

Title	Juvenile Law: Deferred Entry of Judgment (amend Cal. Rules of Court, rule 5.800; revise form JV-751)
Summary	The proposed rule and form amendments would clarify the court’s discretion to independently grant deferred entry of judgment without the approval of the prosecuting attorney and child’s counsel in juvenile delinquency matters and would promote compliance with statutory mandates and recent case law.
Source	Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Laura Pedicini, 415-875-7459, laura.pedicini@jud.ca.gov
Discussion	<p>In juvenile delinquency matters, the deferred entry of judgment (DEJ) procedure provides that if the child admits the allegations contained in a section 602 petition and waives the right to a jurisdictional hearing, upon successful completion of probation, the petition will be dismissed and all records regarding the petition will be sealed.</p> <p><i>Court’s Discretion to Independently Grant Deferred Entry of Judgment and Related Findings</i> Welfare and Institutions Code¹ section 790 was amended in 2007 to provide that a juvenile court may grant DEJ without the support of the prosecuting attorney and the child’s counsel. (Sen. Bill 1626 [Ashburn]; Stats. 2006, ch. 675.) Additional amendments to section 790 require the court to find that the child would benefit from DEJ and to enter findings on the record that the child is appropriate for DEJ.</p> <p>To conform with the amendments to section 790, the committee proposes amending rule 5.800(b) to clarify the court’s discretion to independently grant DEJ, upon making a finding that the child meets the requirements outlined under section 790(a). The committee also proposes amending the rule to reflect the “benefit” finding that must be made by the court, as specified by section 790.</p> <p>In addition, the committee proposes revising <i>Citation and Written Notification for Deferred Entry of Judgment–Juvenile</i> (form JV-751) to reflect the court’s discretion to independently grant DEJ without the</p>

¹ All further references are to the Welfare and Institutions Code.

agreement of the prosecutor and the child's counsel.

Specification That Child Must Admit to Petition as Charged

In the process of reviewing rule 5.800 and form JV-751, the committee observed that the rule and the form do not specify with sufficient clarity that the child must admit the allegations as charged in order to be eligible for DEJ. Welfare and Institutions Code section 791(a)(3) specifies that the child must admit each allegation contained in the petition, as charged. Two recent court decisions indicate that section 791 has been a source of confusion and support the interpretation that qualification for DEJ requires the child to admit the petition as charged without modification and without requesting a contested jurisdictional hearing.² The committee proposes amending rule 5.800(d)(2) and revising form JV-751 to reflect that the child must admit the petition as charged.

Imposition of Probation Terms

Additionally, the committee determined that the rule 5.800(f) and form JV-751 do not adequately specify the scope of probation terms to be imposed when the court grants DEJ. The imposition of search and seizure requirements is mandatory under section 794. Therefore, the committee recommends amending rule 5.800(f)(4) and revising form JV-751 so that they specify that curfew and school attendance requirements may be imposed, if appropriate. The committee further recommends that form JV-751 be revised to reflect that search and seizure requirements must be imposed if DEJ is granted as required by section 794 and to otherwise clarify the wording of the form so that it better mirrors the language contained in section 794 regarding probation terms.

The proposed amended rule and revised form are attached at pages 3–6.

Attachments

² *In re Usef S.* (2008) 160 Cal.App.4th 276, 284–286; *In re Kenneth J.* (2008) 158 Cal.App.4th 973, 979.

Rule 5.800 of the California Rules of Court would be amended, effective January 1, 2010, to read:

1 **Rule 5.800. Deferred entry of judgment**

2
3 **(a) Eligibility (§ 790)**

4
5 A child 14 years or older who is the subject of a petition under section 602
6 alleging violation of at least one felony offense may be considered for a
7 deferred entry of judgment if all of the following apply:

8
9 (1)–(6) ***

10
11 **(b) Procedures for consideration (§ 790)**

12
13 Before filing a petition alleging a felony offense, or as soon as possible after
14 filing, the prosecuting attorney must review the child’s file to determine if
15 the requirements of (a) are met. If the prosecuting attorney’s review reveals
16 that the requirements of (a) have been met, the prosecuting attorney must file
17 *Determination of Eligibility—Deferred Entry of Judgment—Juvenile* (form
18 JV-750) with the petition.

19
20 (1) ~~If the court, the prosecuting attorney, and the child’s attorney agree~~
21 ~~determines that the child should receive is eligible for a deferred entry~~
22 ~~of judgment, the hearing under this rule must proceed on an expedited~~
23 ~~basis, and would derive benefit from education, treatment, and~~
24 ~~rehabilitation efforts, the court may grant deferred entry of judgment.~~

25
26 ~~(2) If the court, the prosecuting attorney, and the child’s attorney do not~~
27 ~~agree that the child should receive a deferred entry of judgment, the~~
28 ~~court may examine the record and make an independent determination.~~
29 ~~If it is determined that the child should not receive a deferred entry of~~
30 ~~judgment, the case must proceed under chapter 14, articles 1 through 4,~~
31 ~~of this division.~~

32
33 **(c) *****

34
35 **(d) Determination without a hearing; supplemental information (§ 791)**

36
37 (1) The court may grant a deferred entry of judgment as stated in (2) or (3).

38
39 (2) If the child admits each allegation contained in the petition as charged
40 and waives the right to a speedy disposition hearing, the court may
41 summarily grant the deferred entry of judgment.
42

1 (3) ***

2

3 (e) ***

4

5 (f) **Conduct of hearing (§§ 791, 794)**

6

7 At the hearing, the court must consider the declaration of the prosecuting
8 attorney, any report and recommendations from the probation department,
9 and any other relevant material provided by the child or other interested
10 parties.

11

12 (1)–(3) ***

13

14 (4) If the court grants the deferred entry of judgment, the court must order
15 search-and-seizure probation conditions and may order probation
16 conditions regarding the following:

17

18 (A)–(B) ***

19

20 (C) Testing for alcohol and other drugs, if appropriate;

21

22 (D) Curfew and school attendance requirements, if appropriate;

23

24 (E) Restitution, if appropriate; and

25

26 ~~(E)~~(F) Any other conditions consistent with the identified needs of
27 the child and the factors that led to the conduct of the child.

28

29 (g)–(h)***

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> <hr style="width: 20px; margin-left: 0;"/> TELEPHONE NO. <i>(Optional):</i> _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY Draft 4 03/26/09 mc Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
CITATION AND WRITTEN NOTIFICATION FOR DEFERRED ENTRY OF JUDGMENT—JUVENILE <input type="checkbox"/> Notice of Hearing	

CITATION

TO *(Name of youth):*

(Name of custodial parent, guardian, or caregiver):

(Address):

1. The district attorney has determined that this youth is eligible to be considered by the juvenile court for a deferred entry of judgment on the offense or offenses alleged in the petition filed *(date):*

2. YOU ARE ORDERED TO APPEAR AT A HEARING

on <i>(date):</i>	at <i>(time):</i>	in Dept.:	Room:
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located at: courthouse address above other *(specify address):*

At the hearing the court will consider whether or not to grant a deferred entry of judgment.

NOTICE

**To Parent and Others Legally Responsible for
the Care and Support of the Youth**

- 1. If the court grants a DEFERRED ENTRY OF JUDGMENT, you may be required to participate in a counseling or education program with the youth.**
- 2. No judicial officer may hear a case when it is shown that the judicial officer is prejudiced against any party or attorney or the interest of any party or attorney appearing in the case. California Code of Civil Procedure section 170.6 describes the bases and procedures for a claim of such prejudice.**

YOUTH'S NAME: —	CASE NUMBER:
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WRITTEN NOTIFICATION

3. A DEFERRED ENTRY OF JUDGMENT will mean that the youth will be on probation for a specific length of time (between 12 and 36 months). Upon successful completion of probation:
 - a. The petition that has been filed will be dismissed.
 - b. The arrest for the offenses will be considered to NEVER have occurred.
 - c. All records in the court, probation department, and law enforcement agencies regarding the petition will be sealed, although the District Attorney and the probation department shall have access for the limited purpose of determining future eligibility for deferred entry of judgment.
4. If the court grants a DEFERRED ENTRY OF JUDGMENT instead of normal court proceedings, the youth will be required to do all of the following:
 - a. To admit that he or she committed the offense or offenses alleged to have been committed.
 - b. To agree to postpone the final determination of the case.
 - c. To satisfactorily complete a program of probation.
 - d. To obey all laws, follow all of the orders of the court and the directions of the probation officer.
5. At the hearing, the court will consider the information provided by the district attorney, any report by a probation officer, and other evidence presented. The youth or the youth's attorney may submit written or oral evidence or statements.
6. If the court grants a DEFERRED ENTRY OF JUDGMENT, it must impose the following probation condition:
Submission to search of the youth's person, residence, and property under the youth's control, without a warrant, by a police or probation officer.
7. The court may also consider imposing other conditions of probation, such as:
 - a. A curfew, if appropriate.
 - b. Regular attendance at school or an education or training program, or employment, if appropriate.
 - c. Prohibiting the consumption or possession of alcoholic beverages, controlled substances, and tobacco, and requiring submission to chemical tests to determine the use of any of these items, if appropriate.
 - d. Restitution to a victim.
 - e. Any other orders the court finds would assist the youth and protect the community, including orders for the parent, guardian, or caregiver of the youth to participate in a counseling or education program.
 - f. Counseling or treatment that the court finds will benefit the youth.
8. IF AT ANY TIME DURING THE PERIOD OF PROBATION
 - a. the youth is found to have committed a felony,
 - b. the youth is found to have committed misdemeanor offenses on more than one occasion, or
 - c. the district attorney or the probation officer notifies the court that the youth is not complying with the conditions of probation, or the orders are not benefiting the youth,

the court will lift the deferred entry of judgment and set a hearing to conclude the case, with consideration of all possible consequences under the law, including commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.
9. IF AT ANY TIME DURING THE PERIOD OF PROBATION the youth is found to have committed one misdemeanor or more on only one occasion, the court may set a hearing to determine if the deferred entry of judgment should be lifted and other orders, including punishment, should be made, or if the deferred entry of judgment should be continued with additional or different conditions of probation. If the court terminates the deferred entry of judgment, the court will then conclude the case, with consideration of all possible consequences, including commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.
10. If the youth commits two or more felonies after the deferred entry of judgment is granted, these could be the basis for a finding by a court that the youth is not a fit subject for treatment under juvenile court laws and should be prosecuted as an adult.
11. During this proceeding, the youth will be represented by an attorney acting on his or her behalf. The district attorney will act for the state, prosecuting the case. The probation department will supervise the youth during the period of the deferred entry of judgment. The court's role is to ensure that the procedures are properly followed.

Item SPR09-33 Response Form

Title: **Juvenile Law: Deferred Entry of Judgment** (amend Cal. Rules of Court, rule 5.800; revise form JV-751)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

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

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

Email: invitations@jud.ca.gov

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

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

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.