

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15-25

Title	Action Requested
Juvenile Law: Substance Abuse Treatment Facilities and Placement	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708	January 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 kerry.doyle@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 amending four rules of the California Rules of Court to conform to recent statutory changes to the factors a juvenile dependency court must consider when determining whether to release or detain a child.

Background

Senate Bill 977 (Liu; Stats. 2014, ch. 219) amended section 319 of the Welfare and Institutions Code to specify that the fact that a parent is enrolled in a substance abuse treatment facility that allows a dependent child to reside with his or her parent is not, for that reason alone, prima facie evidence of detriment or substantial danger. Additionally, SB 977 requires the court to consider at detention, dispositional, and status review hearings whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility.

The Proposal

Rules 5.676, 5.678, and 5.708 would be revised to ensure that they conform to the recently enacted provisions of Welfare and Institutions Code sections 319, 366.21, 366.22, and 366.25.¹ Rule 5.674 would be revised to eliminate the requirement that *all* findings and orders be made on the record at detention hearings.

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

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 These proposals are circulated for comment purposes only.

The Family and Juvenile Law Committee recommends the following specific amendments to the California Rules of Court:

- To ensure the court has the information needed to make the findings required by the recent statutory change to section 319, amend rule 5.676 to require that the social worker’s report to the court include information and a recommendation regarding whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, and to include nonrelative extended family members in the list of possible placement options as is required under current law.
- To conform to the recent statutory change to section 319, amend rule 5.678 to require that when determining whether to release or detain a child, the court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.
- To conform to recent statutory changes to sections 366.21, 366.22, and 366.25, amend rule 5.708 to require the court to consider—at all status review hearings, when determining whether return of a child to the parent or legal guardian would create a substantial risk of detriment to the child—whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.
- Although not required by recent legislation, the committee recommends revising rule 5.674 to eliminate the requirement that *all* detention findings and orders be made on the record, and instead narrow those findings and orders that must be made on the record to only those required under section 319. The committee also considered retaining this requirement for the three title IV-E findings and orders that are reviewed at a federal audit:
 - Continuance in the home is contrary to the child’s welfare;
 - Reasonable efforts were made to prevent removal; and
 - Temporary placement and care are vested with the agency.

Eliminating all nonstatutory requirements to make the findings and orders on the record will significantly reduce those that must be stated on the record, thereby freeing up much-needed court time and making detention hearings shorter or more thorough and meaningful. Given that the three above findings and orders are critical to federal

funding,² however; that there are often clerical errors with the documentation of the court's findings and orders; and that at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made,³ the committee is seeking specific comment on whether the rule should require that the three title IV-E findings and orders reviewed at a federal audit be stated on the record.

Alternatives Considered

The committee considered revising *Findings and Orders After Detention Hearing* (form JV-410) to include a conditional release order that the child is released to the parent only while the parent remains at the substance abuse treatment facility. Practices around conditional releases, however, vary throughout the state, and in jurisdictions that use them, there are multiple conditional release situations, none of which are currently included on the form. The committee decided to leave the form as is, allowing courts that order conditions of release to continue to do so by filling in item 19, "Other findings and orders," on form JV-410.

Implementation Requirements, Costs, and Operational Impacts

This proposal is not likely to impose any costs on the court. The proposal is not recommending changes to any existing Judicial Council forms and is not creating any new court hearings or processes.

² If the first two findings above are not timely made, the child is NEVER eligible for title IV-E funding. If the order above is not made, no funding can be claimed until it is made. (See 45 C.F.R. §§ 1356.21(b) & (c), 1356.71(d)(1) (2014).)

³ See 45 C.F.R. § 1356.21(d)(1) (2014).

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?
- Given that there are often clerical errors with the documentation of the court's findings and orders and that, at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made, should rule 5.674 require that the three title IV-E findings and orders reviewed at a federal audit be stated on the record?

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 Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708, at pages 5–6
2. Senate Bill 977,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB977&search_keywords=

Rules 5.674, 5.676, 5.678, and 5.708 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 5.674. Conduct of hearing; admission, no contest, submission**

2
3 (a) * * *

4
5 (b) **Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)**

6
7 The court must read, consider, and reference any reports submitted by the social
8 worker and any relevant evidence submitted by any party or counsel. All detention
9 findings and orders must ~~be made on the record and~~ appear in the written orders of
10 the court. All findings and orders required to be made on the record under section
11 319 must be made on the record.

12
13 (c)–(d) * * *

14
15 **Rule 5.676. Requirements for detention**

16
17 (a) * * *

18
19 (b) **Evidence required at detention hearing**

20
21 In making the findings required to support an order of detention, the court may rely
22 solely on written police reports, probation or social worker reports, or other
23 documents.

24
25 The reports relied on must include:

26
27 (1) * * *

28
29 (2) * * *

30
31 (3) If a parent is enrolled in a certified substance abuse treatment facility that
32 allows a dependent child to reside with his or her parent, information and a
33 recommendation regarding whether the child can be returned to the custody
34 of that parent.

35
36 ~~(3)~~ (4) * * *

37
38 ~~(4)~~ (5) If continued detention is recommended, information about any parent or
39 guardian of the child with whom the child was not residing at the time the
40 child was taken into custody ~~or~~ and about any relative or nonrelative
41 extended family member as defined under section 362.7 with whom the child
42 may be detained.

1 **Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts;**
2 **detention alternatives**

3
4 (a) * * *

5
6 (b) **Factors to consider**

7
8 In determining whether to release or detain the child under (a), the court must
9 consider the following:

10
11 (1) Whether the child can be returned home if the court orders services to be
12 provided, including services under section 306; and

13
14 (2) Whether the child can be returned to the custody of his or her parent who is
15 enrolled in a certified substance abuse treatment facility that allows a dependent
16 child to reside with his or her parent.

17
18 (c)–(e) * * *

19
20 **Rule 5.708. General review hearing requirements**

21
22 (a)–(c) * * *

23
24 (d) **Return of child—detriment finding (§§ 366.21, 366.22, 366.25)**

25
26 (1) * * *

27
28 (2) The court must consider whether the child can be returned to the custody of his
29 or her parent who is enrolled in a certified substance abuse treatment facility
30 that allows a dependent child to reside with his or her parent.

31
32 ~~(2)(3)~~ * * *

33
34 ~~(3)(4)~~ * * *

35
36 ~~(4)(5)~~ * * *

37
38 ~~(5)(6)~~ * * *

39
40 (e)–(o) * * *