



## Judicial Council of California. Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on February 28, 2012

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Title	Agenda Item Type
Juvenile Law: Forms for Disclosure of Information	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve forms JV-226 and JV-227; amend form JV-574	January 1, 2013
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	January 27, 2012
Hon. Kimberly J. Nystrom-Geist, Cochair	Contact
Hon. Dean Stout, Cochair	Christopher Wu, 415-865-7721 <a href="mailto:christopher.wu@jud.ca.gov">christopher.wu@jud.ca.gov</a>

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends three information sharing forms: new standardized consent forms for release of health and mental health information and education information and an amended order after judicial hearing form for release of information from the juvenile case file pursuant to Welfare and Institutions Code section 827. In order to make informed and punctual decisions about children in foster care, judges need accurate health, mental health and education information. Creation of standardized, legally accurate forms for use by social workers to obtain information from health care and education professionals expedites this process.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2013:

1. Adopt *Authorization to Release Health and Mental Health Information* (form JV-226), which allows release of information from a health-care professional to a child welfare agency when signed by the parent, legal guardian, Indian custodian, or child, in certain circumstances;
2. Adopt *Consent to Release Education Information* (form JV-227), which allows the parent, legal guardian, educational representative appointed by the juvenile court, Indian custodian, or certain eligible students to consent to the release of education records by a school to a child welfare agency; and
3. Amend *Order After Judicial Review* (form JV-574), to make a technical change that allows the court to clearly grant or deny a request to share information in juvenile case files.

### **Previous Council Action**

In 2006 Chief Justice Ronald M. George established the Blue Ribbon Commission on Children in Foster Care (BRC),<sup>1</sup> which was charged with recommending to the Judicial Council of California practices and procedures through which the courts and their partners could improve safety, permanency, well-being, and fairness for children and families involved in the child welfare system. In August 2009, the Judicial Council unanimously accepted the recommendations of the commission, one of which stated that “the Judicial Council support the courts and all partners in the child welfare system in eliminating barriers to the exchange of essential information and data about the children and families they serve.” When Chief Justice George reappointed the BRC in 2009, he revised its charge, including the following: “Under the direction of the Judicial Council, implement as appropriate the recommendations of the BRC accepted by the Judicial Council on August 15, 2008; select and refer recommendations, as appropriate, to a Judicial Council advisory committee, an Administrative Office of the Court division, or another entity for implementation, including for review and preparation of proposed legislation, rules, forms, or educational materials to be considered through the normal judicial branch processes.”<sup>2</sup>

### **Rationale for Recommendation**

The juvenile court is responsible for oversight of all children in foster care. To make proper orders and rulings concerning a child, a judge must be informed about relevant education, health, and mental health information. When child welfare agencies, which have the responsibility to provide care and supervision for children in foster care and to make recommendations to the court, cannot exchange information with education, health, and mental health providers,

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<sup>1</sup> Former Chief Justice Ronald M. George established the Blue Ribbon Commission on Children in Foster Care in 2006 to provide recommendations to the Judicial Council of California on the ways in which the courts and their partners could improve safety, permanency, well-being, and fairness for children and families who find themselves in the child welfare system. Originally the Hon. Carlos R. Moreno, former Associate Justice of the California Supreme Court, chaired this commission. Currently Hon. Richard D. Huffman, Associate Justice, Court of Appeal, Fourth Appellate District, Division One chairs it.

<sup>2</sup> <http://courts.ca.gov/documents/brc-finalreport.pdf>

important information about dependent children's well-being may not be reflected in agency decisions and reports that courts rely on as a basis for decisions.

The impetus for exploration of ways to improve information sharing originated with a recommendation made by the BRC to examine how best to exchange information about children and families among the courts, child welfare and state and local agencies. Another catalyst for this proposal comes from the Child Welfare Council (CWC)<sup>3</sup>, which was created when Governor Arnold Schwarzenegger signed into law Assembly Bill 2216 in 2005. The CWC, co-chaired by the Chief Justice of California or his or her designee, and the Secretary of the California Health and Human Services Agency, is an advisory body that is responsible for improving the collaboration and processes of the multiple agencies and courts that serve children and youth in the child welfare and foster care systems. In September 2009 the CWC endorsed a recommendation from its Committee on Data Linkage and Information Sharing to develop a policy supporting sharing and linking data related to children in the child welfare services system.

Children in foster care frequently experience an interruption or delay in their education or health care because decisions made for them may be based on incomplete information. For example, when children in foster care change schools, the child welfare agency and the new school often do not have timely access to their educational records, which contain essential information about academic performance, educational history, progress, and special needs. Similarly, the health care of children in foster care often is interrupted or delayed because their health-care information is not available to child welfare agencies or the juvenile courts. Inaccurate, legally defective, and obsolete forms are now in common use by various school districts, child welfare workers, and health-care professionals. Adding to the problem, the various entities may mandate use of their forms, requiring the child welfare worker to relocate the parent, who may or may not be available to sign each additional form, resulting in unnecessary delay in the court's decision-making.

Education, health, and mental health information must be released when authorized by a parent, legal guardian, Indian custodian, educational representative or eligible student (for education) and parent, legal guardian, Indian custodian, or child, in certain circumstances (for health and mental health).

The Family and Juvenile Law Advisory Committee proposes adoption of two standardized release forms for statewide use. Form JV-226, the authorization for release of health and mental

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<sup>3</sup> In 2005, former Governor Arnold Schwarzenegger signed into law Assembly Bill 2216, the Child Welfare Leadership and Performance Accountability Act, which created a permanent California Child Welfare Council, an advisory body that is responsible for improving the collaboration and processes of the multiple agencies and courts that serve children and youth in the child welfare and foster care systems. The CWC is co chaired by the Chief Justice of California or his or her designee and the Secretary of the California Health and Human Services Agency. Sec. Diana Dooley, California Health and Human Services Agency and Hon. Vance Raye, Presiding Judge, Court of Appeal, 3rd Appellate Division currently Cochair the CWC.

health information, includes requests for information required by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the California Confidential Medical Information Act (CMIA), and the California Lanterman-Petris-Short Act (LPS). Likewise, form JV-227, the consent form for release of education information, includes requests for information required by the Family Educational Rights and Privacy Act of 1979 (FERPA).

The proposed amended *Order After Judicial Review* (form JV-574) corrects an inadvertent omission in the current form by including an option to grant or deny a request for release of information from a juvenile case file pursuant to Welfare and Institutions Code section 827. The amended form provides checkboxes to indicate that the court grants or denies the release request.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for comment as part of the spring 2011 invitation-to-comment cycle from April 21 to June 20, 2011. It was distributed to appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, county counsel, district attorneys, parents' and children's attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. A total of 18 individuals and organizations provided comments.

#### **Form JV-226**

Six commentators agreed with the form, eight suggested modifications, and two disagreed.

Several commentators suggested that the attorney for the child be added to the list of the persons who may authorize release of information in item 1. As proposed for adoption, JV-226 allows for the parent, legal guardian, Indian custodian, or the child, in certain circumstances, to authorize the release of health and mental health information. The California Confidential Medical Information Act (CMIA) states that the legal representative, or the child, if he or she could have lawfully consented, may authorize release of health information. (Civ. Code, § 56.11(c)(2).) "Representative" is defined as the parent or guardian. (Health & Saf. Code, § 123105(e).) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child. (25 U.S.C. § 1903(6).) No statutory authority supports the addition of the child's attorney to the list of persons who may authorize release of information. An expansion of the current definition of "legal representative" would require legislative action.

Four commentators based this suggestion on Welfare and Institutions Code section 317(f), which provides that the attorney and the child, if 12 years or older, holds the doctor-patient privilege. The advisory committee did not agree to this change because the laws governing privilege and laws concerning confidentiality in dependency matters govern distinctly different contexts.

Privilege laws govern the use of medical information in a court setting and protect disclosures of confidential communications between doctors and patients in court. (Evid. Code, §§ 992, 1014.)

The doctor cannot disclose any confidential communication for use in court proceedings unless the patient waives this privilege. In dependency matters, the child or the attorney for the child, with the informed consent of the child, holds the privilege if the child is capable of informed consent, which is presumed at age 12. (Welf. & Inst. Code, § 317(f).) The provider cannot disclose any confidential communication for use in a court proceeding unless the child, or the attorney for the child, waives the privilege. The proposed forms do not apply to the disclosure in court of confidential communications between a doctor and patient.

The committee recognizes the need to distinguish between the laws governing privilege and separate laws concerning confidentiality in dependency matters. Confidentiality laws found in the HIPAA, CMIA, and LPS, on the other hand, protect personally identifiable information about which individuals and their families have an expectation of privacy. These statutes govern the release of information about the child from a medical provider to a third party, such as child welfare workers and probation. Generally, medical information is confidential absent an authorization, court order, or other discrete exceptions. The parent, legal guardian, Indian custodian, or the child, in certain circumstances, may authorize disclosure of medical information. (Civ. Code, § 56.11(c)(1).) Form JV-226 does not apply to the disclosure of confidential communications in court; rather, it covers disclosure of confidential medical information about the child to a third party and does not affect the use of privilege.

The committee acknowledges the concerns especially in light of the fact that the purpose of these forms is to provide the court with information about the child. Even if the appropriate party authorizes the disclosure of confidential information, in general the information is still privileged and cannot be disclosed in court unless the child or the attorney for the child waives the privilege.

One commentator recommended that an “Indian custodian” as defined in title 25 United States Code section 1903(6) should be authorized to disclose medical and mental health information. The committee agreed with this suggestion and changed the form.

One commentator suggested adding an expiration requirement in the form, and the committee agreed to include a statement that the authorization automatically ends one year from the date of the signature.

Two commentators recommended adding a requirement that a child between 12 and 18 years old speak with his or her attorney before signing the form. The committee agreed with this recommendation.

The invitation to comment specifically asked whether JV-226 should be a single form, as circulated for comment, or be separated into two forms: one form for the parent, legal guardian, or Indian custodian and another form for the child. One commentator agreed with the form as circulated; four asked that the Judicial Council create two separate forms for JV-226. The advisory committee considered this suggestion and decided that one form covering each of the

different types of health or mental health information that could be requested and specifying the persons who can legally authorize release was preferable in that it provides the necessary legal guidance for the health-care provider as well as for the adult or child. It is important to include all of the information on one form to make clear which party may legally authorize release of each medical item. Two separate forms might well cause confusion as to who can legally authorize the release of information and may inadvertently lead to the incorrect person checking the “other” box when that person is not legally authorized to release the information.

One commentator suggested the addition of item 11, which advises that the form is not intended to abrogate rights of court-appointed counsel for the child to access records conferred by Welfare and Institutions Code section 317 or court order. The committee agreed with this suggestion.

Some commentators requested changing the placement of the text and other grammatical, stylistic, and wording corrections. The committee made some of these changes.

#### **Form JV-227**

Five commentators agreed with the form, eight agreed if the form were modified, and two disagreed.

Some commentators suggested that form JV-227 fails to comply with the California Education Code. This consent conforms to the specific requirements of the federal Family Education Rights and Privacy Act (FERPA), which supersedes California law if a conflict exists.<sup>4</sup> FERPA requires a written consent before disclosing personally identifiable information about the student. (34 C.F.R. § 99.30 (2009).) FERPA does permit disclosure of otherwise confidential information without consent or a court order in certain circumstances, including the following: to teachers and school district officials with a legitimate educational interest; to officials of another school, including postsecondary schools, where the student seeks to enroll; to state and local juvenile justice systems or their authorities if allowed or required under state law; and to appropriate parties in a health or safety emergency where necessary to protect the health and safety of the student or other individuals. (34 C.F.R. § 99.31 (2009).)

Two commentators sought more information about the education rights of children in foster care. In its response, the committee included a reference to the AOC Briefing *Sharing Education Information about Children in Foster Care*, which provides a summary of state and federal education law.

#### **Form JV-574**

Six commentators agreed with the form and three agreed if the form were modified. One comment suggested the addition of an extra box for the court to summarily deny the Welfare and Institutions Code section 827 petition without review of the entire case file. Current form JV-573 already contains the option to deny the review of the file so it is unnecessary to add to JV-574.

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<sup>4</sup> See *Rim of the World Unified School District v. Superior Court* (2002) 104 Cal. App. 4th 1393.

## **Alternatives considered and policy implications**

The committee considered informal alternatives to the forms, such as education. The Administrative Office of the Courts (AOC) has published four policy briefs on sharing information about children in foster care (health, mental health, substance abuse, and education) and has conducted education and information sessions with numerous stakeholders around the state. Nevertheless, during these sessions stakeholders overwhelmingly requested the creation of Judicial Council forms to authorize disclosure of information. Stakeholders and the courts found that education alone was insufficient to promote the exchange of information.

The committee also discussed the option to take no action on the creation of these forms and decided to recommend the approval of forms JV-226 and JV-227 and amendments to JV-574. These forms result in a time-savings to the court insofar as they enable child welfare to provide the court with more expedient and accurate information regarding the health, mental health, and education of the child.

## **Implementation Requirements, Costs, and Operational Impacts**

Implementation of the proposed forms and amended form will incur standard reproduction costs.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal IIIA, Modernization of Management and Administration, Objective 5

## **Attachments**

1. Forms JV-226, JV-227 and JV-574, at pages 8–13
2. Chart of Comments, at pages 14–42





Fill in court name and street address:

**Superior Court of California, County of**  
  
Not approved by the Judicial Council

This form authorizes the release of the child’s health and/or mental health records to the child welfare agency to ensure that the child receives appropriate and effective services. It also allows the agency to carry out its case management responsibilities; to monitor treatment, health-care operations, and billing and payment; and to inform the court of the child’s medical and/or mental health needs. This form complies with the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of Medical Information Act (CMIA), and Lanterman-Petris-Short (LPS) Act.

Fill in child's name and date of birth:

**Child’s Name:**  
  
**Date of Birth:**

The parent, legal guardian, or Indian custodian may only complete items ①, ②, ③, ⑥, ⑦, ⑧, and ⑨.

**Case Number:**

The child may only complete items ①, ②, ④, ⑤, ⑥, ⑦, and ⑧.

- ① I am the
  - a.  Parent
  - b.  Legal guardian
  - c.  Indian custodian
  - d.  Child, and I am eligible to consent
  
- ② I give the following child welfare agencies and individuals permission to release health information about  me  the child \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- ③ I am the parent, legal guardian, or Indian custodian and I authorize release of the following medical information. Mental health information contained in the medical file may not be released.
  - I understand that I may **refuse** to sign this form. I understand that the child cannot be denied treatment just because I choose not to sign. (Check all that apply):
    - a.  Diagnoses
    - b.  Medical histories
    - c.  None
    - d.  Immunizations
    - e.  Lab reports
    - f.  X-ray reports
    - g.  None
    - h.  \_\_\_\_\_



Child's name: \_\_\_\_\_

4 If the child is between 12 and 18 years old, the child may authorize release of the following information.

I discussed the contents of this form with my attorney before deciding whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.

I am the child and I authorize the following information to be disclosed (check all that apply):

- a.  HIV information, including test results
- b.  Mental health diagnoses
- c.  Outpatient mental health treatment or counseling records
- d.  Records regarding sexually transmitted diseases
- e.  Records regarding infectious, contagious, or communicable disease if law or regulation requires the disease or condition to be reported to the local health officer
- f.  None

5 Only the child, regardless of his or her age, may authorize release of the following information.

I discussed the contents of this form with my attorney before deciding whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.

I am the child, and I authorize the following information to be disclosed (check all that apply):

- a.  Pregnancy records
- b.  Reproductive health records
- c.  Sexual assault treatment records, if the child consented to this treatment
- d.  None

6 I give permission to release  my  the child's health information specified by the checked boxes in items 3, 4, and 5 and to discuss them with (name of child welfare agency): \_\_\_\_\_.

7 I understand that the child welfare agency may share or be required to share  my  the child's health and/or mental health information with certain persons or agencies for purposes of treatment, health-care operations, billing and payment, or as otherwise required by law, without having to ask for my permission.

I understand that if this health and mental health information is disclosed to someone who is not legally required to keep it confidential, it may be redisclosed and may no longer be protected.



**Case Number:** \_\_\_\_\_

Child's name: \_\_\_\_\_

- 8 a.  I request a copy of this form.
- b.  I am the child and understand that I do not have to give this form to my parent or legal guardian.
- c.  I do not want a copy of this form.
- d.  I request a copy of the records that will be released.

9 I understand that I may revoke this authorization by writing to *(name and address of person to whom revocation should be directed)*: \_\_\_\_\_

Once this person receives my written request, this authorization will be revoked, but only to the extent that the authorization has not already been relied upon to release health information.

- 10 This authorization automatically ends one year from date of signature.
- 11 This form is not intended to abrogate the rights of court-appointed counsel for the child to access records pursuant to Welfare and Institutions Code section 317(f) or court order.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PARENT/LEGAL GUARDIAN)



\_\_\_\_\_  
 (SIGNATURE)

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF CHILD )



\_\_\_\_\_  
 (SIGNATURE)

**IMPORTANT: PLEASE READ**

The health-care provider may refuse to release the records if he or she determines that access to the child's records would have a detrimental effect on the provider's professional relationship with the child or the child's physical safety or psychological well-being.



Fill in court name and street address:

Superior Court of California, County of

**DRAFT  
Not approved by the  
Judicial Council**

Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Case Number:

This form is used to consent to the release of education records of a child who is a subject of juvenile dependency proceedings to the child welfare agency to ensure that the child receives appropriate and effective services. This form also allows the agency to carry out case management responsibilities, to assist with the transfer or enrollment of the child; and to inform the court of the child's educational needs.

- ① I am
  - a.  The child's parent (my right to make education decisions about my child has not been terminated or limited by the court)
  - b.  The child's legal guardian (my right to make education decisions about the child has not been terminated or limited by the court)
  - c.  The child's educational representative appointed by the juvenile court
  - d.  A student 18 years of age or older who attends a postsecondary institution
  - e.  Indian custodian
  
- ② Under the Family Educational Rights and Privacy Act of 1974 (FERPA) and California state law, I authorize (permit) any school, district, county office of education, or individual or entity maintaining the child's records to release these educational records to, and discuss them with (*name of child welfare agency*): \_\_\_\_\_  
 \_\_\_\_\_ These records include, but are not limited to, attendance, academic, individualized education program (IEP), medical, social, psychological, discipline, developmental, speech/language, and achievement test results.
  
- ③  I request a copy of the records that will be released.
  
- ④ This consent automatically ends one year from date of signature.
  
- ⑤ This form is not intended to abrogate the rights of court-appointed counsel for the child to access records pursuant to Welfare and Institutions Code section 317(f) or court order.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Type or print your name*

▶ \_\_\_\_\_  
*Sign your name*



Clerk stamps date here when form is filed.

**DRAFT**  
**Not approved by the**  
**Judicial Council**

1 Name of applicant: \_\_\_\_\_

**The court finds and orders:**

2  After a review of the juvenile case file and review of any filed objections  and a noticed hearing, the court denies the request. Disclosure is not in the best interest of the child.

3  After a review of the juvenile case file and review of any filed objections  and a noticed hearing, the court grants the request. The applicant has shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate needs of the applicant. The court has balanced these needs with the child's best interest. The court finds the need for disclosure outweighs the policy considerations favoring confidentiality of juvenile records.

a.  The following records may be disclosed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  The procedure for providing access is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  See attached.

4  The child is deceased, and the request is granted.  
a.  The court has read and considered the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.  There is a presumption under Welfare and Institutions Code section 827(a)(2)(B) in favor of the release of the documents unless a statutory reason for confidentiality is shown to exist. The court has balanced only the interests of the child who is the subject of the juvenile case file and the interests of other children who may be named in the file with \_\_\_\_\_.

Fill in court name and street address:  
**Superior Court of California, County of**

Fill in child's name and date of birth:  
**Child's Name:**  
**Date of Birth:**

Fill in case number:  
**Case Number:**

Your name: \_\_\_\_\_

4  c. The following records may be disclosed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d.  The procedure for providing access is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. Any information that relates to another child or could identify another child, except for information about the deceased, must be redacted.

f.  See attached.

5  The child is deceased and the request is denied. The court finds by a preponderance of the evidence that disclosure of the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the request.

**Additional orders:**

6  Applicant may not give the information to anyone who is not specified in Welfare and Institutions Code section 827 or 827.10.

7  Disclosure subject to protective order (*list orders*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8  Release of records listed in item 3a only.

9  Release of records with redaction.

10  Other:  
\_\_\_\_\_  
\_\_\_\_\_

11  See attached.

Date: \_\_\_\_\_

▶ \_\_\_\_\_  
*Judge (or Judicial Officer)*



**SPR11-49****Juvenile Law: Disclosure of Information Forms** (approve forms JV-226 and JV-227; revise form JV -574)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Jennifer T. Baronoff Research Attorney Superior Court of Los Angeles County	AM	Thanks so much for adding the approval and denial boxes on the JV-574. Just a quick question regarding section 4b on that same form. There is now a blank space at the end of the last paragraph on that first page. What information is meant to be entered there?	This is a formatting error that has been corrected.
2.	Children's Law Center Martha Matthews Supervising Attorney	AM	<p>We are supportive of the new forms, because having a standardized form may help resolve issues of authorization for disclosure of confidential health/mental health information.</p> <p>However, the form leaves one important issue unresolved. We suggest that the Judicial Council develop a Rule of Court clarifying who qualifies as a "legal representative" [or "guardian ad litem," which is the term used by the Lanterman Act] who can make disclosure decisions for a dependent child. We at Children's Law Center of California interpret these statutory provisions, in circumstances where the child is a dependent and has an appointed attorney, to mean that the child's attorney is authorized to make disclosure decisions as to health and mental health information within the context of the dependency case. Others (including Los Angeles County's office of county counsel) disagree, and believe the child's attorney is not authorized to make disclosure decisions for dependent children. It would be very helpful to all parties in dependency cases, as well as health and mental health care providers working with dependent children, to have this</p>	Civil Code section 56.11(c)(2) states that the legal representative, or the child if he or she could have lawfully consented, may authorize release of information. Health and Safety Code section 123105(e) defines "representative" as the parent or guardian. There is no statutory authority to support the recommendation that the child's attorney may also authorize release of information. An expansion of the definition is best left up to the legislature.

**SPR11-49**

**Juvenile Law: Disclosure of Information Forms** (approve forms JV-226 and JV-227; revise form JV -574)

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	Commentator	Position	Comment	Committee Response
			issue resolved through a Rule of Court.	
3.	County Welfare Directors Association Diana Boyer Senior Policy Analyst	AM	<p>CWDA comments received from county CWS staff on the JV 226:</p> <p>(1) Area of confusion in Sections 4 and 5 which both say:</p> <p>I am the child and I authorize the following information may be disclosed: (the first box is not about something that would be disclosed and says the following:) -I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I chose not to sign This is quite confusing. There is no objection to the statement itself, but having the "i know I can talk to someone about this and decide whether to sign" statement follow the "what may be disclosed" is confusing.</p> <p>2) Recommend that the language contained in # 7 on Page 2 of the JV-226 is very important and should be moved closer to the beginning of the form. Further, the second and third paragraphs should be more clearly separated from the rest of the form.</p> <p>Further, within that paragraph, it mentions "health-care" records, and earlier on the form it seems to differentiate between health and mental health records. It is recommended that, it</p>	<p>The committee requested the placement of this statement and the inclusion of the box in order to make sure that the child read and understood the importance of this.</p> <p>The committee agrees that this statement is very important, but believes that changing the placement would make the form confusing. The committee would like the adult or the child to read and understand the subject matter of what they are signing first.</p> <p>Agree to the suggestion to change the wording to health or mental health.</p>

**SPR11-49**

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	Commentator	Position	Comment	Committee Response
			<p>should read "health and/or mental health" records in this paragraph.</p> <p>3) Multiple check boxes in #4 and #5 could be overwhelming for clients to complete; some could be combined (for example mental health), or suggest an "all of the above" box.</p> <p>4) Does this form comply with CMIA? One county gave us feedback that it may not comply with the CMIA because it is not in 14 point font and because it does not state clearly that the person signing has a right to receive a copy of it.</p> <p>The form may not comply with CMIA and/or HIPAA because it does not adequately state the specific uses or limitations on the use of medical information by the child welfare agency. The statement at the top of the form is a good start but may need to be clearer as it describes the purpose of the form rather than clearly stating what the information can be used for and the purpose of the disclosure.</p> <p>Also, the form may not comply with CMIA and/or HIPAA because it may not adequately specify to name or function of person entitled to receive such information. The form should more clearly state to whom the information will be shared and specify the particular child welfare agency (where the agency types its name) not just use a generic child welfare agency.</p> <p>5) #1 should make it clear which sections each</p>	<p>The advisory committee considered an “all of the above” box but decided that it is important for the child to carefully consider each item.</p> <p>Agree that form must be in 14 point font. The committee agrees to insert a section pursuant to Health Insurance Portability and Accountability Act (HIPAA) and Confidential Medical Information Act (CMIA) that each person has a right to receive a copy. HIPAA and CMIA both require that the form state the specific uses and limitations on the types of information to be disclosed. The purpose clause in this form meets these requirements.</p> <p>CMIA requires the “name or functions of the persons or entities...” Item #2 complies with this requirement.</p> <p>The committee agrees that the form should include the particular child welfare agency name.</p> <p>The committee agrees with this change.</p>

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**Juvenile Law: Disclosure of Information Forms** (approve forms JV-226 and JV-227; revise form JV -574)

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

	Commentator	Position	Comment	Committee Response
			<p>person should be filling out/signing. For example, if it's the parent, then that person should fill out #1, 2, 3, 6, 7, 8, 9 only; if it's the child, then #1, 2, 4, 5, 6, 7, 8, 9 only.</p> <p>Recommend that #3 should be followed by an OR to make it clear that you don't fill out 3, 4 and 5.</p> <p>OR - separate the form into two, one for children and another for parent.</p> <p>6) The signature page should be written to include an "or" so it does not look like both parent and child need to sign.</p> <p>7) We suggest that the notice at the bottom of page 2 in the box is not legally required.</p>	<p>The committee agrees with this change.</p> <p>The committee considered whether to separate the form into two forms, one for the parent, legal guardian, or Indian custodian to sign, and a separate form for the child to sign. The committee decided to use one form only. It is important to include all of the information on one form to make clear which party may legally authorize release of each medical item. Two separate forms may cause confusion as to who can legally authorize the release of information and may inadvertently lead to the incorrect person checking the "other" box when that person is not legally authorized to release the information.</p> <p>The committee revised the form in the opening statement, as suggested by this commenter, to provide clarification as to who can complete which section of the form. This makes clear who can authorize disclosure of which information.</p> <p>The committee is of the opinion that the form is clear as written. This notice is an important section found in CMIA and clearly states the law.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	East Bay Children's Law Offices Roger Chan Executive Director	N	I disagree with the proposed JV-226. I do not feel that the form adequately protects confidential information when a minor consents to treatment (H&S 123115), or sufficiently allows for limited disclosures. My major concern is that the authorization will lead to the child welfare worker receiving a broader scope of confidential information than currently permitted by law, without an adequate remedy for the minor to claim privilege.	The child can decline to release all or part of the confidential information requested in this form. The form includes a provision that the child speak with his or her attorney before signing it. The child or the child's attorney can raise the issue of privilege if the child welfare worker seeks to introduce this information in court.
5.	Humboldt County Dept. of Health & Human Services Humboldt County Counsel's Office Karen Roebuck Senior Deputy County Counsel	AM	JV-574 Order After Judicial Review  1. If a summary denial of the W&I § 827 Petition for Disclosure is appropriate, the Court should not have to review the entire juvenile case file, which might be voluminous. Recommend that an additional box be added for the Court to summarily deny the Petition without review of the entire juvenile case file.  JV-226 Authorization to Release Health and Mental Health Information	<i>JV-573 Order on Request for Disclosure of Juvenile Case</i> addresses this comment. It is the appropriate form to use when the court summarily denies the Welfare and Institutions Code section 827 request.

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			<ol style="list-style-type: none"> <li>1. Because there is the case number and court info in the heading, is it anticipated that this form will be filed with the Court? If so, what is the purpose for filing a release of information with the Court?</li> <li>2. In No. 1 there should be a box to check for a Child’s Attorney who holds the medical and mental health records privilege under W&amp;I § 317.</li> <li>3. No. 4 states that a child between 12 and 18 years old may authorize release of information. Sometimes a Superior Court orders that the child may sign releases of information after review by Child’s Counsel. This form does not allow for that circumstance.</li> <li>4. Recommend typeface no smaller than 14 point. (Civil Code section 56.11(a))</li> <li>5. Care should be taken so that social workers are not precluded from obtaining medical and mental health information for treatment coordination purposes under Civil Code § 5328.04 due to health care providers thinking that this standard form is necessary for any Dependent.</li> </ol>	<p>This form will not be filed in court.</p> <p>This form covers confidential information, which is disclosed to a third party. It does not cover privileged information, which is introduced into court. Welfare and Institutions Code section 317(f) applies to privilege and not to the disclosure of confidential information so no box is necessary.</p> <p>The committee agrees with this recommendation and changed the form include a mandatory statement that the child must talk with his or her attorney before signing the form.</p> <p>Agree that format must be 14 point font.</p> <p>CMIA provides for the “coordination of care” exception to the need for an authorization or a court order. Health care providers should be aware of this provision and this form does not affect this exception.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
6.	Phil Ladew	AM	<p>JV-227 This form should clearly state that information related to minor consent issues (e.g. leaving campus for planned parenthood appointments, or mental heal treatment, etc) are not within the scope of this release.</p> <p>JV-226 This form, as written, is very difficult to follow and not written in child friendly language. Also, it is better public policy to require that the attorney and/or guardian ad litem be informed prior to the form being effective – thus increasing the likelihood that the child is giving “informed consent” to waive privilege. Perhaps the form should be approved by the court – sort of like the legal guardian – at a set court date, with the minor’s attorney having the ability to talk with the child.</p> <p>Also, we recommend separate forms for ordinary information versus sensitive (i.e. minor consent) information.</p> <p>Also, given the fact that the laws are so complex and do not currently work well with one another, perhaps this waiver is premature – or seeks to do too much. For example, this form does not differentiate the rights of youth who are placed out of home versus youth in-home. The rights of the parents are presumably greater when the youth is in-home (though it does not seem as though the current Civil Code sections were not written with this in mind.)</p>	<p>The form provides clear, legal information regarding authorization to release health and mental health information. It would be confusing to provide further information.</p> <p>The committee agrees with this recommendation and changed the form include a mandatory statement that the child must talk with his or her attorney before signing the form.</p> <p>Please see Committee response to #3.</p> <p>This laws which govern disclosure of confidential information pertain to children, regardless of their placement.</p>

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			<p>Also, without a waiver, information that is given to a social worker for “coordination of care and treatment” does not necessarily mean that privilege is waived.</p> <p>It would be better to wait until the laws are brought into conformity to fit the needs of foster youth.</p>	<p>This form covers confidential information, which is disclosed to a third party. It does not cover privileged information, which is introduced into court. Welfare and Institutions Code section 317(f) applies to privilege and not to the disclosure of confidential information so no box is necessary.</p> <p>A myriad of forms used by health care providers, schools and child welfare agencies already exist. These Judicial Council standardized forms comply with federal and state legal requirements.</p>
7.	<p>Legal Advocates for Children and Youth Andrew Cain Supervising Attorney</p>	AM	<p>1. LACY opposes the introduction of form <b>JV-226</b>. Adoption of a central form would severely limit the ability of minor’s counsel to discharge their role in holding various treatment-related privileges, as set forth in Welfare and Institutions Code section 317(f). Under that provision, minor’s counsel acts as the holder of the physician-patient and psychotherapist-patient privilege if the court finds that the minor is not of sufficient age and maturity to consent. It is generally presumed that a minor 12 or older possesses the requisite maturity. The provision also provides that the counsel for the child can invoke the privilege, with</p>	<p>The Committee agreed to changes in the form which addressed these concerns.</p>



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			<p>informed consent of the child in appropriate circumstances. Further, counsel may not waive the privilege if the child invoked it.</p> <p>Two glaring problems related to Section 317 exist in creating this type of form. First, it allows parents to consent to the release of specific information without giving minor’s counsel the opportunity to consider whether the appropriate privilege should be exercised. This is especially problematic when a treatment provider possesses information that is not susceptible to easy labeling. For example, a medical doctor might have information that more appropriately relates to mental health treatment. It is easy to imagine how that provider would feel authorized to release all the information in his records when presented with the consent form. Second, the form does not allow for consideration of instances where a minor 12 or older lacks sufficient maturity to consent. These instances are best left to the discretion of the court, as envisioned under Section 317.</p> <p>Should the Judicial Council wish to move forward with the proposed the form, the following revisions are suggested:</p> <p>a. The Judicial Council should create separate forms. One form would be for the parent to authorize the release of information and the other would be for the child’s use. One form</p>	<p>See Committee’s response to #3.</p>

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			<p>has the potential to create undue confusion. For example, use of the word “me” in paragraph (2) could lead to the parent believing they are consenting to the release of their own information.</p> <p>b. Whereas the purpose of this form is to allow for the release of information to the child welfare agency, it appears that paragraphs 2 and 6 can be combined. An example of appropriate language for paragraph 2 is “I give the following agencies and individuals permission to release and discuss health information about my child to _____(<i>name of child welfare agency</i>)”. Adopting language of this nature would avoid extraneous provisions in the form.</p> <p>c. Paragraph 7 should be split out into multiple provisions. The provision allowing for revocation of consent should stand alone. As currently drafted, it is situated between two provisions regarding re-disclosure of information. These are unrelated concepts that, when combined in one paragraph, risk confusing the person signing the form. Further, the provisions regarding re-disclosure should be narrowed to avoid unintended consequences. It is recognized that the child welfare agency will be required to share certain information for purposes of billing, payment and health-care operations. However, it is not clear under what scenarios the child welfare agency</p>	<p>The committee is of the opinion that this section is clear as written.</p> <p>The Committee agrees with this comment.</p>

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			<p>would have the authority to share this information for treatment purposes without first receiving permission from the court. Thus, the word “treatment” should be stricken from the first sentence of paragraph 7. Additionally, the scenarios where the child welfare agency would share information with entities not required to maintain confidentiality are unclear. Thus, the entire final sentence of paragraph 7 should be stricken.</p> <p>d. The provision regarding a child’s right to speak with their attorney should be strengthened. The proposal contains language notifying the child of the right to talk with an attorney. There is nothing that requires the child welfare agency worker to explain this right to the child. Further, reviewing this form with the child amounts to the social worker giving the child legal advice. Given this concern, and the significance of asking a child to waive their rights to privacy and privilege, the form should not be signed until the child has consulted with their attorney. This can be accomplished by changing the language in paragraph 5 to read “I have reviewed this form with my attorney.”</p> <p>e. Paragraph 9 is written in a way that suggests the child welfare agency worker can select any appropriate expiration date. It is recognized that some flexibility is needed</p>	<p>The Committee agrees with this recommendation and changed the form to include a mandatory statement that the child must talk with his or her attorney before signing the form.</p> <p>Agree to revise the form to include an expiration date.</p>

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			<p>when obtaining parental consent, given the difficulties experienced by child welfare agency workers in locating some parents. However, that same logic does not apply to the youth. Less flexibility is needed when seeking consent directly from the youth. Further, with circumstances in the life of a foster youth changing so rapidly, consent should be renewed with some degree of frequency. LACY proposes that consent from the youth be required on at least an annual basis.</p> <p>2. LACY opposes the introduction of form <b>JV-227</b>. The form is based upon California Education Code section 49076. Under that code section, a school district is required to permit a social worker access to school records for the purposes set forth on the proposed form. The addition of statewide form assures confusion will occur among some, if not many, of our state’s school districts. Upon receiving this form, a school district may assume that consent of the parent, guardian or educational rights holder is required before releasing the information. Such a requirement would be problematic in cases where the parent is unwilling to sign the consent or cannot be located.</p> <p>Given the lengthy duration in foster care for many youth, social workers may need to access education records over a multi-year period. While there is no time limitation on</p>	<p>This form complies with the federal law, Family Education Rights and Privacy Act (FERPA), which requires a consent or court order for release of most information. In situations where the parent, legal guardian or Indian custodian cannot be located, the court may appoint an educational representative pursuant to Welfare and Institutions code section 319(g) who may consent to the release of information.</p> <p>While FERPA does not require an expiration date, the committee agrees to include a statement that the form expires one year from signature.</p>

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			<p>the form, a school district may balk at releasing information when a form is several years old. As noted above, instances may arise where a parent or guardian is either reluctant to sign the consent or unavailable.</p> <p>Based on the aforementioned concerns, LACY would instead support the creation of an information sheet that summarizes the relevant law. We understand that many school districts are not well versed on the provision of section 49076 that confers access rights upon social workers. Creating an information sheet would give the social workers a valuable tool when dealing with these districts.</p> <p>Should the Judicial Council wish to proceed with a consent form, the following revisions are suggested:</p> <p>a. In paragraph (2), the language “County Office of Education” should be added after the word “district”. Many foster youth attend county operated schools. The language in the proposed form does not cover these entities.</p> <p>b. In paragraph (2), the language “those education” should be inserted between “release” and “records”. Further, the entire second sentence of that paragraph should be stricken. Declaring specific types of records covered by this consent creates room for</p>	<p>The AOC Brief on Sharing Education Information about Children in Foster Care provides a summary of the state and federal education law. This brief can be found at: <a href="http://www.courts.ca.gov/cfcc-publications.htm#acc12610">http://www.courts.ca.gov/cfcc-publications.htm#acc12610</a>.</p> <p>The committee agrees with this change</p> <p>The committee agrees with this change.</p>

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			<p>debate between social workers and school districts. A record the social worker believes relates to the child’s developmental level might be labeled something else by the school. Conferring the right to access all “education” records avoids this potential confusion.</p> <p>c. Add language that the form is not intended to abrogate rights of court-appointed counsel for the child to access records conferred by Welfare and Institutions Code section 317 or court order.</p> <p>3. LACY has no objection to the change proposed on form JV-574. The minor changes proposed will provide more clarity to the form.</p>	<p>The committee agrees with this change.</p> <p>No response required.</p>
8.	<p>Superior Court of California, County of Ventura Patti Morua-Widdows, Court Program Manager</p>	AM	<p>It would be easier for the minor if the authorization was a separate form.</p>	<p>The committee considered whether to separate the form into two forms, one for the parent, legal guardian, or Indian custodian to sign, and a separate form for the child to sign. The committee decided to use one form only. It is important to include all of the information on one form to make clear which party may legally authorize release of each medical item. Two separate forms may cause confusion as to who can legally authorize the release of information and may inadvertently lead to the incorrect person checking the “other” box when that person is not legally authorized to release the information.</p>

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9.	Orange County Bar Association John Hueston, President	A	No specific comment.	No response required.
10.	Orange County Public Defender’s Office Deborah A. Kwast Public Defender	A	Comment to Specific Question: The forms should remain as proposed. As proposed, the split forms are clear, concise, and easy for a parent or child to understand.	No response required.
11.	Riverside County DPSS Children’s Services Division Aggie Jenkins	AM	The form, JV227, should be split into two (2) separate forms, one (1) for the adult parent/guardian and one (1) for the child. This would enhance the child’s confidentiality within the spirit of the law and reinforce for the child, his/her confidence in that confidentiality.	See Committee’s response to #3.
12.	State Bar of California Family Law Section Executive Committee (FLEXCOM) Saul Bercovitch	AM	<p>POSITION TAKEN: JV-226: AGREE, IF MODIFIED. JV-227: OPPOSE.</p> <p>A. JV-226: FLEXCOM suggests the following modification to JV-226:</p> <p>The Judicial Council asked for specific feedback as to whether one form should be used for both parents/guardians and children.</p> <p>1. The Council should create separate forms. The role played by minor’s consent laws in determining the types of information subject to release is unique. When a minor has the authority to consent to treatment, only that minor may authorize the release of information. Separating out the various rights will, hopefully, lead to less confusion. Further, the form created for adults can contain a specific</p>	<p>The committee considered whether to separate the form into two forms, one for the parent, legal guardian, or Indian custodian to sign, and a separate form for the child to sign. The committee decided to use one form only. It is important to include all of the information on one form to make clear which party may legally authorize release of each medical item. Two separate forms may cause confusion as to who can legally</p>

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			<p>advisement stating that the rights to authorize release of a minor’s information are limited.</p> <p><b>B. JV-227</b> FLEXCOM opposes JV-227</p> <p>This form is unnecessary and potentially harmful. California Education Code section 49076 already makes it clear that a child welfare agency has the right to access education records for the purposes set out in the intent language of the proposal. Adopting this form may suggest that the Judicial Council believes consent of certain individuals is required. In certain instances, use of this form can impede the work of child welfare agencies. Problems may arise in getting the appropriate consent in individual cases. If a school district grows accustomed to seeing this form, they may balk at providing information if the consent cannot be obtained. This outcome would be contrary to the intent of current law.</p> <p>If some type of form is deemed necessary, a better approach would be to create an informational document that outlines the rights set forth in Education Code 49076. The child welfare agency can use this form when working with each school district’s foster youth liaison in attempting to access records.</p>	<p>authorize the release of information and may inadvertently lead to the incorrect person checking the “other” box when that person is not legally authorized to release the information.</p> <p>The federal law, Family Education Rights and Privacy Act (FERPA), requires a consent or court order for release of most education information. This form complies with this statute. In situations where the parent, legal guardian or Indian custodian cannot be located, the court may appoint an educational representative pursuant to Welfare and Institutions code section 319(g) who may consent to the release of information.</p> <p>The AOC Brief on Sharing Education Information about Children in Foster Care provides a summary of the state and federal education law. This brief can be found at: <a href="http://www.courts.ca.gov/cfcc-publications.htm#acc12610">http://www.courts.ca.gov/cfcc-publications.htm#acc12610</a>.</p>
13.	Strategic Planning Committee of the Family Law Section of the Santa Clara County Bar Association	N	JV-227: This form is unnecessary because Social Services already has authorization to obtain school records. The form may give	This form complies with the federal law, Family Education Rights and Privacy Act (FERPA) which requires a consent or court order for release



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	Crisanne Hazen, Senior Attorney		<p>schools and parents the impression that having the form signed is a necessary step in order to give Social Services access to those records and may create more barriers than exist currently.</p> <p>JV-226: The concern is that the form implies that parents or guardians have the power to refuse access to this information, which is in direct conflict with Welfare and Institutions Code Section 317; Section 317 says that the child/child’s attorney holds the privilege to this information. Again, having this form at all may give health care providers and parents the impression that getting the form signed is a necessary step in order for the child/child’s attorney to obtain the information, and may unintentionally create more barriers than exist currently.</p>	<p>of most education information. In situations where the parent, legal guardian or Indian custodian cannot be located, the court may appoint an educational representative pursuant to Welfare and Institutions code section 319(g) who may consent to the release of information.</p> <p>The committee recognizes the need to distinguish between the laws governing privilege and separate laws concerning confidentiality in dependency matters. Privilege is an evidentiary matter and concerns the use of medical information in a court setting, while confidentiality deals with disclosure about a patient to a third party. This form covers the disclosure of confidential information. The issue of privilege may be brought to the attention of the court during court proceedings.</p>
14.	Superior Court of San Diego County Mike Roddy, Executive Officer	AM	<p>Our court recommends the following changes to the forms in this request for comment:</p> <p><b>Form JV-226</b></p> <p>Paragraph 1 – Edit to correct awkward construction of items in series – “It allows the agency to ...; for ...; to ... ” by replacing “for” with “to monitor” (or “to oversee” or “to manage”). Also, it is not clear what “health-care operation” means; should it be “health care operations”?</p>	<p>The suggested legal, grammatical, and stylistic changes are accepted.</p>

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			<p>It also allows the agency to fulfill its case management responsibilities; <del>for</del> <u>to monitor</u> treatment, health-care operations, billing and payment; and to inform the court of the child's medical and/or mental health needs.</p> <p>Item 1 - Add check box for Indian custodian?</p> <p>Item 3 - Insert comma after “guardian.” (Strunk &amp; White, <i>The Elements of Style</i>, Elementary Rules of Usage, Rule 4, “Place a comma before a conjunction introducing an independent clause.”)</p> <p>I am the parent or legal guardian, and I authorize release of the following information (<i>check all that apply</i>):</p> <p>Item 3 - For consistency in form, make all items plural (i.e., “Medical <u>histories</u>,” “Psychosocial <u>evaluations</u>”). Consider changing “Medications” to be more specific (e.g., “Prescribed medications” or “Medications given”).</p> <p>Item 3 - Change “my child” to “the child” for consistency with Items 2 and 6. “The” is preferable because the adult can be a legal guardian (or Indian custodian), not a parent.</p> <p>I understand that I may refuse to sign this form. I understand that <del>my</del> <u>the</u> child cannot be denied treatment just because I choose not to sign.</p>	

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			<p>Item 4 - Insert comma after “child.” (Strunk &amp; White, <i>The Elements of Style</i>, Elementary Rules of Usage, Rule 4, “Place a comma before a conjunction introducing an independent clause.”) Suggest using same language for second clause as used in item 3.</p> <p>I am the child, and I authorize <u>release of</u> the following information <del>to be disclosed</del> <i>(check all that apply)</i>:</p> <p>Item 4 - Move first check box item (<input type="checkbox"/> “I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. ... .”) so that it appears <b>after</b> the other listed items. It does not make sense for it to follow immediately after “... I authorize the following information to be disclosed.”</p> <p>For consistency, make all items plural (i.e., “Mental health <u>diagnoses</u>”).</p> <p>Correct typo (change “Infections” to “Infectious”).</p> <p>Change “require” to “requires” (singular subject: “law or regulation”).</p> <p><input type="checkbox"/> HIV information, including test results</p> <p style="padding-left: 40px;"><input type="checkbox"/> Sexually transmitted disease records</p> <p><input type="checkbox"/> Mental health <u>diagnosise</u>s</p>	

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			<p><input type="checkbox"/> Infection<u>s</u>, contagious, or communicable disease</p> <p><input type="checkbox"/> Outpatient mental health treatment or records if law or regulation requires the disease or counseling records condition to be reported to the local health officer</p> <p><input type="checkbox"/> None</p> <p><input type="checkbox"/> I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.</p> <p>Item 5 - Insert comma after “child.” (Strunk, The Elements of Style, Elementary Rules of Usage, “Place a comma before <i>and</i> or <i>but</i> introducing an independent clause.”) Suggest using same language for second clause as used in item 3.</p> <p>I am the child, and I authorize <u>release of</u> the following information <del>to be disclosed</del> (check all that apply):</p> <p>Item 5 - Move first check box item (<input type="checkbox"/> “I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. ... .”) so that it appears <b>after</b> the</p>	

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			<p>other listed items. It does not make sense for it to follow immediately after "... I authorize the following information to be disclosed."</p> <p><input type="checkbox"/> Pregnancy records</p> <p style="padding-left: 40px;"><input type="checkbox"/> Sexual assault treatment records</p> <p><input type="checkbox"/> Reproductive health records <span style="float: right;"><input type="checkbox"/></span></p> <p>None</p> <p><input type="checkbox"/> I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.</p> <p>Item 6 - Correct transposed words. Change "them" to "it" because it refers to "health information."</p> <p>I give permission to release <input type="checkbox"/> my <input type="checkbox"/> the child's health information specified by the checked boxes in items 3, 4, and 5 <del>to</del> and <u>to</u> discuss <del>them</del> <u>it</u> with _____ (name of child welfare agency).</p> <p>Item 7 - Change "my child's" to "the child's" for consistency with Items 2 and 6. "The" is preferable because the adult can be a legal guardian (or Indian custodian), not a parent. Delete "-care" for consistency with item 6 and second sentence in item 7 ("health</p>	

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			<p>information”).</p> <p>I understand that the child welfare agency may share or be required to share <input type="checkbox"/> my <input type="checkbox"/> <del>my</del> <u>the</u> child’s health-care information with certain persons or agencies for purposes of treatment, health-care operations, billing and payment, or as otherwise required by law, without having to ask <u>for</u> my permission.</p> <p>Item 7 - Replace blank line in second sentence with “this person” to make completion of the form simpler.</p> <p>I understand that I may revoke this authorization by writing to: _____  <i>(name and address of person to whom revocation should be directed)</i>. Once _____ <i>(name of person to whom revocation should be directed)</i> <u>this person</u> receives my written request, this authorization will be revoked, but only to the extent that the authorization has not already been relied upon to release health information.</p> <p>Item 7 - Edit as follows for clarity:</p> <p>I understand that if <del>disclosure of</del> this health information is <u>disclosed</u> to someone who is not legally required to keep it confidential, it may be redisclosed and <u>may</u> no longer be protected.</p> <p>Item 8 - Edit as follows for clarity:</p>	

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			<p>I request a copy of the records <del>to</del> <i>that will</i> be released.</p> <p>Item 9 – What does “Deadline for expiration of form” mean? Is it the date on which the authorization will no longer be effective? Is it a deadline to be chosen by the parent, legal guardian, or child? If so, on what basis would the decision be made?</p> <p><b>Form JV-227</b></p> <p>Paragraph 1 - The following edits are suggested for clarity:</p> <p>The purpose of this form is to consent to the release of education records of <u>a</u> child in foster care to the child welfare agency in order to ensure that the child receives appropriate and effective services. <del>It is</del> <i>This form</i> also <del>to</del> allows the agency to fulfill case management responsibilities, to assist with the transfer or enrollment of the child<del>s</del>, and to inform the court of <del>his or her</del> <i>the child's</i> educational needs.</p> <p>Item 1 - The following edits are suggested for clarity and because it is unlikely the student will understand the significance of “eligible.”</p> <p><del>An eligible student (student 18 years of age or older who attends a postsecondary institution)</del></p> <p>Result: A student 18 years of age or older who</p>	

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			<p>attends a postsecondary institution</p> <p>Add check box for Indian custodian?</p> <p>Item 2 - Insert “results” after “achievement test” for clarity.</p> <p>These records include, but are not limited to, attendance, academic, individualized education program (IEP), medical, social, psychological, discipline, developmental, speech/language, and achievement test <i>results</i>.</p> <p>Item 3 - Edit as follows for clarity:</p> <p>I request a copy of the records <del>to</del> <i>that will</i> be released.</p> <p><b>Form JV-574</b></p> <p>Item 1 - Change “petitioner” to “applicant” for consistency within form. (See items 3 [“The applicant has shown ...”] and 6 [“Applicant may not give...”].)</p> <p>Item 2 - Insert comma after “and a noticed hearing.”</p> <p>Item 3 - Insert comma after “and a noticed hearing.” Correct typo: “The court finds that the <del>needs</del> <i>need</i> for disclosure outweighs the policy considerations favoring confidentiality of juvenile records.”</p> <p>Items 4 and 5 - Insert comma after “deceased.”</p>	



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			<p>(Strunk &amp; White, <i>The Elements of Style</i>, Elementary Rules of Usage, Rule 4, “Place a comma before a conjunction introducing an independent clause.”)</p> <p>The child is deceased, and the request is granted.</p> <p>The child is deceased, and the request is denied.</p> <p>Item 6 – Insert “or 827.10.”</p> <p>Applicant may not give the information to anyone who is not specified in section 827 <i>or</i> <u>827.10</u> of the Welfare and Institutions Code.</p>	
15.	Superior Court of Monterey County Eva Mihi	A	No specific comment.	No response required.
16.	Superior Court of Riverside County Staff	A	No specific comment.	No response required.
17.	Superior Court of Sacramento County Finance Division Robert Turner, ASO II	NI	No specific comment.	No response required.
18.	Superior Court of San Diego County Legal Services Thomas J. Eral	AM	No specific comment.	No response required.
19.	Youth Law Center Maria F. Ramiu Managing Attorney	AM	On behalf of the Youth Law Center these comments are submitted with respect to Item #SPR11-49 regarding proposed juvenile court consent to disclosure of education and health information forms.	No response required.

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			<p>The Youth Law Center is a San Francisco-based, public interest law firm that works on behalf of children in the juvenile justice and child welfare systems in California and around the country. These comments relate to proposed forms JV-226 and JV-227.</p> <p>Although barriers may exist for child welfare agencies in obtaining information from schools and health care providers, it is unclear why standardized Judicial Council consent forms are likely to aid in overcoming those barriers. The schools and health care providers that child welfare agencies seek information from are not regular participants in the juvenile court process. Information sharing barriers erected by educational or health care providers are more likely to be overcome if the standardized consent forms are developed, promulgated or endorsed by entities that govern or are associated with schools or health care providers. However, if the Judicial Council decides to go forward with the JV-226 and JV-227 it is imperative that they be revised to accurately reflect the law.</p> <p>JV-226 (Consent to Disclose Health Records) Agree if Modified</p> <p>Generally, the consent form fails to provide the information necessary for a parent to give an informed consent and fails to accurately reflect the law. The stated purposes in the disclosure forms are to provide the child with appropriate</p>	<p>These forms were created as the result of recommendations made by the Blue Ribbon Commission on Children in Foster Care and the Child Welfare Council in order to assist in information sharing between child welfare, state and local agencies, and the courts.</p> <p>In meetings held pursuant to these recommendations, the stakeholders raised concerns that various state and local health care providers and school districts use legally inaccurate and obsolete forms for the release of information. These Judicial Council forms create a standardized legally accurate way to exchange medical and education information about children in the dependency proceedings.</p> <p>This form states that this information may be redisclosed and no longer protected. It also requires that the child talk with an attorney before signing the form.</p>

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			<p>and effective services, fulfill case management responsibilities and assist with the provision of health and education related services.</p> <p>However, child welfare agencies routinely use the information obtained for other purposes including prosecuting the parent in the juvenile court child abuse case or penalizing the child in current or future child welfare agency processes and programs. The information becomes a permanent part of the child welfare agency record and the agency will use that record in conducting the agency’s business. For example, the child welfare agency may adversely use the information received to deny the child access to programs and services that are unrelated to the child’s healthcare. There is also a risk that the agency may use the information against the child after he or she reaches the age of majority in child abuse, foster parenting and adoption assessments as well as licensing or other certifications. The forms should be revised to correct the foregoing general deficiencies as well as the following specific problems:</p> <p>Item #4 - “Only a child who is between 12 and 18 years old may authorize release of the following information.” This statement is not legally accurate and should be deleted. A child 12 and older may release the type of records indicated but as worded the records listed for children under age 12 could never be released. Adolescents between the ages of 12 and 18 may consent to treatment for certain</p>	<p>Agree to change the language to “if the child is between 12 and 18.”</p>

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			<p>“sensitive” health services and must authorize the release of health records relating to treatment to which they are authorized to consent.</p> <p>Item #5 - “Only the child, regardless of his or her age, may authorize release of the following information.” While the statement is accurate with respect to pregnancy related records, it does not otherwise accurately reflect the law and should be deleted. If, for example, the child could not consent to the treatment involving the records indicated, the child could not consent to the release of the records (e.g., a 2 year old sexual assault victim or a 3 year old intersex child who has had treatment related to reproductive health).</p> <p>JV-227 (Consent to Release Education Records)      Agree if Modified</p> <p>The form may be used for children who are subjects of juvenile dependency proceedings but are not “in foster care.” Therefore the “foster care” reference in the first paragraph of the form should be deleted and replaced with “who is a subject of juvenile dependency proceedings” or other language to capture the intended population.</p> <p>Additionally, an expiration date or some time limit should be added to the consent form. The consent form should only be valid for a specified time period that should not extend in</p>	<p>The committee agrees to change the wording as to sexual assault.</p> <p>The committee agrees with this change.</p>

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			<p>any circumstance beyond the juvenile court's involvement with the child.</p> <p>Finally, the parenthetical "student 18 years or older who attends a postsecondary institution" in Item #1 does not accurately define "eligible student" and should be revised or deleted. Students age 18 and older and students of any age in post- secondary education institutions may consent to the release of their school records. (Education Code §49061(a).)</p>	The committee agrees with this change.

