

Title	Juvenile Law: Request to Change Court Order (amend Cal. Rules of Court, rule 5.570)
Summary	The proposed amendments to rule 5.570 of the California Rules of Court promote compliance with new legal requirements identified in Welfare and Institutions Code section 388(c)(1) that allow any party, including a dependent child, to petition the court to terminate court-ordered reunification services under certain conditions.
Source	Family and Juvenile Law Advisory Committee  Hon. Jerilyn L. Borack and Hon. Susan D. Huguenor, Cochairs
Staff	Melissa Ardaiz, Associate Attorney, 415-865-7567, melissa.ardaiz@jud.ca.gov
Discussion	<p>The Family and Juvenile Law Advisory Committee recommends amending rule 5.570 of the California Rules of Court to bring it into compliance with new law. (Assem. Bill 2341 [Maze]; Stats. 2008, ch. 457.)<sup>1</sup> Welfare and Institutions Code section 388(c)(1) includes new provisions that allow any party, including a dependent child, to petition the court to terminate court-ordered reunification services if (1) a change of circumstances or new evidence exists that meets the conditions of section 361.5(b) or (e) or (2) the parent’s or guardian’s actions or inactions, including failure to visit the child or failure to make progress on his or her court-ordered treatment plan, create a substantial likelihood that reunification will not occur. When such a petition is filed, sections 388(c)(2)–(4) provide guidance to the court about factors to consider, required findings and orders, and setting of a subsequent hearing. The proposed amendments to rule 5.570(a), (d), (e), (f), and (h) incorporate the new requirements from section 388(c). In drafting the proposed language, it was the committee’s intent to simplify the provisions identified in section 388(c) to promote clarity and ease of rule usage for judicial officers and legal practitioners.</p> <p>As a result of new section 388(c), the <i>Request to Change Court Order</i> (form JV-180) and <i>Court Order on Form JV-180, Request to Change Court Order</i> (form JV-183) may be revised in a future public comment</p>

---

<sup>1</sup> Assembly Bill 2341 amended sections 361.5 and 388 of the Welfare and Institutions Code. Identical changes to section 361.5 were also enacted by Assembly Bill 2070, and the corresponding rule changes are covered in the rule proposal enacting that legislation (see SRO09-14). Only the changes to section 388 are covered by this proposal.

cycle. The forms are usable in their current state, but the committee may subsequently recommend that the forms be modified to specifically include the new provisions in section 388(c).

The committee specifically requests comments regarding whether the proposed revisions clarify the new legal requirements identified in section 388(c) and promote ease of rule usage.

The proposed rule text is attached on pages 3–5.

Welfare and Institutions Code section 388 is attached on pages 6–7.

---

Attachments

Rule 5.570 of the California Rules of Court would be amended, effective January 1, 2010, to read:

1 **Rule 5.570. Request to change court order**

2  
3 **(a) Contents of petition (§§ 388, 778)**

4  
5 A petition for modification must be liberally construed in favor of its  
6 sufficiency. The petition must be verified and, to the extent known to the  
7 petitioner, must contain the following:

8  
9 (1)–(6) \* \* \*

10  
11 (7) A concise statement of any change of circumstance or new evidence  
12 that requires changing the order or, for requests under section  
13 388(c)(1)(B), a concise statement of the relevant action or inaction of  
14 the parent or guardian;

15  
16 (8)–(10) \* \* \*

17  
18 **(b)–(c) \*\*\***

19  
20 **(d) Denial of hearing**

21  
22 (1) If the petition filed under section 388(a) or (b) or section 778 fails to  
23 state a change of circumstance or new evidence that may require a  
24 change of order or termination of jurisdiction, or that the requested  
25 modification would promote the best interest of the child, the court may  
26 deny the ~~application~~ petition ex parte.

27  
28 (2) If the petition filed under section 388(c) fails to offer clear and  
29 convincing evidence supporting termination of reunification services or  
30 fails to show that the requested termination of services would promote  
31 the best interest of the child, the court may deny the petition ex parte.

32  
33 **(e) Grounds for grant of petition (§§ 388, 778)**

34  
35 (1) If the petition filed under section 388(a) or (b) or section 778 states a  
36 change of circumstance or new evidence and it appears that the best  
37 interest of the child may be promoted by the proposed change of order  
38 or termination of jurisdiction, the court may grant the petition after  
39 following the procedures in (f) and (g).

1  
2 (2) For a petition filed under section 388(c)(1)(A), the court may terminate  
3 reunification services during the time periods described in section  
4 388(c)(1) only if the court finds by a preponderance of evidence that  
5 reasonable services have been offered and provided, and finds by clear  
6 and convincing evidence that the change of circumstance or new  
7 evidence described in the petition satisfies a condition in section  
8 361.5(b) or (e). The court may grant the petition after following the  
9 procedures in (f) and (g).

10  
11 (3) For a petition filed under section 388(c)(1)(B), the court may terminate  
12 reunification services during the time periods described in section  
13 388(c)(1) only if the court finds by a preponderance of evidence that  
14 reasonable services have been offered and provided, and finds by clear  
15 and convincing evidence that action or inaction by the parent or  
16 guardian creates a substantial likelihood that reunification will not  
17 occur. Such action or inaction includes, but is not limited to, failure to  
18 visit the child or failure to participate regularly and make substantive  
19 progress in a court-ordered treatment program. In determining whether  
20 the parent or guardian has failed to visit the child or to participate  
21 regularly or make progress in a court-ordered treatment plan, the court  
22 must consider factors including, but not limited to, the parent or  
23 guardian's incarceration, institutionalization, or participation in a  
24 residential substance abuse treatment program. The court may grant the  
25 petition after following the procedures in (f) and (g).

26  
27 **(f) Hearing on Petition**

28  
29 If all parties stipulate to the requested modification, the court may order  
30 modification without a hearing. If there is no such stipulation, and the  
31 petition has not been denied ex parte under section (d), ~~If it appears to the~~  
32 court that the requested modification will be contested or if the court desires  
33 to received further evidence, the court must order that a hearing on the  
34 petition for modification be held within 30 calendar days after the petition is  
35 filed.

36  
37 **(g) \*\*\***

38  
39 **(h) Conduct of hearing (§ 388)**

40  
41 (1) The petitioner requesting the modification under section 388 has the  
42 burden of proof.  
43

1 (A) If the request is for the removal of the child from the child's  
2 home, the petitioner must show by clear and convincing evidence  
3 that the grounds for removal in section 361(c) exist.  
4

5 (B) If the request is for removal to a more restrictive level of  
6 placement, the petitioner must show by clear and convincing  
7 evidence that the change is necessary to protect the physical or  
8 emotional well-being of the child.  
9

10 (C) If the request is for termination of court-ordered reunification  
11 services, the petitioner must show by clear and convincing  
12 evidence that one of the conditions in section 388(c)(1)(A) or (B)  
13 exists.  
14

15 (D) All other requests require a preponderance of the evidence to  
16 show that the child's welfare requires such a modification.  
17

18 (2) The hearing must be conducted as a disposition hearing under rules  
19 5.690 and 5.695 if:  
20

21 (A) The request is for removal from the home of the parent or  
22 guardian or to a more restrictive level of placement; ~~or~~  
23

24 (B) The request is for termination of court-ordered reunification  
25 services; or  
26

27 ~~(B)~~(C) There is a due process right to confront and cross-examine  
28 witnesses.  
29

30 Otherwise, proof may be by declaration and other documentary evidence, or  
31 by testimony, or both, at the discretion of the court.  
32

33 (i) \*\*\*  
34  
35

## **Welfare and Institutions Code § 388**

(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction.

(b) Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child. The court may appoint a guardian ad litem to file the petition for the dependent child asserting the sibling relationship if the court determines that the appointment is necessary for the best interests of the dependent child. The petition shall be verified and shall set forth the following:

- (1) Through which parent he or she is related to the dependent child.
- (2) Whether he or she is related to the dependent child by blood, adoption, or affinity.
- (3) The request or order that the petitioner is seeking.
- (4) Why that request or order is in the best interest of the dependent child.

(c)(1) Any party, including a child who is a dependent of the juvenile court, may petition the court, prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1) of subdivision (a) of Section 361.5, or within six months of the initial dispositional hearing for a child described by paragraph (2) or (3) of subdivision (a) of Section 361.5, to terminate court-ordered reunification services provided under subdivision (a) of Section 361.5 only if one of the following conditions exists:

- (A) It appears that a change of circumstance or new evidence exists that satisfies a condition set forth in subdivision (b) or (e) of Section 361.5 justifying termination of court-ordered reunification services.
- (B) The action or inaction of the parent or guardian creates a substantial likelihood that

reunification will not occur, including, but not limited to, the parent or guardian's failure to visit the child, or the failure of the parent or guardian to participate regularly and make substantive progress in a court-ordered treatment plan.

(2) In determining whether the parent or guardian has failed to visit the child or participate regularly or make progress in the treatment plan, the court shall consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a residential substance abuse treatment program.

(3) The court shall terminate reunification services during the above-described time periods only upon a finding by a preponderance of evidence that reasonable services have been offered or provided, and upon a finding of clear and convincing evidence that one of the conditions in subparagraph (A) or (B) of paragraph (1) exists.

(4) If the court terminates reunification services, it shall order that a hearing pursuant to Section 366.26 be held within 120 days.

(d) If it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 386, and, in those instances in which the means of giving notice is not prescribed by those sections, then by means the court prescribes.

## Item SPR09-37 Response Form

**Title:** **Juvenile Law: Request to Change Court Order** (amend Cal. Rules of Court, rule 5.570)

- 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](mailto: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

<b>DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009</b>
--

*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.*