.) No. You are not required to pay fees or costs for services given to your child as part of this case. But if you can afford to, you may be required to pay back the cost of services you or other family members receive from the county or the court.

25. Can my child's juvenile records be sealed?

If your child's records are sealed, it is as if the offense that brought your child to court never happened. That means your child can truthfully say he or she that your child does not have a criminal or juvenile record (unless your child wants to join the military or get federal security clearance).

If your child's case is dismissed by the juvenile court after January 1, 2015, without your child having become a ward of the court, or because your child satisfactorily completed probation (formal or informal), in many cases the court will have automatically sealed your child's records. If the court seals your child's records for this last reason, he or she your child should receive a copy of the sealing order and form JV-596-INFO, Sealing of Records for Satisfactory Completion of Probation. If your child satisfactorily completes a probation diversion program, the probation department will seal those records and give notice to your child.

If the court finds your child has not satisfactorily completed probation, it will not dismiss the case and will not seal the records at termination. To have the records sealed in this situation, your child will need to ask the court to seal the records at a later date. (See form JV-595-INFO, How to Ask the Court to Seal Your Records, for more information about asking the court to seal records.) If the probation department determines that your child has not satisfactorily completed a diversion program and does not seal the records, your child can ask the juvenile court to review that decision and order the records sealed, or your child can ask to have them sealed at a later date as described above.

The court will not seal your child's records if your child is found to have committed an a sex offense listed in Welfare and Institutions Code section 707(b) (violent offenses such as murder, rape, or kidnapping, and some offenses involving drugs or weapons) when he or she your child was 14 or older, and the charge was not dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b). For all other offenses listed in section 707(b), your child may request that the court seal the records at age 21 if your child is committed to the Division of Juvenile Justice or age 18 for all other dispositions, but those records may be viewed by the prosecuting attorney in the future under certain circumstances.

26. Can my child's juvenile court record be used against him or her as an adult?

Under the three-strikes law, certain serious or violent felonies committed as a juvenile at ages 16 and 17 can be counted as strikes and used against your child in the future.

27. What should I do as a parent?

All your parental responsibilities continue when your child receives a citation. You may want to contact a lawyer for assistance. In addition, the court can order you to do things, like take classes or go to counseling, that will help you and your child.

If your child is placed in a group home with a foster family or in a treatment facility, or committed to a county facility probation camp or the Division of Juvenile Justice, ~~do your best to maintain stay in~~ contact with your child and support the positive your child's programs and activities he or she does there. Encourage your child to follow obey all the court's orders and, especially, not to leave remain in his or her the placement without permission. Understand Find out what is happening in your child's life so that you can prepare get ready for his or her your child to return home. ~~Explore~~ Learn about ways of creating making a protective and supportive environment for your child's return to school or work. Develop strategies plans to hold your child accountable ~~for his or her behavior~~.

Contact your child's parole agent or probation officer to ask for referrals to community organizations, such as parents' groups or counseling services, that can assist help you, ~~such as parent groups or counseling~~. Your school district and local hospital or mental health department may also offer useful programs.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL 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:	
CASE NAME:	
JUVENILE WARDSHIP PETITION <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) <input type="checkbox"/> § 602(a)	CASE NUMBER:

1. Petitioner on information and belief alleges the following:

a. <input type="checkbox"/> The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code (check applicable boxes; see attachments for concise statements of facts): <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a) Violation (specify code section):			
b. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a).			
c. Child's name and address:		d. Age:	e. Date of birth:
f. Sex:			
g. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		h. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	
i. Name: <input type="checkbox"/> mother Address: <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (check all that apply): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		j. Other (name, address, and relationship to child): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.	
k. Attorney for child (if known): Address: Phone number:		l. Child is <input type="checkbox"/> not detained. <input type="checkbox"/> detained. Date and time of detention (custody): Current place of detention (address):	

(See important notices on page 2.)

CHILD'S NAME:	CASE NUMBER:
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2. Petitioner requests that the court find these allegations to be true.
3. Petitioner requests a hearing to determine whether the child is a fit and proper subject under juvenile court law under Welfare and Institutions Code section 707(a)(1) 707(a)(2) 707(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

Indian Child Inquiry Attachment (form ICWA-010(A)) is completed and attached.

Number of pages attached: _____

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and your child may be required to pay any *restitution* owed to the victim and any fines or penalties ordered by the court. In addition, if you or family members other than your child receive services or legal assistance paid for by the court or county, you may be required to pay back the cost of those services unless the court or county decides that you can't afford to pay.

RECORD SEALING

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or www.courts.ca.gov/forms.htm, for more information about record sealing.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<i>FOR COURT USE ONLY</i> DRAFT Not Approved by the Judicial Council	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CASE NAME:		
NOTICE OF HEARING—JUVENILE DELINQUENCY PROCEEDING Welfare and Institutions Code, §§ <input type="checkbox"/> 601 <input type="checkbox"/> 602 <input type="checkbox"/> 725 <input type="checkbox"/> 777(a)		CASE NUMBER:

NOTICE TO (name and address):

- A hearing has been set for the date and time below. The child and the parent or legal guardian or noticed adult relative are entitled to be represented by an attorney.
- The court will appoint an attorney for the child if the child cannot afford an attorney.

See important notice on page 2.

1. A hearing will be held

on (date): _____ at (time): _____ in Dept.: _____ Room: _____

located at court address above other (specify address):

2. The hearing is for the purpose of

- detention hearing.
- b. formal reading of petition, advisement of rights, and plea.
- c. jurisdiction hearing.
- d. disposition hearing.
- e. review.
- f. permanency hearing.
- g. other (specify):

3. TO THE CHILD:

You have the right to be at the hearing and to present evidence. You have the right to be represented by an attorney. The court will appoint an attorney for you if you cannot afford to pay for one. An attorney can be appointed to speak with you before the court date.

You are ordered to be present at the hearing.

4. TO THE PARENT, LEGAL GUARDIAN, OR ADULT RELATIVE:

You have the right to be present at the hearing. You have the right to have an attorney present to represent you at the hearing.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

— TO PARENT OR LEGAL GUARDIAN —

1. If the court orders your child to pay *restitution* to the victim of the alleged offense or to pay any *fin*es or *penalty assessments*, you may be required to pay the full amount or as much of that amount as the court decides you can afford.
2. You will not be required to pay back the cost of services, support, or legal assistance provided to your child by the court or county in this case.
3. You may be required to pay back the cost of services, including counseling, or legal assistance provided to you or other family members by the court or county in this case.



Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code, § 54.8.)

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Juvenile Law: Sealing of and Access to Records (Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV 595 INFO, JV-596, and JV-596-INFO)

Committee or other entity submitting the proposal:

Family and Juvenile Law Advisory Committee

Staff contact (name, phone and e-mail): Tracy Kenny 916-263-2838, tracy.kenny@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 2. Implementation of Legislative Changes from the 2017-2018 Legislative Session

As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

p) AB 529 (Stone): Juveniles: sealing of records
Ch. 685, Statutes of 2017

Would require, if a person who has been alleged to be a ward of the juvenile court and has his or her petition dismissed or if the petition is not sustained by the court after an adjudication hearing, the court to seal all records pertaining to that dismissed petition that are in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice.

q) SB 312 (Skinner): Juveniles: sealing of records
Ch. 679, Statutes of 2017

Expands the exception to sealing of juvenile court records to include those cases where a finding on a serious or violent offense is reduced to a misdemeanor.

r) SB 462 (Atkins): Juveniles: case files: access
Ch. 462, Statutes of 2017

Expands the list of who can be allowed to access an otherwise sealed juvenile case file to include law enforcement agencies, probation departments, or other specified agencies for the purposes of data collection and research, provided the court is satisfied that identifying information is protected.

If requesting July 1 or out of cycle, explain:

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

W18-06

Title	Action Requested
Juvenile Law: Sealing of and Access to Records	Review and submit comments by February 14, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.850; amend rules 5.552 and 5.840; approve forms JV-597 and JV-598; revise forms JC-590, JV-595-INFO, JV-596, and JV-596-INFO	September 1, 2018
	Contact
	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov
Proposed by	
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes new and amended rules and new and revised forms to conform to recently enacted statutory provisions concerning the sealing of juvenile records. The proposal would update recently adopted rules and forms to implement sealing of records under Welfare and Institutions Code section 786¹ to include changes to that section that go into effect on January 1, 2018; modify forms to reflect the authority of the court to seal records for section 707(b) offenses; and adopt a new rule and optional form for use by probation to seal records under newly enacted section 786.5.

Background

In 2013, the Legislature took action to ensure that all juveniles who come before the court or a probation officer receive information about the process to request sealing of records and required the adoption of a Judicial Council form that can be used to petition the court for sealing under Welfare and Institutions Code section 781 (Assem. Bill 1006 [Yamada]; Stats. 2013, ch. 269). In 2014, the Legislature went a step further by enacting section 786, which requires courts to seal records – without the filing of a petition – for any child 14 years of age or older who was not a serious or violent (707(b)) offender and who satisfactorily completed probation (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249). That legislation, however, spurred many questions and concerns

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

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

within the juvenile justice system, and legislation has been enacted in every year since 2014 to clarify the scope and impacts of section 786.²

In 2017, the Legislature enacted Assembly Bill 529 (Stone; Stats. 2017, ch. 685), which further amended section 786 to require the court to seal records for any case that it dismisses on the motion of the prosecution, on its own motion, or because the petition is not sustained after an adjudication hearing. AB 529 also enacted section 786.5, which requires the probation department to seal the records of any juvenile who successfully completes a diversion program for an arrest that does not lead to the filing of a petition with the juvenile court and to notify any agency overseeing the diversion program to seal its records. This sealing would result in the arrest being deemed not to have occurred. If the probation department determines that the diversion program was not successfully completed, section 786.5 requires that notice of that determination be provided to the individual and that the individual have an opportunity to petition the court for a review of that determination. Also enacted in 2017 was Senate Bill 312 (Skinner; Stats. 2017, ch. 679), which clarified that records for section 707(b) offenses can be sealed under section 786 if the offense was reduced to a misdemeanor and authorized courts to seal other 707(b) records (other than those for registerable sex offenses under section 290.008) under section 781, as long as access to those records is provided under specified circumstances. Finally, the Legislature, in 2017, enacted Senate Bill 462 (Atkins; Stats. 2017, ch. 462), which presents specific standards for accessing juvenile case files for data collection and research purposes, with specific confidentiality protections required.

The Proposal

The proposal recommends adopting a new rule of court, rule 5.850, and approving two optional forms, JV-597 and JV-598, to implement the new requirements under section 786.5 for sealing diversion records. It also proposes amending rule 5.840 and revising both mandatory sealing informational forms, JV-595-INFO and JV-596-INFO, as well as the two optional sealing order forms, JV-590 and JV-596, to incorporate recent changes in juvenile records sealing law. Finally, the proposal would amend rule 5.552, on access to juvenile case files, to incorporate the new provisions in section 827.12 allowing access for data collection and research purposes.

Rule and forms proposals to implement amendments to section 786

Because section 786 has been expanded to require the court to seal records when it dismisses a petition without finding the child a ward of the delinquency court, amendments and revisions to the rule and forms to implement section 786 are proposed, as follows, to reflect this expansion. Section 786 was also amended to clarify that a 707(b) offense that has been reduced to a misdemeanor is eligible for sealing, and changes have been made to the rule to reflect that clarification.

² See Assembly Bill 1945 (Stone; Stats. 2016, ch. 858), Assembly Bill 666 (Stone; Stats. 2015, ch. 368), and Assembly Bill 989 (Cooper; Stats. 2015, ch. 375).

Amended rule 5.840. This rule describes the procedures for the court to seal records under section 786. Now that the court must seal records if it dismisses a case before wardship in the same manner that it currently seals records for satisfactory completion of probation, the rule must incorporate this expansion of the statute.

Revised form JV-596. To assist courts in implementing the new requirements of section 786, the council approved optional sealing order form JV-596, *Dismissal and Sealing of Records—Welfare and Institutions Code Section 786*, effective July 1, 2016. For this form to be used to seal records under newly enacted section 786(e), it needs to be revised to allow the court to find that the petition was dismissed before wardship as an alternative to finding that probation was satisfactorily completed.

Rules and forms proposals for sealing by probation for diversion cases

Newly enacted section 786.5 requires the probation department to seal records for diversion cases when the diversion program has been satisfactorily completed and to provide notice that it has sealed the records, or if it has not, the reason for not doing so. It also provides the right to petition the court for review of a determination that records should not be sealed. A new rule and new optional forms, described immediately below, are proposed to implement this new statute.

New rule 5.850. The committee proposes adopting a new rule of court to implement the requirements of newly enacted section 786.5. The new rule includes the procedures to be followed to petition the court if a record is not sealed by probation for satisfactory completion of the program and review of that determination by the juvenile court is sought. These procedures include a requirement that the probation department file with the court the request for the court to review the determination for the child and that the court appoint counsel for any child seeking review in a court hearing before or during the hearing. The committee is seeking specific comment on these procedures.

New form JV-597. The committee is proposing an optional form to be used by probation to comply with the requirements of section 786.5 that the probation department provide written notice that it has or has not sealed records for diversion program participants. This form would also provide notice to those individuals whose records are not sealed that they may petition the court for review of the probation department's determination. The committee notes that many probation departments may prefer to develop something similar locally, but wanted to provide an option for those departments seeking assistance in implementing the new requirements.

New form JV-598. Because section 786.5 allows a diversion participant whose records are not sealed to petition the court for review of the determination that he or she did not satisfactorily complete the program, this proposal includes an optional form petition that could be used by participants to seek that review. This form includes simple instructions and, to provide a mechanism for review, could accompany the notice that records were not being sealed.

Form change to implement amendments to section 781 allowing for sealing of 707(b) offenses

Before the enactment of SB 312, records for offenses committed by individuals aged 14 or older listed in section 707(b) were ineligible for sealing under section 781. Now those records can be sealed under specific circumstances as long as they are not for 707(b) sex offenses that require registration under Penal Code section 290.008. However, access to these records is allowed in future proceedings for a variety of reasons, and the prohibition on the destruction of the court's records of these offenses remains. In addition to updating various information forms, as discussed below, this proposal would revise optional *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781* (form JV-590) to allow the court to specify that the court records will not be destroyed under section 781(d) as an alternative to setting a destruction date.

Record sealing information form revisions³

The Judicial Council has two sealing-specific informational forms that describe the law concerning record sealing for different audiences and contexts, each of which is proposed to be updated to reflect the changes in sealing law discussed above. Form JV-596-INFO is to be given at the termination of the case to wards whose records are sealed under section 786, and form JV-595-INFO is for those wards whose cases are not dismissed under section 786 and who need information about petitioning the court for the sealing of records under section 781. Both of these forms need to be revised to include information about the expansion of section 786 and the possibility of record sealing by probation under new section 786.5, and to clarify the much narrower constraints on record sealing by request under section 781 for 707(b) offenses.

Amendments to rule 5.552 to implement section 827.12 access for data collection and research

Rule 5.552 presents the procedures for accessing juvenile case files and provides that any access that is unauthorized under section 827 or 828 requires that a petition be filed with the juvenile court.⁴ Newly enacted section 827.12 allows law enforcement, probation, the court, the Department of Justice, and other state and local agencies with custody of a juvenile delinquency case file to access those records for data collection or reporting requirements imposed under the terms of a grant or as required by state or federal law, provided that personally identifying information is not released. In addition, it gives provisions for a chief probation officer to make a request of the juvenile court that access and data be provided from juvenile delinquency case files and related juvenile records in the possession of the probation department for the purpose of data sharing or research, provided that the court finds that the methodology to protect confidentiality is sound and that any personally identifying information that is accessed is not further released. To ensure that rule 5.552 is not in conflict with section 827.12, it needs to be

³ Revisions to form JV-060 to reflect record sealing changes are included in another proposal circulating for comment in this cycle *Juvenile Law: Information for Parents*.

⁴ The Judicial Council approved amendments to rule 5.552 that become effective January 1, 2018. Because the proposed amended rules would become effective September 1, 2018, this proposal works from the rule text that will be effective on January 1, 2018.

amended to incorporate cross-references to the statute and to include the required findings that the court must make before authorizing the release of information from confidential files.

Alternatives Considered

The committee considered not proposing a form for probation to comply with section 786.5, allowing each county to develop a solution to meet its own needs, but concluded that, as an optional form, the proposed form would not interfere with local efforts to implement the section. The committee also considered limiting the rule of court on section 786.5 to the court review process but determined that the process was intertwined with the notice requirements for probation under the statute and thus drafted the rule to include general procedures for probation to follow consistent with the statute.

Implementation Requirements, Costs, and Operational Impacts

Printing costs may be incurred to replace any existing stock of the mandatory sealing information forms. Some courts may incur programming charges if electronic systems are used for the court orders and they opt to use the optional revised order forms. In addition, all of the sealing law changes will result in more cases being eligible for sealing under sections 781 and 786 and thus will create additional court workload, as will the option to seek review under section 786.5, which will bring cases into the court that otherwise would not have required a court file or intervention (although this influx may be partially offset by filing of fewer 781 petitions for diversion cases overall). All of these impacts are as a result of the legislative changes and are necessary to make the rules and forms legally accurate. In addition, because the informational forms are available in other languages, there will be costs to translate the revised forms.

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?
- Is it helpful to probation departments to approve optional form JV-597 for their use, or would it be preferable to rely on local probation notice forms?
- Should proposed new rule 5.850 to implement section 786.5 cover the probation notice requirements or focus only on court procedures to review a determination that a diversion program was not satisfactorily completed?
- Is it preferable to require the probation department to file a request for review of denial of sealing under section 786.5, or should that burden be on the child?
- Is it necessary to appoint counsel for a child who seeks to challenge the denial of sealing under section 786.5, or should appointment be at the discretion of the court?
- Do the changes to rule 5.552 effectively implement newly enacted section 827.12?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rules 5.552, 5.840, and 5.850, at pages 7–10
2. Proposed forms JV-590, JV-595-INFO, JV-596, JV-596-INFO, JV-597, and JV-598, at pages 11–21
3. Assembly Bill 529,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB529
4. Senate Bill 312,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB312
5. Senate Bill 462
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB462

Rule 5.850 of the California Rules of Court is adopted and rules 5.552 and 5.840 are amended, effective September 1, 2018, to read:

1 **Rule 5.552. Confidentiality of records (§§ 827, 827.12, 828)**

2
3 (a) * * *

4
5 (b) **Petition**

6
7 Juvenile case files may ~~only~~ be obtained or inspected only in accordance with
8 sections 827, 827.12, and 828. They may not be obtained or inspected by civil or
9 criminal subpoena. With the exception of those persons permitted to inspect
10 juvenile case files without court authorization under sections 827 and 828, and the
11 specific requirements for accessing juvenile case files provided in section
12 827.12(a)(1), every person or agency seeking to inspect or obtain juvenile case files
13 must petition the court for authorization using *Request for Disclosure of Juvenile*
14 *Case File* (form JV-570). A chief probation officer seeking juvenile court
15 authorization to access and provide data from case files in the possession of the
16 probation department under section 827.12(a)(2) must comply with the
17 requirements of subdivision (e) of this rule.

18
19 (1)–(2) * * *

20
21 (c)–(d) * * *

22
23 (e) **Release of case file information for research (§ 827.12(a)(2))**

24
25 The court may authorize a chief probation officer to access and provide data
26 contained in juvenile delinquency case files and related juvenile records in the
27 possession of the probation department for the purpose of data sharing or
28 conducting or facilitating research on juvenile justice populations, practices,
29 policies, or trends if the court finds the following:

30
31 (1) The research, evaluation, or study includes a sound method for the
32 appropriate protection of the confidentiality of an individual whose juvenile
33 delinquency case file is accessed for this purpose. In considering whether a
34 method is sound, the court must have information on:

35
36 (A) The names and qualifications of any nonprobation personnel who will
37 have access to personally identifying information as defined in Civil
38 Code section 1798.79.8(b);

39
40 (B) Procedures to mask personally identifying information that is shared
41 electronically; and
42

1 (C) Data security protocols to ensure that access to the information is
2 limited to those people authorized by the court.

3
4 (2) No further release, dissemination, or publication of personally identifying
5 information by the probation department or a program evaluator, researcher,
6 or research organization that is retained by the probation department will take
7 place for research or evaluation purposes.

8
9 (3) If the information is being released for human subject research as defined in
10 45 Code of Federal Regulations part 46, the probation department has
11 provided notice and an opportunity to respond to the office of the public
12 defender, and is prepared to enter into a formal agreement with the entity or
13 entities conducting the research that specifies what may and may not be done
14 with the information disclosed.

15
16 (4) The disclosure requirements of section 10850 are met if any dependency
17 information in a delinquency file may be disclosed.

18
19 (5) A date for destruction of records containing personally identifying
20 information in the possession of nonprobation department personnel has been
21 set to prevent inappropriate disclosure of the records.

22
23 **(ef) Reports of law enforcement agencies (§ 828)**

24
25 **(fg) Other applicable statutes**

26
27
28 **Rule 5.840. Dismissal of petition and sealing of records (§ 786)**

29
30 **(a) * * ***

31
32 **(b) Dismissal of petition**

33
34 If the court finds that a minor subject to this rule has satisfactorily completed his or
35 her informal or formal probation supervision, the court must order the petition
36 dismissed. The court must not dismiss a petition if it was sustained based on the
37 commission of an offense listed in subdivision (b) of section 707 when the minor
38 was 14 or older unless the finding on that offense has been dismissed or was
39 reduced to a misdemeanor or an offense not listed in subdivision (b) of section 707.
40 The court may also dismiss prior petitions filed or sustained against the minor if
41 they appear to the satisfaction of the court to meet the sealing and dismissal criteria
42 in section 786. An unfulfilled order, condition, or restitution or an unpaid
43 restitution fee must not be deemed to constitute unsatisfactory completion of

1 probation supervision. The court may not extend the period of supervision or
2 probation solely for the purpose of deferring or delaying eligibility for dismissal
3 and sealing under section 786.
4

5 **(c) Sealing of records**

6
7 For any petition dismissed by the court under section 786, including any petition
8 dismissed before the child is adjudicated a ward of the court, the court must also
9 order sealed all records in the custody of the court, law enforcement agencies, the
10 probation department, and the Department of Justice pertaining to those dismissed
11 petition(s) using form JV-596, *Dismissal and Sealing of Records—Welfare and*
12 *Institutions Code Section 786*, or a similar form. The court may also seal records
13 pertaining to these cases in the custody of other public agencies upon a request by
14 an individual who is eligible to have records sealed under section 786, if the court
15 determines that sealing the additional record(s) will promote the successful reentry
16 and rehabilitation of the individual. The prosecuting attorney, probation officer, and
17 court must have access to these records as specifically provided in section 786.
18 Access to the records for research purposes must be provided as required in section
19 787.
20

21 **(d)–(f) * * ***
22
23

24 **Rule 5.850 Sealing of records by probation in diversion cases (§ 786.5)**

25
26 **(a) Applicability**

27
28 This rule states the procedures to seal the records of persons who are subject to
29 section 786.5.
30

31 **(b) Sealing of records**

32
33 Upon satisfactory completion of a program of diversion or supervision under a
34 referral by the probation officer or the prosecutor in lieu of filing a petition to
35 adjudge the person a ward of the juvenile court, including a program of informal
36 supervision under section 654, the probation department must seal the arrest and
37 other records in its custody relating to the arrest or referral and participation in the
38 program. The probation department must also notify the public or private agency
39 operating the diversion program to which the person has been referred to seal any
40 records in its custody relating to the arrest or referral and participation in the
41 program, and the operator of the program must do so promptly.
42

43 **(c) Notice to participant**

1
2 The probation department must notify the person in writing that his or her records
3 have been sealed based on satisfactory completion of the program. If the record is
4 not sealed, the probation department must notify the person in writing of the
5 reason or reasons for not sealing the record and provide the person with a copy of
6 the *Petition to Review Denial of Diversion Program Sealing of Records* (form
7 JV-598) or similar local form to allow the person to seek court review of the
8 probation department's determination. The notice to the participant concerning
9 sealing and satisfactory completion must be provided within 60 days of completion
10 of the program or 60 days from a determination that the program has not been
11 completed by the person.

12
13 **(d) Review of unsatisfactory completion of program by the juvenile court**

14
15 A person who receives notice from the probation department that he or she has not
16 satisfactorily completed the program and that his or her records have not been
17 sealed may submit a request to that same probation department for the court to
18 review that determination, and the probation department must file that petition with
19 the court for a hearing to review whether he or she has met the satisfactory
20 completion requirement and is eligible for record sealing by the probation
21 department. This petition must be filed with the juvenile court in the county that
22 issued the notice within 60 days of the petitioner's receiving the notice from the
23 probation department and must include a copy of that notice. The clerk of the court
24 must set the matter for hearing and notify the petitioner and the probation
25 department of the date of the hearing. If the petitioner is not represented by counsel,
26 the clerk must provide a copy of the petition to the probation department at the time
27 notice of the hearing is provided. If the court finds after the hearing that the
28 petitioner is eligible for sealing of the records under section 786.5, it must order the
29 probation department to promptly comply with the sealing and notice requirements
30 of this rule.

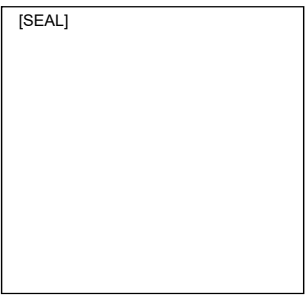
ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CASE NAME: _____	
ORDER TO SEAL JUVENILE RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 781	CASE NUMBER: _____

1. Name of the petitioner (*specify aliases*): _____ Date of birth: _____
2. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (*name*): _____
3. The court has read and considered the petition and the report of the probation officer.
4. The petition is
 a. granted. b. denied.

THE COURT ORDERS

5. a. The sealing of petitioner's juvenile records in the custody of this court and the courts, agencies, and officials named below (*designate county*):
 See attachment (5) for additional names.
 b. The destruction of all sealed records according to Welfare and Institutions Code section 781(d).
 c. Date court records must be destroyed: _____ Or court records must be retained pursuant to section 781(d).
 d. Date all other records must be destroyed: _____
6. Petitioner is relieved from the registration requirements under Penal Code section 290, and the registration information in the custody of the Department of Justice and other agencies and officials listed above shall be destroyed.
7. The clerk will send a certified copy of this order to the clerk in each county in which a record is ordered sealed and a copy to each agency and official listed above.

Date: _____ _____
 JUDICIAL OFFICER OF THE SUPERIOR COURT



CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: _____ Clerk, by _____, Deputy

JV-595-INFO How to Ask the Court to Seal Your Records

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools, or other public agencies about what you did. If you make those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated, you do not need to ask for them to be sealed.

There are now two ways that records may be sealed in California. As of January 1, 2015, courts or probation departments are required to seal records in certain cases when the court or probation department finds that probation (formal, informal, or diversion) is satisfactorily completed or if your case was otherwise dismissed after the petition was filed. If the court or probation sealed all of your records at the end of your case, you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that sealing order.

For more information about when the court seals your records at termination of probation, see form **JV-596-INFO**.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer **or the juvenile court clerk** in the county where you had a case or contact.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order. You qualify if:

- You are at least **18** or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if you owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

When do you *not* qualify to seal your records?

- If you were convicted as an adult of an offense involving moral turpitude, such as:
 - A sex or serious drug crime;
 - Murder or other violent crime; or
 - Forgery, welfare fraud, or other crime of dishonesty.
- If, when you were 14 or older, the court found that you committed a sex offense listed in Welfare and Institutions Code section 707(b) for which you must register under Penal Code section 290.008 because you were paroled from the Department of Juvenile facilities.

If you are unsure if you are eligible, ask your attorney.

Who can see your sealed records?

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- A prosecuting attorney may see your records that were sealed for an offense listed under section 707(b) in a later proceeding for the reasons listed in Welfare and Institutions Code section 781(d).
- If your sealed record was for a 707(b) offense when you were 14 or older, the prosecutor, probation, and the court may unseal your records if you are charged with a subsequent felony.
- You can request the court to unseal your records if you want to have access to them or allow someone else to inspect them.

Can employers see your records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask of you.



How do you ask to have your records sealed?

- ① You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records*, at www.courts.ca.gov/forms.htm, can be used, or your court may have a local form.
- ② When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation, and attach it to your petition.
- ③ If you think there are agencies that might have records on you that were never sent to probation, you need to include them, or the court will not know to seal them.

If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See <http://oag.ca.gov/fingerprints/security> for more information.

- ④ Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.) Note: A small number of counties require you to take your form to the court. More information on each county's specific requirements is available at www.courts.ca.gov/28120.htm.
- ⑤ If you are currently 26 years of age or older, you may have to pay a fee. If you cannot afford the fee, ask the probation department or the court about a fee waiver.
- ⑥ Probation will review your form and submit it to the court within 90 days, or 180 days if you have records in two or more counties.
- ⑦ The court will review your application. The court may decide right away to seal your juvenile records. Or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date and time of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.

- ⑧ If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your application.
Important! The court can seal only records it knows about. Make sure you list all records from all counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition, and you will need to file a petition in that county to seal those records.
- ⑨ If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date. **If the sealed records are for a 707(b) offense when you were 14 or older, the court will not destroy those records.**
- ⑩ The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you are seeking to enlist in the military or apply for a job requiring you to provide information about your juvenile records, seek legal advice about this issue.

Questions?

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information about sealing your records can be found at www.courts.ca.gov/28120.htm.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL 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: _____	
CASE NAME: _____	
DISMISSAL AND SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786	CASE NUMBER: _____

1. Name of subject child: _____ Date of birth: _____
2. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (name): _____
3. The court has read and considered the report of the probation officer and any other evidence presented or information provided.

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

4. The child has satisfactorily completed a program of informal supervision, probation under section 725, or a term of probation, **or** the petition was dismissed before wardship.
5. The petition(s) filed on (date(s)): _____ is/are dismissed.
6. The child's juvenile records related to the arrest(s) on (date(s)): _____ regarding an alleged violation of (specify offense(s)): _____ in the custody of this court and of the courts, agencies, and officials listed below are ordered sealed:
 Probation Dept. (specify county): _____
 California Dept. of Justice
 Law enforcement agency (specify all): _____
 Law enforcement case number(s): _____
7. The court finds that sealing the following additional public agency records will promote the successful reentry and rehabilitation of the subject child and orders the records in their custody relating to petitions and arrests listed in items 5 and 6 sealed:
 District Attorney (specify county): _____
 School:
 Department of Motor Vehicles:
 Other (specify): _____

 Attachment. Number of pages attached: _____

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

8. All records pertaining to the dismissed petition are to be destroyed on the dates stated in this item, and the arrest is deemed never to have occurred except that the prosecuting attorney, probation officer, child welfare agency, and court may access these records for the specific purposes stated in Welfare and Institutions Code section 786.

- a. Date court records must be destroyed:
- b. Date all other records must be destroyed:

9. The clerk shall send a certified copy of this order to the clerk in each county in which a record is ordered sealed and one copy each to the child, the child's attorney, and the agencies and officials listed in items 6 and 7.

Date:



JUDICIAL OFFICER OF THE SUPERIOR COURT

CLERK'S CERTIFICATE

[SEAL]

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by _____, Deputy

In many cases, the court or probation department will seal your juvenile records if you satisfactorily complete probation (formal or informal supervision or a diversion program).

If your case is terminated by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal, informal, or diversion), or if your case was otherwise dismissed after the petition was filed, in many cases, the court or probation will have dismissed the petition(s) and sealed your records. If the court or probation sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court or probation finds you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (see form **JV-595-INFO** for information about asking the court to seal your records).

The court will not seal your records at the end of your case if you were found to have committed an offense listed in Welfare and Institutions Code section 707(b) (a violent offenses such as murder, rape, or kidnapping, and also some offense involving drugs or weapons) when you were 14 or older and it was not dismissed or reduced to a misdemeanor or a lesser offense not listed in 707(b), but except for certain sex offenses, you can ask the court to seal your records at age 18 (or age 21 if you were committed to the Division of Juvenile Facilities).

How will the court decide if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation and have not been found to have committed any further crimes (felonies or any misdemeanors for crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines and fees must still be paid.

Even if your records are sealed, you must still pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and earlier cases, if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney's office) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see your sealed records?

- If your records were sealed by the court at termination, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal supervision program.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you were in but cannot use that information to keep you in juvenile hall or to punish you.
- If the juvenile court finds you have committed a felony, your sealed records can be viewed to decide what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to decide if transfer is appropriate.
- If you are in foster care, child welfare can look at your records to determine where you should live and what services you need.
- If your case was dismissed before you became a ward, the prosecutor can look at your records for six months after the dismissal in order to refile the dismissed petition based on new information or evidence.
- If you want to see your records or allow someone else to see them, you can ask the court to unseal them.

NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed and you do not need to ask the court to seal them again.

Do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you want to enlist in the military or apply for a job that asks you to provide information about your juvenile records, seek legal advice about this issue.

Can employers see your records if they are not sealed?

Juvenile records are not allowed to be disclosed to most employers, and employers are not allowed to ask about or consider your juvenile history in most cases. There are exceptions to this rule if you are applying to be a peace officer or to work in health settings. Also, federal employers may still have access to your juvenile history. You should seek legal advice if you have questions of what an employer can ask of you.

DIVERSION PROGRAM, PROBATION DEPARTMENT NOTICE ON SEALING OF RECORDS—WELFARE AND INSTITUTIONS CODE SECTION 786.5	Probation Dept., County of: DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL
CHILD'S NAME:	

1. Name of subject child: _____ Date of birth: _____
2. a. Date of completion of diversion program: _____ or date of noncompletion of diversion program: _____
- b. Probation officer (*name*): _____

3. RECORDS ARE SEALED

The subject child has successfully completed a program of diversion or supervision after referral by the probation officer or prosecutor in lieu of the filing of a petition to adjudge the child a ward of the juvenile court. All records relating to the arrest or referral and participation in the program for an alleged violation of (specify offense(s)): _____ in the department's custody have been sealed, and the arrest is deemed never to have occurred except that a probation department responsible for the supervision of a person may access this record for the purpose of complying with section 654.3(e).

The probation department hereby notifies the following public or private agencies operating the diversion program to which the child was referred that it must promptly seal any records relating to the juvenile's arrest or referral or participation in the program in its custody:

(Specify agency): _____
 (Specify agency): _____

4. PROGRAM COMPLETION IS UNSATISFACTORY—RECORDS ARE NOT SEALED

The probation department has determined that the sealing is inappropriate because the program was not satisfactorily completed for the reasons stated below and has therefore not sealed the child's records. A copy of form JV-598, *Petition to Review Denial of Diversion Program Sealing of Records*, has been provided to the child to allow the child to seek juvenile court review of this determination.

CHILD'S NAME:	Probation Dept., County of:
---------------	-----------------------------

- 5. The probation department shall send a copy of this order to the child, the child's attorney, and the agencies and officials listed in item 3.

Date:


PROBATION OFFICER

CHILD'S NAME	CASE NUMBER:
--------------	--------------

3. ATTACHMENT OF PROBATION NOTICE

I have attached a copy of the notice from probation determining that I did not complete my program satisfactorily (form JV-597 or similar local form) to this form.

4. REQUEST FOR INTERPRETER

If there is a hearing, I will need a *(language)* interpreter.

Date: ▶ _____
SIGNATURE of PETITIONERr

INSTRUCTIONS—AFTER YOU COMPLETE THIS FORM

Give this form and the attached copy of the notice from probation to the probation officer or department that gave you the notice. The probation department will file it with the court and tell you when to come to court for your hearing. If you do not have an attorney, the court will appoint one for you before or at the hearing.

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal *(include amend/revise/adopt/approve + form/rule numbers):*

Juvenile Law: Presumptive Transfer of Specialty Mental Health Services

Committee or other entity submitting the proposal:

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Staff contact (name, phone and e-mail): 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:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: As directed by the Judicial Council, review legislation identified by Governmental Affairs that may have an impact on family and juvenile law issues within the advisory committee's purview. The committee will review the legislation below, and any other identified legislation, and propose rules and forms as may be appropriate for the council's consideration.

a) AB 1299 (Ridley-Thomas) Medi-Cal: specialty mental health services: foster children Ch.603, Statutes of 2016 Requires that the responsibility under Medi-Cal for providing specialty mental health services must be transferred within forty-eight hours of the child being moved to a new county. In certain situations, this presumptive transfer can be waived.

If requesting July 1 or out of cycle, explain:

Presumptive transfer under AB 1299 went into effect on July 1, 2017. The departments responsible for the majority of implementation efforts requested delayed court procedures while the underlying process was developed. Now that a process is known, court procedures are necessary.

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

JUDICIAL COUNCIL OF CALIFORNIA

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

INVITATION TO COMMENT

W18-07

Title	Action Requested
Juvenile Law: Presumptive Transfer of Specialty Mental Health Services	Review and submit comments by February 9, 2018.
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212	September 1, 2018
	Contact
	Daniel Richardson, 415-865-7619 Daniel.richardson@jud.ca.gov
Proposed by	
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes the adoption of two California Rules of Court and four juvenile law (JV) forms, including an information sheet. These rules and forms implement a procedural framework for a juvenile court review hearing created by recent legislation involving foster children's access to specialty mental health services under federal Early and Periodic Screening, Diagnosis and Treatment services. When a foster child or nonminor is moved to a different county, the responsibility for providing and arranging for specialty mental health services is presumptively transferred to the new county unless certain exceptions apply. Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603), provides certain individuals the right to request a hearing to challenge a placing agency's determination regarding that transfer. The proposed rules and forms are intended to provide procedural clarity for this unique hearing. The committee also recommends renumbering a JV form to keep the JV forms related to this proposal in sequential order with forms related to the administration of a foster child's psychotropic medications.

The Proposal

The proposal is being made in response to Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603), which created specific procedures related to the presumptive transfer of the responsibility for providing specialty mental health services (SMHS) from the child's or nonminor's county of

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

original jurisdiction to the county of residence. SMHS jurisdiction is to be presumptively transferred to the county of residence, unless an exception listed under Welfare and Institutions Code section 14717.1(d)(5)(A)-(D) applies.¹ The placing agency is responsible for determining whether an exception to presumptive transfer applies. Certain individuals may challenge this determination and petition the juvenile court for judicial review of the placing agency’s decision. The procedures related to this judicial review are the focus of this proposal, and the new proposed rules of court and new JV forms.

The committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* (form JV-215) from JV-215 to JV-212. Doing so will ensure that the forms related to this proposal will be in sequential order with forms related to the administration of a foster child’s psychotropic medications. As both forms relate to mental health treatment, the committee considered it consistent to keep them in sequential order.

Presumptive transfer, exceptions, and review hearing

Assembly Bill 1299 created section 14717.1 to address lengthy delays or denials in accessing mental health services for children placed in an “out-of-county”² placement. To overcome barriers to care when the child or nonminor³ changes placements, SMHS jurisdiction must presumptively transfer from the county of original jurisdiction to the county of residence unless an exception applies.⁴ Section 14717.1(d)(5) provides for four possible exceptions:

- It is determined that the transfer would disrupt continuity of care or delay access to services provided to the foster child.
- It is determined that the transfer would interfere with family reunification efforts documented in the individual case plan.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court.

² A placement in a county other than the one in which the child originally entered foster care (i.e., the “county of original jurisdiction”).

³ The committee elected to specify that the rule applies to nonminors as well as children. Section 14717.1 refers to foster children in most places, but (b)(2)(A) and (c)(2) mention foster youth. Federal Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), the services that are the subject of this proposal, are available to Medicaid beneficiaries under the age of 21 (42 U.S.C. §1396(d)). The committee therefore elected to include nonminors in the rule.

⁴ Under section 14717.1, presumptive transfer refers to the transfer of SMHS jurisdiction from the county of *original jurisdiction*. Therefore, any determination of an exception to presumptive transfer will apply to maintaining SMHS jurisdiction in the county of original jurisdiction. This includes the situation where a child or nonminor moves from one out-of-county placement to another out-of-county placement. Section 14717.1(c) defines presumptive transfer as “absent any exceptions as established pursuant to this section, responsibility for providing or arranging for specialty mental health services shall promptly transfer *from the county of original jurisdiction* to the county in which the foster child resides...” (italics added). Likewise, section 14717.1(d)(1) states that “presumptive transfer may be waived and the responsibility for the provision of specialty mental health services *shall remain in the county of original jurisdiction* if any of the exceptions described in paragraph (5) apply.” (italics added). All County Letter 17-77 also defines presumptive transfer as the “prompt transfer of the responsibility for the provision of, or arranging and payment for specialty mental health services *from the county of original jurisdiction* to the county in which the foster child resides.” (p. 2).

- The foster child’s placement in a county other than the county of original jurisdiction is expected to last less than six months.
- The foster child’s residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

The placing agency, in consultation with the Child and Family Team (CFT)⁵, is responsible for determining whether an exception under section 14717.1(d)(5)(A)–(D) applies. Once this determination is made, the placing agency is responsible for informing the CFT and parties to the case of the placing agency’s determination.

After being informed of the placing agency’s determination, the foster child or nonminor, the person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor, the county probation agency or the child welfare services agency with responsibility for the care and placement of the child or nonminor, or any other interested party who owes a legal duty to the child involving the child’s health or welfare, as defined by the department,⁶ may request a waiver of presumptive transfer.⁷ The placing agency must make a determination on the request to waive presumptive transfer based on an exception under section 14717.1(d)(5)(A–D).

The individual who requested the waiver, or any party to the case, may request a judicial review of the placing agency’s determination prior to the county’s determination becoming final. This would include the situation where the placing agency’s initial determination was that an exception to presumptive transfer applies and no waiver request was made. Under section 14717.1(d)(4), the court may set the matter for hearing and confirm or deny the transfer of jurisdiction or application of an exception based on the best interests of the child.

Under section 14717.1, the Department of Health Care Services (Department) and the California Department of Social Services (CDSS) are required to provide policy guidance on the implementation of AB 1299.⁸ All County Letter 17-77 (ACL)⁹ was published in July 2017. It provides a framework for the presumptive transfer process and for the responsibilities of the placing agency during the presumptive transfer process. It also includes timelines and notice requirements that the placing agency is required to follow.

⁵ The Child and Family Team means a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his or her family, and to help achieve positive outcomes for safety, permanency, and well-being. Section 16501(a)(4).

⁶ Department of Health Care Services.

⁷ Section 14717.1(d)(2).

⁸ Section 14717.1(g) requires that the department and CDSS adopt regulations to implement section 14717.1 by July 1, 2019. Section 14717.1(d)(2) further requires that a request for waiver be in a manner established by the department. Section 14717.1(d)(3) further requires that the department define who may request a waiver for those who owe a legal duty to the child.

⁹ <http://www.cdss.ca.gov/Portals/9/ACL/2017/17-77.pdf?ver=2017-07-17-110909-783>.

Under section 141717.1(g), the department and CDSS are required to adopt regulations to implement section 14717.1 by July 1, 2019. The department and CDSS may implement and administer the changes made by AB 1299 through all-county letters, information notices, or similar written instructions until regulations are adopted. It is anticipated that a new all-county letter or information notice will be published in the near future, which will include updates on (1) the timeline of the presumptive transfer process, and (2) who may request a waiver of presumptive transfer (discussed below).

Proposed rules of court and JV forms

This proposal is directed at providing procedural clarity for the court and parties on hearings related to the waiver of presumptive transfer. The proposed rules 5.647 and 5.648 address the timelines, notice requirements, and the request for a hearing to review the presumptive transfer determination and the application of an exception. Rule 5.647 will apply to any placement change to an out-of-county placement after the rule becomes effective September 1, 2018. Rule 5.648 will apply to those children and nonminors who are placed out-of-county as of December 31, 2017 and continue to reside in an out-of-county placement. The rules mirror each other with some exceptions (discussed below). The various elements of the proposed rules are highlighted below.

Timelines

Proposed rule 5.647 provides timelines for a timely hearing on the issue of presumptive transfer. As section 14717.1(d)(4) states, a hearing may be requested “prior to the county’s determination becoming final.” The committee wanted to ensure that the county’s determination does not finalize during the period when a request for a hearing is made and prior to final decision by the court if a hearing is granted.

The rule therefore reflects that the individual who is requesting a hearing will have three court days from the date of being informed of the placing agency’s determination on the request for a waiver of presumptive transfer to request a hearing. The ACL states that the request for a hearing should be made before the placing agency’s determination “becomes final” (page 9). Without indicating when the determination becomes final, the ACL on page 7 states that the placing agency shall notify the Mental Health Plan where the child resides within three business days of the presumptive transfer decision and ensure that the foster child’s residence address is updated in the Medi-Cal eligibility data system within two business days of making the determination. The presumptive transfer should therefore proceed within three days of the placing agency providing notice of their determination on the waiver of presumptive transfer.

The department and CDSS were contacted on this issue and have indicated that the timeline to request a hearing may be amended in a future All County Letter or All County Information Notice (ACIN). Staff from the department and CDSS indicated that the individual requesting a hearing be given *seven days* after being informed of the placing agency’s determination on the request for waiver of presumptive transfer to request a hearing. It is expected that the new seven-day timeline will be published in a new information notice that is currently under construction,

and may be published during the comment period. The committee will monitor this issue and seek comment on whether the timeline should be adjusted to match any changes to the administrative process.

In order to avoid lengthy delays, the rule further proposes that a hearing be set within five court days of the request for hearing being filed. The committee also elected to indicate in the rule that the hearing should be resolved within five days of the date the initial hearing is held unless there is a finding that good cause requires a continuance. AB 1299 was intended to ensure prompt transfer of the responsibility of arranging and providing for a child or nonminor's specialty mental health services. A limit on how long a court may take to resolve the hearing on presumptive transfer would ensure the hearing process does not create a lengthy delay of a resolution of presumptive transfer determination, while allowing for flexibility where good cause is found.

Notice

The proposed rule 5.647 would require the clerk to provide notice of the hearing if a hearing is granted by the court. Certain individuals who can request a hearing may not be in a position to provide effective notice. While an attorney or social worker may be well-versed on how to provide notice, others—such as a parent, foster child, or youth, or the person responsible for making mental health decisions on behalf of the child—may not be.

To provide clarity and consistency, the committee elected to include a specific age for when notice is required to a child of a description of the presumptive transfer process and how to request a waiver of presumptive transfer. A minor can consent to mental health treatment at the age of 12.¹⁰ At the age of 10, a child is to be provided notice of their right to attend court.¹¹ A child of any age who is the subject of a juvenile court hearing is entitled to be present at a hearing.¹² The committee is seeking input on whether age 10 or age 12, or some other age, is most appropriate.

The committee also elected to allow the person to request a waiver within two days of being provided notice as required in subdivision (d)(1)(C) of the proposed rule. This is to protect against those situations where the placing agency does not give timely notice of the presumptive transfer determination. Likewise, the request for a hearing is to be made within three days of being informed of the placing agency's determination of the request for the application of a waiver of presumptive transfer. These timelines would provide a layer of protection for the right to request a judicial review against not being timely informed of the placing agency's notice requirements under the rule.

¹⁰ Fam. Code, § 6924.

¹¹ Section 349.

¹² *Id.*

Finally, to ensure that the administrative process of presumptive transfer does not take place during the hearing, subdivision (b)(4) requires that the person requesting the hearing also inform the placing agency within three days of being informed of the placing agency's determination by providing the placing agency with a copy of the JV-214 form requesting a hearing. This will ensure that the placing agency will be aware of the request for a hearing and should not proceed with presumptive transfer until the court rules on the request or makes a ruling on the request following a hearing.

Report from the social worker or probation officer

Proposed rule 5.647 requires that the social worker or probation officer prepare a report for the hearing if one is granted. Subdivision (d) of the proposed rule provides a list of items that must be discussed or documented in the report. These items include a discussion of the placing agency's rationale for their determination on the request for waiver and the agency's responsibilities during the presumptive transfer process as found in the ACL.¹³ These responsibilities include:

- Notice of a description of presumptive waiver and exceptions and how to request a waiver of presumptive transfer;
- Informing certain individuals and the Child Family Team (CFT) of the placing agency's initial determination on presumptive transfer;
- Consulting the CFT and other professionals as appropriate on the presumptive transfer determination; and
- Notice to the individual who requested waiver and any party to the case of the placing agency's determination of the application of a waiver.

The committee elected to include these requirements to help ensure that the court was actively engaged in ensuring that the placing agency meets the procedural requirements related to presumptive transfer. This will help ensure that a well-informed, team-based decision is made on presumptive transfer and that those who are entitled to challenge the placing agency's determination are given notice—and the requisite time—to make their objections and request a hearing.

Who may request a judicial review hearing

The committee elected to include in proposed rule 5.647 the list of both those who may request a waiver and those individuals who are entitled to request a hearing. Section 14717.1(d)(4) states that the individual who requested the exception or any other party to the case who disagrees with

¹³ In addition, section 14717.1(d)(7) requires that a request for waiver, the exceptions claimed as the basis for the request, a determination whether a waiver is determined to be appropriate under section 14717.1, and any other objections to the determination shall be documented in the foster child's case plan pursuant to section 16501.1. The case plan must also document that a waiver processed based on an exception shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services (§ 14717.1(d)(6)).

the determination made by the county agency, may request judicial review prior to the county's determination becoming final. Section 14717.1(d)(2) lists those who may request a waiver in a manner established by the department as:

- The foster child;
- The person or agency that is responsible for making mental health care decisions on behalf of the foster child;
- The county probation agency or the child welfare services agency with responsibility for the care and placement of the child; or
- Any other interested party who owes a legal duty to the child involving the child's health or welfare, as defined by the department.

As to this last category, the department currently limits this group to the child's attorney.¹⁴ The committee requested that the department consider also adding the child's legal guardian, CASA volunteer, and tribe to the list of those who can request a waiver and thus a hearing. Staff to the department agreed to include these additional individuals, and it is expected that these individuals will be included as those that may request a waiver of presumptive transfer in a new information notice that is currently under construction.

Ruling on presumptive transfer

Section 14717.1(d)(4) requires that if the court sets the matter for hearing, it may confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child. This is set forth in subdivision (e)(2) of proposed rule 5.647 and proposed form JV-215 as item 10. Unless otherwise specified, the evidentiary standard would be the preponderance of the evidence.

Under section 14717(d)(6), a waiver based on an exception to a presumptive transfer shall be contingent upon the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into a contract, within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child. The court will have to make this determination if it determines that an exception to waiver applies. Information related to the county of original jurisdiction's ability to contract with a specialty mental health care provider is required by the rule to be in the report that is provided for the hearing. This finding is also included in the proposed form JV-215.

Children and nonminors who reside out of county as of December 31, 2017

The committee elected to address those children and nonminors who reside in an out-of-county placement as of December 31, 2017, in a separate rule: proposed rule 5.648, which would sunset on January 1, 2020.

¹⁴ All County Letter 17-77, p. 5.

Section 14717.1(c)(2) addresses the presumptive transfer of SMHS jurisdiction for all foster children who were placed outside their county of original jurisdiction prior to July 1, 2017, and continue to reside out of county as of December 31, 2017. For these children, the SMHS jurisdiction is to transfer either if the foster child requests the transfer (which begins the transfer process), or if the foster child continues to reside outside the county of original jurisdiction after December 31, 2017 (§ 14717.1(c)(2)). SMHS jurisdiction shall transfer no later than the child's first regularly scheduled status review hearing, conducted pursuant to section 366 in the 2018 calendar year unless an exception to waiver as described under section 14717.1(d)(5) applies.

The committee considered whether to address this category of youth in this proposal since the proposed rule will become effective *after* the presumptive transfer determination should be made.¹⁵ The committee elected however to include these youth in a separate rule that will sunset. The committee reasoned that this was necessary because it is feasible that there will be cases in which the presumptive transfer determination will not be made prior to the first section 366 hearing of 2018.

The requirements for the presumptive transfer process for these children and nonminors mostly mirror the other rule in this proposal, rule 5.647; differences between the two rules are highlighted in gray in the attached rule 5.648. Under section 14717.1 and the ACL, the presumptive transfer process is to begin no later than 10 days prior to the child's or nonminor's first section 366 hearing in 2018.

JV forms

Four JV forms are being proposed in this proposal:

Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services (form JV-214): This form is the application for a hearing to review the placing agency's determination on the presumptive transfer determination. It includes the requisite information needed by the court to determine whether or not to grant a hearing. This would include the placing agency's presumptive transfer determination and why the person requesting a hearing believes that it would be in the child's or nonminor's best interests to depart from the placing agency's determination. It would also include the applicant's contact information.

Order on the Request and Notice of Hearing to Review Presumptive Transfer of the Responsibility for Specialty Mental Health Services (form JV-214(A)): This form provides for

¹⁵ If approved, the rule would be effective September 1, 2018. If the statute and section 366 review timelines are followed correctly, the child or nonminor will already have had a determination on presumptive transfer prior to the rule becoming effective on September 1, 2018. Section 366 review hearings are required to be held every six months. All children or nonminors in foster care should have had a section 366 review in the 2018 calendar year before the rule is effective. However, the committee believes that it is highly probable that some foster children or youth will not have a timely section 366 hearing or a timely presumptive transfer determination by this time.

the court's order granting or denying a hearing. In addition, it can also be used as the notice form by the clerk when a hearing is granted.

Instruction Sheet for Requesting the Waiver of Transfer of Responsibility for Arranging and Providing of Specialty Mental Health Services (form JV-214-INFO): The committee elected to include an information sheet to accompany the JV form requesting a hearing on presumptive transfer. An information sheet has been created and is attached that gives an explanation of presumptive transfer and the exceptions, and how to request a hearing.

Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services (form JV-215): This form would be used for the court's order on the presumptive transfer individualized exception determination if a hearing is granted. This form would provide the court with the requisite orders needed to confirm or deny the placing agency's presumptive transfer individualized exception determination. Under section 14717.1(d)(4), the court may confirm or deny the transfer of jurisdiction or application of an exception based on the best interests of the child.

The committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* (form JV-215) from JV-215 to JV-212. Doing so will ensure that the forms related to this proposal will be in sequential order with forms related to the administration of a foster child's psychotropic medications. As both relate to mental health treatment, the committee considered it consistent to keep the forms in sequential order.

Alternatives Considered

The committee considered not creating the rules and JV forms related to this proposal but elected to proceed with the proposal for the reasons stated above. In addition, the committee felt the proposal was necessary to clarify the procedural requirements related to the hearing under the proposal. Although the hearings are anticipated to be rare, in the event that the hearings do occur, the committee believed that procedural clarity was necessary through the creation of the proposed rules and forms.

The committee also elected to include in the rule some of the requirements listed in section 14717.1. This includes the requirement that the placing agency consult with the individuals listed in section 14717.1(d)(3) on the presumptive transfer decision. The committee wanted the court to review these responsibilities through the report required by the rules to ensure that the placing agency is meeting these requirements.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that there will be additional costs to courts when a hearing under the rule is granted, although this has more to do with the implementation of AB 1299 than with the proposal. The proposal does require the clerk to provide notice of the hearing date, because clerks are more likely to be able to provide effective and correct notice.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency's determination on the request for waiver will be extended from three court days to seven court days.
- What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?
- Should any other individuals be included as those that may petition the court for review of the placing agency's presumptive transfer individualized exception determination?
- Should the rule include the requirements of the placing agency's responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?
- Should the rule include factors that the court may consider when making its determination of the child's best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?
- Should the rule require that the social worker or placing agency prepare a report?
- Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?
- Is there any concern with subdivision (c)(2) reflecting a timeline of seven *calendar* days as opposed to seven *court* days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.
- Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 5.647 and 5.648, at pages 12–21
2. Forms JV-214, JV-214(A), JV-214-INFO, and JV-215, at pages 22–28

1 Title 5. Family and Juvenile Rules

2
3 Chapter 10. Medication, Mental Health, and Education

4
5 Rule 5.647. Medi-Cal: Presumptive Transfer of Specialty Mental Health Services

6
7 (a) Applicability

8
9 This rule applies to the court’s review under Welfare and Institutions Code section
10 14717.1 of the presumptive transfer of the responsibility to arrange and provide for
11 the child or nonminor’s specialty mental health services to the child or nonminor’s
12 county of residence. The rule applies to presumptive transfer following any change
13 of placement within California for a child or nonminor to a placement outside the
14 county of original jurisdiction, including the initial placement. Nothing in this rule
15 relieves the placing agency of the reporting requirements and duties under section
16 14717.1 when no hearing under this rule is held.

17
18 (b) Request for the waiver of presumptive transfer (§ 14717.1)

- 19
20 (1) The following individuals may request that the placing agency consider the
21 application of a waiver to the presumptive transfer of the responsibility for
22 providing specialty mental health services to the child or nonminor’s county
23 of residence:
24
25 (A) The foster child or nonminor;
26
27 (B) The person or agency that is responsible for making mental health care
28 decisions on behalf of the foster child or nonminor;
29
30 (C) The child welfare services agency or the probation agency with
31 responsibility for the care and placement of the child; or
32
33 (D) The attorney of the child or nonminor.
34
35 (2) A request for waiver must be made to the placing agency within seven
36 calendar days of the determination that the child or nonminor will be in a
37 placement outside the county of original jurisdiction or within two court days
38 of the agency providing notice in subdivision (d)(1)(C).
39
40 (3) The individual who requested the waiver, or any other party to the case who
41 disagrees with the placing agency’s determination on the application of an
42 exception to presumptive transfer, may request a judicial review of the
43 placing agency’s determination.

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(4) A request for a hearing may be made by filing a *Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services* (form JV-214), or by the filing of substantially similar information. This document must be filed with the court and provided to the placing agency within three court_days of being informed of the placing agency’s determination on the request for the application of a waiver of presumptive transfer.

(5) The transfer of the responsibility for providing specialty mental health services cannot occur until the court makes a ruling on the application.

(c) Setting of a hearing. (§14717.1)

(1) The court on its own motion may direct the clerk to set a hearing, or deny the request for a hearing without a ruling on the application of a waiver of presumptive transfer.

(2) If the court sets a hearing, the clerk must provide notice of the hearing date no later than five court days after the form was filed. Notice must be provided to:

- i. the parents or guardians of the child, unless parental rights have been terminated;
- ii. the petitioner;
- iii. the social worker or probation officer;
- iv. the developmental rights holder or surrogate parent;
- v, the child or nonminor if the child is 10 years of age or older; and
- vi. all other persons entitled to notice under section 293.

(3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court’s determination is final.

(d) Reports

(1) When a hearing is granted under (c)(1), the social worker or probation officer must provide a report including discussion or documentation of the following:

(A) That notice consistent with section 361.2(h) of the presumptive transfer requirements under section 14717.1 was provided. The notice must include a description of exceptions to presumptive transfer, the option to request a waiver of presumptive transfer if an exception exists, and how

1 to make such a request to the placing agency. The notice must be
2 provided to:

- 3
- 4 i. The child if aged 12 years old or older, or nonminor;
- 5 ii. The attorney of the child or nonminor; and
- 6 iii. The person or agency responsible for making mental health care
7 decisions on behalf of the child or nonminor.
- 8

9 (B) The placing agency's rationale for the presumptive transfer decision,
10 including:

- 11 i. Any request for waiver, and the exceptions claimed as the basis
12 for that request;
- 13 ii. A determination whether a waiver is determined to be
14 appropriate under section 14717.1(d)(5)(A-D);
- 15 iii. Any objections to the placing agency's determination; and
- 16 iv. How the child's or nonminor's best interests will be promoted by
17 the placing agency's presumptive transfer determination.
- 18

19 (C) That the placing agency informed the following of its initial
20 presumptive transfer determination, which includes a determination by
21 the placing agency that an exception to presumptive transfer applies,
22 within three days of that determination:

- 23 i. the child or nonminor,
- 24 ii. the Child and Family Team coordinator if one exists, or the
25 placing agency's case-carrying social worker or deputy
26 probation officer,
- 27 iii. the attorney of the child or nonminor,
- 28 iv. the biological parents when appropriate (if they are not already a
29 member of the Child and Family Team)
- 30

31 (D) That the Child and Family Team, and others who serve the child or
32 nonminor as appropriate, such as the therapist, developmental decision
33 maker, and Court Appointed Special Advocate volunteer, were
34 consulted regarding the waiver determination.

35
36 (E) That notice of the placing agency's determination of whether to waive
37 presumptive transfer was provided to the individual who requested
38 waiver of presumptive transfer, along with all parties to the case, within
39 three court days of the placing agency's decision.

40
41 (F) Whether the mental health provider in the county of original jurisdiction
42 demonstrates an existing contract with a specialty mental health services
43 provider, or the ability to enter into a contract with a specialty mental

1 health services provider within 30 days of the waiver decision, and the
2 ability to deliver timely specialty mental health services directly to the
3 foster child or youth.
4

5 **(e) Conduct of the hearing.**
6

7 (1) The social worker or probation officer must provide a report no later than two
8 court days after the hearing is set under (c)(1) that includes the information
9 required in (d).
10

11 (2) At the hearing, the court must confirm or deny the transfer of the
12 responsibility to arrange and provide for the child or nonminor's specialty
13 mental health services or the application of an exception to presumptive
14 transfer based on the best interests of the child or nonminor. A waiver of
15 presumptive transfer is contingent on the mental health provider in the county
16 of original jurisdiction demonstrating an existing contract with a specialty
17 mental health services provider, or the ability to enter into a contract with a
18 specialty mental health services provider within 30 days of the waiver
19 decision, and the ability to deliver timely specialty mental health services
20 directly to the child or nonminor.
21

22 (3) The hearing must conclude within five court days of the initial hearing date,
23 unless a showing of good cause consistent with section 352 supports a
24 continuance of the hearing beyond five days.
25

26 (4) When considering whether it is in the child's best interests to confirm or deny
27 the request for a waiver to presumptive transfer, the court may consider the
28 following:
29

30 (A) The access to mental health services and the child's current provision
31 of specialty mental health services, and whether any important service
32 relationships will be impacted;
33

34 (B) If reunification services are being provided, the impact the transfer
35 would have on reunification services;
36

37 (C) The anticipated length of stay in the child's new placement;
38

39 (D) The child's or nonminor's position on transfer, or the child's or
40 nonminor's attorney's position on transfer; and
41

42 (E) The ability to maintain specialty mental health services in the county
43 of original jurisdiction after the child changes placements.

- 1
2 (5) The court may make its findings and orders on *Hearing on the Determination*
3 *of Presumptive Transfer of the Responsibility for Mental Health Services*
4 (form JV-215).
5

6 **Advisory Committee Comment**
7

8 This rule describes the process for presumptive transfer of responsibility for specialty mental
9 health services when a child or nonminor is placed in another California county. The rule is
10 designed to provide a single reference to the process to aid an individual interested in requesting
11 court review of the presumptive transfer determination. The rule provides a comprehensive guide
12 for the procedures related to a hearing type created under California Assembly Bill 1299 (Ridley-
13 Thomas; Stats. 2016, ch. 603) codified at Welfare and Institutions Code section 14717.1. The rule
14 combines the procedural framework from section 14717.1, All County Letter 17-77 (California
15 Health and Human Services) and common court procedures. All County Letter 17-77 provides
16 policy guidance concerning the conditions for and exceptions to presumptive transfer. It includes
17 the manner in which a request for waiver is required to be made to the placing agency. It also
18 includes the responsibilities of the placing agency in providing notice of the presumptive transfer
19 information and of the placing agency's determination on presumptive transfer. The exceptions to
20 the presumptive transfer of the responsibility to provide for and arrange for specialty mental
21 health services to the county of the child's or nonminor's out-of-county residence are found in
22 Welfare and Institutions Code section 14717.1(d)(5)(A–D). A court review hearing under this
23 rule will not necessarily be common, but for all cases, a request for waiver, the exceptions
24 claimed as the basis for the request, a determination whether a waiver is determined to be
25 appropriate under Welfare and Institutions Code section 14717.1, and any objections to the
26 determination must be documented in the child's or nonminor's case plan under Welfare and
27 Institutions Code section 16501.1. An exception to presumptive transfer means that the
28 responsibility to provide and arrange for specialty mental health services will remain in the
29 original county of jurisdiction. This is true when a child moves from one out-of-county placement
30 to another out-of-county placement.
31

32 **Rule 5.648 Medi-Cal: Presumptive Transfer for Out-of-County Children and**
33 **Nonminors.**
34

35 **(a) Applicability**
36

37 This rule applies to the court's review under Welfare and Institutions Code section
38 14717.1 of the presumptive transfer of the responsibility to arrange and provide for
39 the child's or nonminor's specialty mental health services to the child's or youth's
40 county of residence for any child or nonminor that resides outside their county of
41 original jurisdiction as of December 31, 2017. Nothing in this rule relieves the
42 placing agency of the reporting requirements and duties under section 14717.1
43 when no hearing under this rule is held. This rule will sunset and only applies to

1 those children or nonminors that reside in a placement outside their county of
2 original jurisdiction as of December 31, 2017.

3
4 **(b) Request for the waiver of presumptive transfer (§ 14717.1)**

5
6 (1) The following individuals may request that the placing agency consider the
7 application of a waiver to the presumptive transfer of the responsibility for
8 providing specialty mental health services to the child or nonminor's county
9 of residence:

10
11 (A) The foster child or nonminor;

12
13 (B) The person or agency that is responsible for making mental health care
14 decisions on behalf of the foster child or nonminor;

15
16 (C) The child welfare services agency or the probation agency with
17 responsibility for the care and placement of the child; or

18
19 (D) The attorney of the child or nonminor.

20
21 (2) A request for waiver must be made to the placing agency within seven
22 calendar days of the determination that the child or nonminor will be in a
23 placement outside the county of original jurisdiction or within two court days
24 of the agency providing notice in subdivision (d)(1)(C).

25
26 (3) The individual who requested the waiver, or any other party to the case who
27 disagrees with the placing agency's determination on the application of an
28 exception to presumptive transfer, may request a judicial review of the
29 placing agency's determination.

30
31 (4) A request for a hearing may be made by filing a Request for a Hearing on the
32 Determination of Presumptive Transfer of the Responsibility for Mental
33 Health Services (form JV-214), or by the filing of substantially similar
34 information. This document must be filed with the court and provided to the
35 placing agency within three court days of being informed of the placing
36 agency's determination on the request for the application of a waiver of
37 presumptive transfer.

38
39 (5) The transfer of the responsibility for providing specialty mental health
40 services cannot occur until the court makes a ruling on the application.

41
42 **(c) Setting of a hearing. (§14717.1)**

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- (1) The court on its own motion may direct the clerk to set a hearing, or deny the request for a hearing without a ruling on the application of a waiver of presumptive transfer.

- (2) If the court sets a hearing, the clerk must provide notice of the hearing date no later than five court days after the form was filed. Notice must be provided to:
 - i. the parents or guardians of the child, unless parental rights have been terminated;
 - ii. the petitioner;
 - iii. the social worker or probation officer;
 - iv. the developmental rights holder or surrogate parent;
 - v, the child or nonminor if the child is 10 years of age or older; and
 - vi. all other persons entitled to notice under section 293.

- (3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court's determination is final.

(d) Reports

- (1) When a hearing is granted under (c)(1), the social worker or probation officer must provide a report including discussion or documentation of the following:
 - (A) That notice was provided prior to the determination of presumptive transfer at least 10 days prior to the child's or nonminor's next section 366 status review hearing that occurs after December 31, 2017, or as soon as thereafter, of the presumptive transfer requirements under section 14717.1. The notice must include a description of exceptions to presumptive transfer, the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency. The notice must be provided to:
 - i. The child if aged 12 years old or older, or nonminor;
 - ii. The attorney of the child or nonminor; and
 - iii. The person or agency responsible for making mental health care decisions on behalf of the child or nonminor.

 - (B) The placing agency's rationale for the presumptive transfer decision, including:

- 1 i. Any request for waiver, and the exceptions claimed as the basis for
2 that request;
- 3 ii. A determination whether a waiver is determined to be appropriate
4 under section 14717.1(d)(5)(A–D);
- 5 iii. Any objections to the placing agency’s determination; and
- 6 iv. How the child’s or nonminor’s best interests will be promoted by
7 the placing agency’s presumptive transfer determination.
8

9 (C) That at least 10 days prior to the child’s or nonminor’s next status review
10 hearing that occurs after December 31, 2017, the placing agency informed
11 the following of its initial presumptive transfer determination, which
12 includes a determination by the placing agency that an exception to
13 presumptive transfer applies, within three days of that determination:

- 14 i. the child or nonminor,
- 15 ii. the Child and Family Team coordinator if one exists, or the placing
16 agency’s case-carrying social worker or deputy probation officer,
- 17 iii. the attorney of the child or nonminor,
- 18 iv. the biological parents when appropriate (if they are not already a
19 member of the Child and Family Team).
20

21 (D) That the Child and Family Team, and others who serve the child or
22 nonminor as appropriate, such as the therapist, developmental decision
23 maker, and Court Appointed Special Advocate, were consulted regarding
24 the waiver determination.
25

26 (E) That notice of the placing agency’s determination of whether to waive
27 presumptive transfer was provided to the individual who requested waiver
28 of presumptive transfer, along with all parties to the case, within three
29 court days of the placing agency’s decision.
30

31 (F) Whether the mental health provider in the county of original jurisdiction
32 demonstrates an existing contract with a specialty mental health services
33 provider, or the ability to enter into a contract with a specialty mental
34 health services provider within 30 days of the waiver decision, and the
35 ability to deliver timely specialty mental health services directly to the
36 foster child or youth.
37

38 (G) That for a child or nonminor who resides in a county other than the county
39 of original jurisdiction after June 30, 2017, that is not receiving specialty
40 mental health services consistent with his or her mental health needs as
41 specified in the child’s or nonminor’s client plan, the placing agency
42 ensured:
43

- i. That the child or nonminor has been provided a mental health screening prior to completing the steps of presumptive transfer, unless a waiver is requested; and
- ii. For a child or nonminor that has been screened and assessed as needing specialty mental health services but is not receiving them, that presumptive transfer occurs consistent with this rule.

(e) Conduct of the hearing

- (1) The social worker or probation officer must provide a report no later than two court days after the hearing is set under (c)(1) that includes the information required in (d).
- (2) At the hearing, the court must confirm or deny the transfer of the responsibility to arrange and provide for the child or nonminor’s specialty mental health services or the application of an exception to presumptive transfer based on the best interests of the child or nonminor. A waiver of presumptive transfer is contingent on the mental health provider in the county of original jurisdiction demonstrating an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.
- (3) The hearing must conclude within five court days of the initial hearing date, unless a showing of good cause consistent with section 352 supports a continuance of the hearing beyond five days.
- (4) When considering whether it is in the child’s best interests to confirm or deny the request for a waiver to presumptive transfer, the court may consider the following:
 - (A) The access to mental health services and the child’s current provision of specialty mental health services, and whether any important service relationships will be impacted;
 - (B) If reunification services are being provided, the impact transfer would have on reunification services;
 - (C) The anticipated length of stay in the child’s new placement;
 - (D) The child’s or nonminor’s position on transfer, or the child’s or nonminor’s attorney’s position on transfer; and

1
2 (E) The ability to maintain specialty mental health services in the county of
3 original jurisdiction after the child changes placements.
4

5 (5) The court may make its findings and orders on *Hearing on the Determination*
6 *of Presumptive Transfer of the Responsibility for Mental Health Services*
7 (form JV-215).
8

9 (f) Unless amended or reenacted by Judicial Council action effective after the effective
10 date of this rule, this rule is repealed effective January 1, 2020.
11

12 **Advisory Committee Comment**
13

14 This rule describes the process for presumptive transfer of responsibility for specialty mental
15 health services for children or nonminors who are residing in a California county as of December
16 31, 2017, that is not the county of original jurisdiction. The rule will sunset January 1, 2020,
17 because it is not considered likely that the rule will still be needed after that point. A presumptive
18 transfer determination for children or nonminors who reside out-of-county as of December 31,
19 2017, is required to occur prior to the first scheduled section 366 hearing in the year 2018. For
20 more information, see the advisory comment of rule 5.647.

JV-214

Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services

Clerk stamps date here when form is filed.

Use this form to request a court hearing to challenge the decision made by the placing agency on the presumptive transfer determination. (Read JV-214-INFO, *Instruction Sheet for Requesting a Hearing to Review the Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services*).

Fill in court name and street address:

Superior Court of California, County of

- 1 Your relationship to the child or nonminor:
 - a. Self
 - b. Person or agency that is responsible for making mental health decisions on behalf of the child or nonminor
 - c. The child's or nonminor's attorney
 - d. Parent or legal guardian
 - e. Other: _____

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

- 2 Your contact information:
 - a. Name:
 - b. Street Address:
 - c. City/State/Zip:
 - d. Telephone Number:
 - e. E-mail Address:

Court fills in case number when form is filed.

Case Number:

- 3 The child or nonminor is placed or will be placed in a county that is not the county of original jurisdiction. The out-of-county placement is in *(name county)*: _____ county.
- 4 A request was made to the agency that is making this placement asking that the mental health services for the child or nonminor not be transferred to the new county. That request was made on: *(date)* _____ by *(name)* _____.
- 5 On *(date)*: _____, the agency that is making the placement informed me:
 - a. That the agency thinks that it is best to transfer the responsibility for the child or nonminor's mental health care services to the new county.
 - b. That the agency agrees that there is an exception to the rule that mental health care services should be provided in the county where the child or non-minor lives.
- 6 I disagree with the agency's decision about transferring the responsibility for mental health care services to the new county, as follows:
 - a. The responsibility for providing or arranging for the child's or nonminor's specialty mental health services should transfer to the child's or nonminor's county of residence.



Child's/Nonminor's name:

Case Number:

- 6 b. The following exception to presumptive transfer should be applied and the responsibility for providing or arranging mental health services should remain with the child or nonminor's home county:
- (1) The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child's or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

7 My request in number 6 is in the child's or nonminor's best interests because:

8 I am requesting that the court grant a hearing on this matter.

9 On (date): I informed the placing agency that I was requesting a court hearing to review the decision on presumptive transfer by providing the placing agency with a copy of this form.

Date:

Type or print name

Sign your name

JV-214(A)

Order on the Request and Notice of Hearing to Review Presumptive Transfer of the Responsibility for Specialty Mental Health Services

Clerk stamps date here when form is filed.

The court finds and orders:

- ① A hearing on the application will be held as follows:
 - a. Date: _____ Time: _____
 - Dept.: _____ Div.: _____
 - Room: _____
 - b. Address of court: _____

- ② The request for a hearing is denied.

Date: _____

Judge (or Judicial Officer)

Notice: The court must provide notice to the parents or guardians of the child, unless parental rights have been terminated; the petitioner; the social worker or probation officer; the developmental rights holder or surrogate parent, the child or nonminor if the child is 10 years of age or older, and all other persons entitled to notice under section 293

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

Notice to (*name and address*):

- ③ Child's/nonminor's name: _____
- ④ The court has granted a hearing on the above date to review the presumptive transfer of the specialty responsibility to provide for mental health services to the county of the child's/nonminor's residence.
- ⑤ The hearing will be held:
 - a. Date: _____ Time: _____ Dept.: _____
 - Div.: _____ Room: _____
 - b. Address of court: _____

Date: _____

Type or print name

Sign your name

Instruction Sheet for Requesting a Hearing to Review the Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services

① What is presumptive transfer?

Most foster children are eligible for specialty mental health services, which consist of services such as therapy to address emotional, behavioral, and developmental problems. When a child is removed from their parent's or guardian's home, the child's home county where the child lived is responsible for arranging, paying, and providing these services. When a child or nonminor changes placement and is placed outside their home county, the responsibility for providing these services is required to transfer to the county where the child lives, unless certain exceptions apply. This process is called "presumptive transfer." The purpose of presumptive transfer is to ensure that foster children who are placed outside of their county of home county receive access to these services without any delay, based upon their individual strengths and needs.

② What are exceptions to presumptive transfer of responsibility for arranging of specialty mental health services?

There are four exceptions to presumptive transfer:

- The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor. In other words, the child's services would be interrupted in some way by the presumptive transfer.
- The transfer would interfere with family reunification efforts documented in the individual case plan.
- The child or nonminor's placement in a county other than the home county is expected to last less than six months.
- The child or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

③ Who is noticed of the decision?

When a decision is made to move the child or nonminor to a placement outside the home county, the social worker or probation officer must inform certain individuals of the presumptive transfer requirements

③ and a description of exceptions, and the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency. These individuals include the following:

- the child (if 12 years old) or nonminor,
- the attorney of the child or nonminor,
- and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor (the parent or guardian unless the court has made an order appointing someone else)

④ Requesting that a waiver be applied to presumptive transfer

You may believe it would better if the child's or nonminor's home county remained responsible for the child's or nonminor's mental health services. Maybe this is because the child or nonminor would lose an important service relationship, or reunification services might be impacted. The child or nonminor, the attorney of the child or nonminor, and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor can request that the placing agency consider applying an exception to presumptive transfer and keep the responsibility for mental health services in the home county. The placing agency is required to inform the person that requested the waiver and any party to the case of their decision. The person that requested the waiver and any party to the case can ask the court to review the placing agency's decision.

A request for waiver must be made to the placing agency within seven calendar days of the determination that the child or nonminor will be in a placement outside the home county. The social worker or probation officer should inform you of the best way to make the request for waiver.



⑤ How is a determination on a request for waiver made?

The social worker or probation officer will make a determination of whether or not there is an exception to presumptive transfer. This decision must be communicated to the individual who requested waiver of presumptive transfer, along with all parties to the case, within three business days of the placing agency's decision. This could be communicated in writing or orally.

⑥ How to request a hearing

The person who requested the waiver or any other party to the case may request a court hearing to review the placing agency's decision on the waiver request. If you want to ask the court to review that decision, you must file a request for hearing with the Clerk in the Superior Court where the child or nonminor's case is being heard. This request must be filed with the clerk within three court days of the agency telling you their decision.

To request a hearing, you will need to file form JV-214. The form requires certain information. You will need to explain to the court why it would be better for the child to continue to have the home county maintain responsibility for mental health treatment, or if responsibility should be moved to the new county. The person requesting a hearing is also required to inform the placing agency that they are requesting a hearing. To do this, you will need to give a copy of the JV-214 form to the social worker or probation officer within three days of being informed of the placing agency's determination of the request for the waiver.

⑦ The hearing

The court will read the request for a hearing and make a decision on whether to grant a hearing based on the information that was provided in the JV form. If no hearing is granted, the placing agency's decision will become final. If a hearing is granted, presumptive transfer will be on hold until the court makes a ruling on the request for a waiver. The clerk of the court will contact you either by phone or letter informing you of the court date.

At the court date, the judge will want to know why presumptive transfer should be waived or not. The court will make its decision based on the best interests of the child or nonminor. Therefore, be prepared to explain to the judge why you believe that it is in the child's or nonminor's best interests to keep mental health treatment in the home county or to move it to the new county.

JV-215

Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services

Clerk stamps date here when form is filed.

- ① a. Hearing date: _____ Time: _____
 Dept.: _____ Room: _____
- b. Judicial officer: _____
- c. Party (name): Present
- (1) Child:
 - Attorney:
 - (2) Mother:
 - Attorney:
 - (3) Father-presumed:
 - Attorney:
 - (4) Father-biological:
 - Attorney:
 - (5) Father-alleged:
 - Attorney:
 - (6) Legal guardian:
 - Attorney:
 - (7) Indian custodian:
 - Attorney:
 - (8) De facto parent:
 - Attorney:
 - (9) County agency social worker:
 - Attorney:
 - (10) Tribal representative:
 - Attorney:
 - (11) Other (*specify*):
 - Attorney:

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

The court finds and orders:

- ② The social worker/probation officer provided a report no later than two days after a hearing was granted. The report included the information as required by rule 5.647(d) or 5.648(d) of the California Rules of Court.
- ③ The court has read and considered the report.
- ④ The child or nonminor
- a. is being placed in a county outside the county of original jurisdiction on (*date*): _____.
 - b. was placed in a county outside the county of original jurisdiction on (*date*): _____.
- ⑤ The placing agency provided notice as required in rule 5.647(d)(1)(A) and 5.648(d)(1)(A) of the requirement of presumptive transfer and a description of exceptions, and the option to request a waiver of presumptive transfer.



Child's/Nonminor's name:

Case Number:

- A request to apply a waiver to presumptive transfer was made to the placing agency on *(date)*:
- The placing agency has determined an exception to the presumptive transfer of the responsibility to provide for and arrange for the child's or nonminor's specialty mental health services:
- a. Does not apply.
 - b. Does apply. The exception that applies is:
 - (1) The transfer would disrupt continuity of care or delay access to services provided to the foster child.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.
- a. The placing agency consulted the Child and Family Team and others who serve the child or nonminor as appropriate regarding the waiver determination.
- b. The decision on the waiver of presumptive transfer was communicated by the placing agency to the Child and Family Team on *(date)*:
- Notice of the placing agency's determination of whether to waive presumptive transfer was provided to the individual who requested waiver of presumptive transfer, along with all parties to the case, within three court days of the placing agency's determination.
- After having considered the basis for the application for the hearing, the report provided for the hearing, and any other evidence presented at the hearing, the court finds that waiver of presumptive transfer, or presumptive transfer is in the child's or nonminor's best interests.
- a. If waiver applies, the mental health provider in the county of original jurisdiction demonstrates an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.

Date:

Judicial Officer

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Probate Conservatorship: Interstate Transfer

Committee or other entity submitting the proposal:

Probate and Mental Health Advisory Committee

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Item 5. Proposal to develop new Judicial Council forms to facilitate transfer of conservatorships to and from California under the California Conservatorship Jurisdiction Act (Prob. Code §§ 1980–2033; added by Stats. 2014, ch. 553).

If requesting July 1 or out of cycle, explain:

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

Judicial Council of California

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

W18-08

Title	Action Requested
Probate Conservatorships: Interstate Transfer	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms GC-363, GC-364, GC-365, and GC-366	September 1, 2018
Proposed by	Contact
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Corby Sturges, corby.sturges@jud.ca.gov 415-865-4507

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends approving four Judicial Council forms for optional use to transfer conservatorship proceedings into and out of California under the California Conservatorship Jurisdiction Act (CCJA). The CCJA provides the exclusive basis for determining whether a California court, as opposed to a court of another state, has jurisdiction to appoint a probate conservator.

The Proposal

The Probate and Mental Health Advisory Committee recommends that the Judicial Council approve, effective September 1, 2018:

- *Petition to Transfer Probate Conservatorship* (form GC-363);
- *Orders Transferring Probate Conservatorship* (form GC-364)
- *Petition to Accept Transfer of Probate Conservatorship* (form GC-365);
- *Orders Accepting Transfer of Probate Conservatorship* (form GC-366)

for optional use in proceedings to transfer probate conservatorships between states, as defined, in accordance with the requirements of the California Conservatorship Jurisdiction Act (CCJA). ([SB 940; Stats 2014, ch. 553.](#)) The CCJA applies only to general probate conservatorships. It does not apply to proceedings for the care or protection of a minor child, a person with a

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

developmental disability, or a person subject to involuntary mental health care or treatment. (Prob. Code, § 1981.)¹

Transfer California conservatorship to another state

The CCJA authorizes a conservator appointed by a California court to petition the court to transfer the conservatorship to another state (the receiving state). (*Id.*, § 2001(a).) If, after a noticed hearing, the court is satisfied that the court in the receiving state will accept the conservatorship and makes specific findings regarding the conservatee’s presence in or significant connections to the receiving state, objections to the transfer, the conservatee’s interests, and the arrangements for care of the conservatee’s person or property in the receiving state, the court must issue an order provisionally granting the petition and direct the conservator to petition the court in the receiving state to accept the conservatorship. (*Id.*, § 2001(d)–(f).) Proposed form GC-363 solicits the information the court needs to make the required findings. Proposed form GC-364 provides a framework for the court to issue findings and a provisional order in conformance with the statutory requirements.

The conservator must then file a petition similar to the one described below in an appropriate court of the receiving state. Once the California court has received both a provisional order accepting the conservatorship from a court of the receiving state and all documents, including any required accounting, required to terminate the conservatorship in California, the court must issue a final order confirming the transfer and terminating the conservatorship in California. (*Id.*, § 2001(g).) Proposed form GC-364 provides a framework for the court to issue the final order.

Transfer out-of-state conservatorship to California

The CCJA also authorizes a conservator appointed in another state, on issuance of an order provisionally transferring a conservatorship proceeding to California, to petition an appropriate court in this state to accept the conservatorship. (*Id.*, § 2002(a)(1).) The petition must include a certified copy of the provisional order of transfer, must state on the first page that the conservatorship is not excluded from the CCJA’s application, and must allege facts showing that the CCJA applies and the requirements for transfer are satisfied. (*Id.*, § 2002(a)(2)–(3).) The petition must also specify any modification needed to conform the conservatorship to California law and include the terms of a proposed final order accepting the conservatorship. (*Id.*, § 2002(a)(4).) A petition for appointment of a temporary conservator may also be filed while this petition is pending. (*Id.*, §§ 1994(a)(3), 2002(a)(5).) Proposed form GC-365 is intended to capture all the information required to be in the petition.

After filing, the petitioner must give notice to all persons entitled to notice of a hearing for appointment of a conservator in both this state and the transferring state, as well as any attorney representing the conservatee in either state. (*Id.*, § 2002(b).) Any person entitled to notice may object to the petition on one or more of four specific grounds: (1) transfer would be contrary to the conservatee’s interests; (2) under the law of the transferring state, the conservator is

¹ Unless otherwise specified, all statutory references are to the Probate Code.

ineligible for appointment in California; (3) under California law, the conservator is ineligible for appointment in California, and the petition does not identify a willing and eligible replacement; or (4) the CCJA does not apply to the conservatorship. (*Id.*, § 2002(c).) The court must promptly appoint an investigator, who must, in turn, promptly investigate the facts related to the specific bases for objection. (*Id.*, §§ 1454, 2002(d), (f).)

Unless the court determines at the hearing that any of the specific grounds for objection applies, the court must provisionally grant the petition and set another noticed hearing, no more than 60 days from the date of the provisional order, to determine whether the conservatorship needs modification to conform to California law and to review the conservatorship. (*Id.*, §§ 1851.1, 2002(f), (h).) Proposed form GC-366 provides a framework for the court to make these provisional orders. Once the court orders provisional acceptance, the appointed court investigator must promptly begin a full review investigation under section 1851.1, which incorporates and augments the requirements for a review investigation under section 1851. (*Id.*, §§ 1851, 1851.1, 2002(g).)

At the modification and review hearing—which the conservatee must attend unless excused—the court may take any action necessary to bring the conservatorship into conformity with California law, including striking or modifying any unauthorized powers. (*Id.*, §§ 1851.1, 2002(h)(1).) The court must also consider the findings in the investigator’s report, including whether the conservatee wishes to petition for termination of the conservatorship, whether the conservatorship is still necessary, and whether the conservator is acting in the conservatee’s best interests. (*Id.*, §§ 1851(a), 1851.1(c), 2002(h)(2).) The court may take any appropriate action in response to the investigator’s report. (*Id.*, § 1851.1(c).) Proposed form GC-366 provides space for the court to specify necessary modifications and to make findings in response to the investigator’s report.

If the court determines that the conservatorship may be modified to conform to California law, the review indicates that the conservatorship remains necessary, then once the court has received a final order transferring the conservatorship to California, it must issue a final order accepting the transfer and appointing the conservator in California. (*Id.*, § 2002(i).) Proposed form GC-366 provides a framework for this final order.

Alternatives Considered

The committee considered not recommending the approval of these forms, as they are not expressly required by the CCJA. However, evidence indicates that litigants are experiencing difficulty articulating the jurisdictional facts needed for a probate court to order transfer of a conservatorship from California to another state or to accept the transfer of a conservatorship proceeding from another state. These forms attempt to address this difficulty by soliciting all the necessary facts and information from petitioners in a framework suitable for incorporation into a court order.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements and costs of approving the proposed forms are not clear. Short-term training requirements and costs seem likely. It is possible, though, that court staff would need training to implement the CCJA transfer process even without the forms. Operationally, the forms are likely to promote more efficient court operations and use of judicial resources. By soliciting the information needed to support a petition to transfer a conservatorship to or from California, the forms should lead to both faster and better-informed adjudication of transfer petitions. In particular, they will reduce the number of issues needing to be addressed in probate notes or at hearings as well as the frequency and duration of continuances. The forms should also promote access to justice for both conservators and conservatees by facilitating both a faster transfer process and the ongoing protection of the conservatee's interests.

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?
- Would additional forms be useful to facilitate the transfer of conservatorship proceedings into and out of California? If so, please identify the function or purpose of those forms.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed new forms GC-363, GC-364, GC-365, and GC-366, at pages 5–12

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
CONSERVATEE	

c. The conservatorship is consistent with the laws of the receiving state and is likely to be accepted by the court in that state because *(give reasons):*

4. For a conservatorship of the person:

a. Petitioner has made or plans to make the following arrangements for the conservatee's care in the receiving state *(describe arrangements):*

b. Petitioner has arranged for the provision of the following services to the conservatee in the receiving state *(describe services):*

5. For a conservatorship of the estate:

a. Conservatee's relationship to receiving state:

(1) Same as stated in 3a.

(2) The conservatee has the following significant connection(s) to the receiving state *(describe all connections):*

(a) Family members and other persons entitled to notice of the proceedings who live in receiving state *(name and address of each):*

(b) The conservatee has been present in the receiving state for a total of _____ months from *(date first arrived):* _____ to *(date last departed):* _____. During that time, the conservatee was absent from the receiving state for a total of _____ months.

(c) The conservatee holds a legal or beneficial interest in the following property located in the receiving state *(describe each piece of property and give street address of real property or location of personal property):*

(d) The conservatee has the following other ties to the receiving state:

Registered to vote in the receiving state *(voter registration number):*

Filed state tax return in receiving state *(tax ID number and year(s) filed):*

Filed local tax return in receiving state *(tax ID number and year(s) filed):*

Registered vehicle in receiving state *(VIN number and license plate number of each):*

Driver's license issued by receiving state *(number):*

(e) Friends and social ties in receiving state *(name and address of each):*

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
CONSERVATEE	

(f) Public benefits or services received in receiving state *(list each)*:

(g) Other ties *(describe each)*:

b. The petitioner has made the following arrangements for management of the conservatee's property in the receiving state *(describe all arrangements)*:

6. If you have been appointed conservator of both the person and estate for the person named in 2, complete 3, 4, and 5, above.

7. Status of final California accounting: _____

Includes payment of all fees and costs, including attorney's fees.

Date expected:

Date filed:

I declare under penalty of perjury under the laws of the State of California that the information stated on this form is true and correct.

Date:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL 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:	
CONSERVATORSHIP OF (name): <div style="text-align: right;">CONSERVATEE</div>	
ORDERS TRANSFERRING PROBATE CONSERVATORSHIP	CASE NUMBER:

Provisional Order

The court held a hearing a petition to transfer the conservatorship proceeding on (date):

The court finds:

1. Notice of the hearing was given as provided in Probate Code section 2001(b).
2. Based on the evidence presented, it is likely that a court of (state): _____ (the receiving state) will accept the conservatorship.
3. The conservatee is physically present in reasonably expected to move permanently to _____ the receiving state.
4. The conservatee has the following significant connections to the receiving state:
5. No objection to the transfer had been filed, or The transfer would not be contrary _____ to the conservatee's interests.
6. [Person] The plans for the care of and provision of services to the conservatee in the receiving state are reasonable and sufficient.
7. [Estate] The arrangements made for the management of the conservatee's property are adequate.

The court orders:

8. The petition to transfer the conservatorship to (state): _____ is provisionally granted.
9. The conservator is directed to file a petition for acceptance of the conservatorship in an appropriate court of the receiving state.

Date: _____  _____
 (JUDICIAL OFFICER)

Final Order

The court has received an order, issued by a court of record of the receiving state, provisionally accepting the conservatorship.

The court has received and, if appropriate, approved all documents, including a final accounting, needed to terminate the conservatorship in California.

The court therefore orders:

10. The transfer of the conservatorship to the receiving state is confirmed.
11. The California conservatorship is terminated.

Date: _____  _____
 (JUDICIAL OFFICER)

CONSERVATORSHIP OF <i>(name):</i> _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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5. c. (3) The following property belonging to the conservatee's estate is located in California:

(4) The conservatee has the following other ties to California *(for example, voter registration, driver's license, tax filing)*:

6. I request that the court:

a. Accept transfer of the conservatorship proceeding identified above and recognize the transferring state's conservatorship order.

- b. (1) Appoint me as conservator of the person estate under California law for the person named in 1.
- (2) Appoint *(name):* _____
(mailing address): _____

(telephone number): _____ *(e-mail address):* _____
(relationship to conservatee): _____, who is eligible for appointment under California law,
 as conservator of the person estate for the person named in 1.

- c. (1) Adopt the transferring state's conservatorship order, which needs no modifications to conform to California law.
- (2) Issue a new conservatorship order as proposed on the attached *Order Appointing Probate Conservator* (form GC-340), which modifies the terms of the conservatorship as needed to conform to California law as follows:
- (A) Powers modified:

(B) Duties modified:

(C) Bond modified:

(D) Other information needed:

Additional modifications are included on Attachment 6c(2). *(You may use form MC-205 for this purpose.)*

d. Issue *Letters of Conservatorship* (form GC-350) on qualification.

7. A *Petition for Appointment of Temporary Conservator* (form GC-111) is filed with this petition.
8. The conservatee has has not been diagnosed with a major neurocognitive disorder (MNCD, a.k.a. dementia).
- a. A completed *Petition for Exclusive Authority to Give Consent for Medical Treatment* (form GC-380), with *Attachment Requesting Special Orders Regarding Dementia* (form GC-313), is filed with this petition.
- b. I intend to petition the court for MNCD powers under section 2356.5 of the Probate Code as soon as the court issues a final order accepting transfer of this conservatorship.

I declare under penalty of perjury under the laws of the State of California that the information stated on this form is true and correct.

Date: _____

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL 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:	
CONSERVATORSHIP OF (name):	CONSERVATEE
ORDERS ACCEPTING TRANSFER OF PROBATE CONSERVATORSHIP	CASE NUMBER:

Provisional Order of Acceptance

Findings:

1. Notice of the hearing was given as required by law.
2. A court of record of the State of _____ has issued an order provisionally transferring the conservatorship identified above to California.
3. Based on a review of the results of the preliminary investigation conducted under section 2002(d) and all other evidence before the court:
 - a. The transfer of the conservatorship proceeding to California would not be contrary to the conservatee's interests.
 - b. Under the law of the transferring state, the conservator is eligible for appointment in California.
 - c. (1) The conservator is eligible for appointment in California under California law; or
 (2) The conservator is ineligible for appointment in California under California law, but the petition has identified a person who is willing to serve as conservator and eligible for appointment in California.
 - d. The California Conservatorship Jurisdiction Act applies to these proceedings. This court has jurisdiction to appoint a conservator in these proceedings under section 1993 of the Probate Code.

Orders:

4. The petition to accept the transfer of the conservatorship identified above from (state): _____ to California is provisionally granted.
5. The court investigator must promptly begin an investigation under section 1851.1 of the Probate Code. The investigator must complete the investigation and report its findings in writing as required under section 1851(b)(1) no fewer than 15 days before the date of the hearing set in 6.
6. A hearing is set in this department on _____, no more than 60 days from the date of this order, to determine whether the conservatorship needs to be modified to conform to California law and to review the conservatorship.
 - a. The conservatee must attend the hearing unless excused in accordance with sections 1825 and 1851.1(c) of the Probate Code.

Date: _____ _____
(JUDICIAL OFFICER)

SHORT TITLE	CASE NUMBER:
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Determination of Conformity with California Law and Review of Conservatorship

- 7. Notice of the hearing was given as required by law.
- 8. The conservatee attended was excused from the hearing.
- 9. a. No modification to the original conservatorship order is needed to conform to California law.
- b. The following modifications to the conservatorship order are necessary to conform to California law and are ordered on the attached *Order Appointing Probate Conservator* (form GC-340):
 - (1) Powers modified:

 - (2) Duties modified:

 - (3) Bond modified:

 - (4) Other information needed:

 - Additional modifications are set forth on Attachment 9b(2).

- 10. The court has read and considered the findings of the review investigation conducted in accordance with sections 1851.1(c) and 2002(h)(2) and all other admitted evidence, and finds the following:
- 11. The conservatee does not wish to petition for termination of the conservatorship.
- 12. The conservatee does not object to the person identified below serving as conservator in California.
- 13. The conservatee was informed of the rights to attend the hearing and to be represented by legal counsel of one's choice or, if desired, by counsel appointed by the court.
- 14. The conservatee is still in need of the conservatorship.
- 15. Other (*specify*):

Final Order of Acceptance

16. The court has received a final order from the court of (*state*): _____ transferring the conservatorship to California. The court orders acceptance of the conservatorship.

17. Name:
 Address:
 Telephone: _____ E-mail: _____
 is appointed conservator of the person estate for (*name*):
 under California law as specified in the accompanying original conservatorship order form GC-340.
 The clerk is ordered to issue *Letters of Conservatorship* (form GC-350) on the appointee's qualification.

Date: _____  _____
 (JUDICIAL OFFICER)

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (September 1 cycle)**

RUPRO Meeting: December 14, 2017

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Probate Law: Appointment of Counsel

Committee or other entity submitting the proposal:

Probate and mental Health Advisory Committee

Staff contact (name, phone and e-mail): Corby Sturges, 415-865-4507, corby.sturges@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: October 24, 2017

Project description from annual agenda: Review and consider recommendations for changes in law, practice, and procedure in limited conservatorships for the developmentally disabled, including rules of court concerning qualifications and continuing education requirements for counsel appointed by the court in conservatorship proceedings.

If requesting July 1 or out of cycle, explain:

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

Judicial Council of California

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

W18-09

Title	Action Requested
Probate Law: Appointment of Counsel	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve form GC-005	September 1, 2018
Proposed by	Contact
Probate and Mental Health Advisory Committee	Corby Sturges, 415-865-4507
Hon. John H. Sugiyama, Chair	corby.sturges@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends approving a form for optional use to apply for and order the appointment of counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee, including a limited conservatee, in a proceeding under division 4 (beginning with section 1400) of the Probate Code, which includes the Guardianship-Conservatorship Law. Probate courts and other stakeholders have indicated that appointment of counsel early in a proceeding would promote more efficient and informed case management and better protect the legal rights of persons subject to guardianship or conservatorship.

Background

The probate court holds the authority to appoint counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under division 4 of the Probate Code if the court determines that the person is not represented by counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests. (Prob. Code, § 1470(a).)

In addition, the court is required to appoint counsel for a conservatee, a proposed conservatee, or a person alleged to lack capacity in specified proceedings—that is, those to establish, transfer, or terminate a conservatorship; to appoint or remove a conservator; for a determination and order affecting the legal capacity of the conservatee; or for an order authorizing removal of a temporary conservatee from that person's residence—in two sets of circumstances.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

First, the court must appoint counsel in those proceedings if the person is unable to retain counsel and has requested that the court appoint counsel. (Prob. Code, § 1471(a).) Second, the court must also appoint counsel in those same proceedings if the person has not retained counsel, does not plan to retain counsel, and has not requested that the court appoint counsel, if the court determines that the appointment would either be helpful to resolution of the matter or is necessary to protect the person's interests. (*Id.*, § 1471(b).)

In a proceeding to establish a limited conservatorship for a developmentally disabled adult, the court must immediately appoint counsel for the person unless the person has already retained, or plans to retain, counsel. (Prob. Code, § 1471(c).) Finally, the court must appoint counsel for a conservatee or person alleged to lack legal capacity in proceedings under other scattered sections of the Probate Code, some of which refer back to section 1471 and some of which do not. (See, e.g., *id.*, §§ 1852, 1954, 2357, 2684, 3140, 3205.) The court investigator is typically responsible for informing the conservatee of the circumstances in which the court is authorized or required to appoint counsel. (See *id.*, §§ 1826, 1851.1.)

The Proposal

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective September 1, 2018, approve *Application and Order for Appointment of Counsel* (form GC-005) for optional use to request the appointment of counsel in guardianship and conservatorship proceedings as outlined above. The proposal is needed to ensure that counsel is appointed for wards, proposed wards, conservatees, and proposed conservatees when appropriate or required by statute. The need is particularly acute in limited conservatorship proceedings, in which the court is required to appoint counsel immediately if the proposed limited conservatee has not retained counsel and does not plan to retain counsel. (Prob. Code, § 1471(c).)

The first page of the form would serve as the application. It would solicit information about the person requesting appointment, the person to be represented, the type of proceeding, and the circumstances justifying or requiring the appointment of legal counsel under sections 1470 and 1471 of the Probate Code. The applicant could file the form with the petition or, if not the petitioner, at any point after the filing of the petition. Furthermore, nothing would preclude more than one applicant from requesting appointment of counsel. This flexibility would bring the need for appointment of counsel to the court's attention as early as possible in the proceeding.

The second page of the form would serve as the appointment order. The court would have the opportunity to make findings of the facts and circumstances justifying or requiring appointment of counsel, identify the attorney appointed, and issue the order of appointment. The form is proposed for optional use. It would not preclude the court from using other mechanisms to appoint counsel. If the form were used, copies of the order could be kept in the case file and given to the appointed attorney and the client for their reference.

Alternatives Considered

The committee considered not proposing a form for appointment of counsel, but concluded that the problem to be addressed was sufficiently serious and the costs of a new optional form sufficiently low to warrant a new form. The committee also considered proposing two forms—an application and an order—but decided to circulate a single form and request comment on the advantages and disadvantages of separate forms. Finally, the committee considered proposing amendments to rule 7.1101 of the California Rules of Court governing the qualifications and training of appointed counsel, but elected to defer that proposal pending further consultation with stakeholders.

Implementation Requirements, Costs, and Operational Impacts

The proposal would assist courts in implementing existing statutory requirements by simplifying the process for appointment of counsel. The courts might incur some short-term costs incorporating the new form into their procedures, but these costs should be insubstantial and offset by ongoing gains in efficiency.

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?
- Would two separate forms—one for the application and one for the order—promote more efficient case management?
- Are additional rule amendments or form revisions needed to address issues related to appointment of counsel in guardianship or conservatorship proceedings, including limited conservatorships? If so, please specify.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Application and Order for Appointment of Counsel (form GC-005), at pages 4–5
2. Probate Code, §§ [1470](#) & [1471](#)

CASE NAME:	CASE NUMBER:
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ORDER

The court finds that:

6. The person named in 2 has not retained legal counsel, is not otherwise represented by counsel in this proceeding, and *(check all that apply)*:
- a. Is unable to retain counsel.
 - b. Does not plan to retain counsel.
 - c. Has requested the appointment of counsel.
 - d. Has not requested the appointment of counsel.
7. Appointment of counsel for the person named in 2 *(check all that apply)*:
- a. Would be helpful to the resolution of the matter.
 - b. Is necessary to protect that person's interests.
 - c. Is required because this proceeding is described in Probate Code section 1471(a)(1)–(5) and items 6(a) & (c), above, are both checked.
 - c. Is required because this proceeding is described in Probate Code section 1471(a)(1)–(5) and items 6(b), above, and 7(a) or (b) are checked.
 - d. Is required because this is a proceeding to establish a limited conservatorship, and item 6(b), above, is checked.

The court orders that:

7. The attorney named below, who meets the qualification and education requirements in rule 7.1101 of the California Rules of Court, is appointed to act as legal counsel for the person named in 2 and directed to represent that person in this proceeding until relieved by the court on the substitution of other counsel or for cause.

Attorney *(name)*:

Firm, agency, or office *(name)*:

(address):

(telephone number):

(e-mail):

(State Bar number):

Date:

 _____
 (JUDICIAL OFFICER)