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IN V I T A T I O N T O C O M M E N T
SPR13-27

Title	Action Requested
Juvenile Law: Minor Changes for Statutory Compliance	Review and Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes Amend Cal. Rules of Court, rules 5.570, 5.695, 5.710, 5.715, 5.720, and 5.805	Proposed Effective Date
Proposed by Family and Juvenile Law Advisory Committee Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Dean T. Stout, Cochair	January 1, 2014
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Executive Summary and Origin

Legislation enacted in 2012 requires changes to various juvenile law-related rules of court to ensure that the rules accurately and comprehensively reflect the current state of the law. Assembly Bill 324 (Stats. 2012, ch. 7) clarified which juvenile offenders can be committed by the juvenile court to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF), by specifically including wards adjudicated delinquent for sex offenses subject to registration. The rule governing commitments to DJF (rule 5.805) must be updated to reflect this change.

Senate Bill 1425 (Stats. 2012, ch. 179) sets forth a higher standard of proof for petitioners seeking to modify the order of a dependency court when the court has denied the parent reunification services. The rule governing these modification petitions (rule 5.570) requires amendment to reflect this higher standard of proof.

Senate Bill 1064 (Stats. 2012, ch. 845) provides parents who have been detained for immigration violations, or who have been deported, with additional time and consideration when their children have been removed and the court is determining whether further reunification services are necessary or beneficial. These provisions impact each of the review hearings in juvenile dependency matters and require that the rules governing those proceedings (rules 5.695, 5.710, 5.715, and 5.720) be updated to reflect the changes.

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 These proposals are circulated for comment purposes only.

The Proposal

Rule changes needed to incorporate changes in statute enacted by AB 324

AB 324 sought to clarify the criteria for a juvenile ward to be committed to DJF in light of the decision of the California Supreme Court in *In re C.H.*, 53 Cal.4th 94 (2011), which held that wards adjudicated delinquent for sex offenses subject to registration pursuant to subdivision (c) of Penal Code section 290.008 and who were not adjudicated for an offense listed in subdivision (b) of Welfare and Institutions Code section 707 were not eligible for commitment to DJF.

Assembly Bill 324 revised Welfare and Institutions Code sections 731 and 733 to make explicit that juvenile courts may commit wards adjudicated for either a 707(b) offense or an offense subject to registration under section 290.008(c). Because AB 324 has expanded the offenses for which a ward may be committed to DJF, rule 5.805 (California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments) must be amended to reflect that the court must specify in its order that the offense is one that is *either* listed in subdivision (b) of Welfare and Institutions Code section 707 *or* is an offense described in subdivision (c) of Penal Code section 290.008. The specific required change would be:

Rule 5.805 California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments

- Add the words “or subdivision (c) of Penal Code section 290.008” to rule 5.805(2).

Rule changes needed to incorporate changes in statute enacted by SB 1425

Senate Bill 1425 was enacted to ensure that parents who are denied reunification services by the juvenile court because of either the nature of the abuse or a history of prior abuse cannot inappropriately delay permanency for their children by filing modification petitions under Welfare and Institutions Code section 388 that are not well supported by evidence. To address this concern, SB 1425 requires that a section 388 modification petition filed to modify (1) an order denying reunification services or (2) a custody or visitation order for a parent who was denied reunification services under paragraph (4), (5), or (6) of subdivision (b) of Welfare and Institutions Code section 361.5, may only be granted if the court finds by clear and convincing evidence that the proposed change is in the best interest of the child. This heightened standard of proof must be included in rule 5.570 (Request to change court order (petition for modification)) in both subdivision (e), which sets forth the grounds for granting a 388 petition, and subdivision (h), which sets forth the conduct of the hearing. The specific changes required are:

Rule 5.570¹ Request to change court order (petition for modification)

- Addition of a new paragraph to rule 5.570(e) setting forth the grounds for granting a section 388(a) petition when the parent’s reunification services were denied and the petition seeks to modify that order or change custody and visitation.
- Addition of a new paragraph to rule 5.570(h) stating that the petitioner has to show by clear and convincing evidence that the modification sought is in the best interest of the

¹ Note that another invitation to comment, [SPR13-25](#), also proposes changes to Rule 5.570 to implement unrelated recent legislation.

child when the parent's reunification services were denied and the petition seeks to modify that order or change custody and visitation.

Rule changes needed to incorporate changes in statute enacted by SB 1064

In 2008, legislation (Assem. Bill 2070 [Bass]; Stats. 2008, ch. 482) was enacted that provides the court with additional discretion to extend reunification services for parents who are incarcerated or institutionalized, in light of the barriers they face in maintaining contact with their children and obtaining court-ordered reunification services. This legislation requires the court to consider those barriers when determining whether services should continue. In 2012, SB 1064 extended those protections to parents who are detained by the United States Department of Homeland Security (DHS) or who have been deported. Thus, the court must now consider the barriers faced by immigrant parents who are in detention or have been deported in the same manner that they consider them for incarcerated or institutionalized parents. Each of the rules governing the conduct of permanency review hearings in dependency matters must be amended to include the additional provisions, as well as the rule setting forth the required findings and orders of the court in those hearings. The proposed changes are specifically described below.

Rule 5.695² Findings and orders of the court—disposition

- Updated language in rule 5.695(h)(13) to include parents or guardians who are detained by DHS or have been deported to their country of origin among those parents who are entitled to receive reunification services unless the court finds by clear and convincing evidence that the services would be detrimental to the child, with consideration of the factors in subdivision (e) of Welfare and Institutions Code section 361.5.

Rule 5.710 Six-month review hearing

- Updated language in rule 5.710(c)(1)(D)(ii) to include parents who are detained by DHS or have been deported to their country of origin among those parents for whom the court must consider any particular barriers to maintaining contact with the parent's child when determining whether to extend court-ordered services to 12 months.
- Updated language in rule 5.710(c)(1)(D)(ii) to include parents who are detained by DHS or have been deported to their country of origin among those parents for whom the court may consider good faith efforts to maintain contact with the child, as well as any other barriers to the parent's access to services, when determining whether to extend court-ordered services to 12 months.

Rule 5.715 Twelve-month permanency hearing

- Updated language in rule 5.715(b)(4)(A)(ii) stating that parents who have been arrested and issued an immigration hold, detained by DHS, or deported to their country of origin are entitled to consideration of their special circumstances when the court is determining whether reunification services may be extended to 18 months.

² Note that another invitation to comment, [SPR13-24](#), also proposes changes to Rule 5.695(h) to implement unrelated recent legislation.

Rule 5.720 Eighteen-month permanency review hearing

- Updated language in rule 5.720(b)(3)(A) stating that the court may extend reunification services for up to 24 months for parents recently discharged from the custody of DHS if it finds by clear and convincing evidence that the parent is making significant and consistent progress in establishing a safe home for the child's return.
- Updated language in rule 5.720(b)(3)(A)(iii) stating that the court, when finding whether there is a substantial probability that the child will be returned to his or her parents within 24 months, include parents who have the ability to complete a post-discharge treatment plan following immigration detention, deportation to their country of origin, or their return to the United States.

Alternatives Considered

The Family and Juvenile Law Advisory Committee is proposing these rule changes to ensure that the current rules of court are consistent with the current state of the law. Failure to make these changes will render the rules incomplete and out-of-date. Alternatively, the rules could be modified to simply include statutory references so that additional explanatory language would be unnecessary, but this approach would eliminate essential information about procedural requirements in these cases from the rules.

The committee did consider making a change to the *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732), item six, to implement the expanded commitment criteria for DJF, but determined that the existing form can accommodate the expanded criteria without modification because it provides space for the court to list the code section for which the ward was adjudicated and committed. Given the operational impacts of form changes, and the current suitability of the form, the committee determined that it was preferable not to make any revisions to expressly reflect the changes made by AB 324.

Implementation Requirements, Costs, and Operational Impacts

This proposal will not result in any costs to the courts because all of the proposed rule amendments reflect current statutory requirements enacted by recent legislation. Updating the rules will benefit the courts by ensuring that the branch and other juvenile court stakeholders are aware of the requirements of the recently enacted legislation and are in full compliance with them.

Request for Specific Comments

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

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

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

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. Cal. Rules of Court, rules 5.805, 5.570, 5.695, 5.710, 5.715, and 5.720, at pages 6–11
2. Link to legislation AB 324 (Stats. 2012, ch. 7):
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB324&search_keywords=
3. Link to legislation SB 1425 (Stats. 2012, ch. 179):
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1425&search_keywords=
4. Link to legislation SB 1064 (Stats. 2012, ch. 845):
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1064&search_keywords=
5. Links to [SPR13-24: Juvenile Law: Access to Services for Children, Nonminors, and Nonminor Dependents](#), and [SPR13-25, Juvenile Law: Extended Foster Care](#)

Rules 5.805, 5.570, 5.695, 5.710, 5.715, and 5.720 of the California Rules of Court would be amended, effective January 1, 2014, to read:

Rule 5.805. California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments

If the court orders the youth committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ):

- (1) The court must complete Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (form JV-732).
 - (2) The court must specify whether the offense is one listed in section 707(b) or subdivision (c) of Penal Code section 290.008.
 - (3)-(4) ***

Rule 5.570. Request to change court order (petition for modification)

(a)-(d) ***

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

(1)-(4) ***

(5) If the petition filed under section 388(a) is filed before an order terminating parental rights and is seeking to modify an order that reunification services were not needed under section 361.5(b)(4), (5), or (6), or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the court may modify the orders only if the court finds by clear and convincing evidence that the proposed change is in the best interests of the child. The court may grant the petition after following the procedures in (f), (g), and (h).

(f)-(g) ***

(h) Conduct of hearing (§ 388)

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

(A)-(C) ***

(D) If the request is to modify an order that reunification services were not needed under section 361.5(b)(4), (5), or (6), or to modify any orders related to custody or visitation of the child for whom reunification services were not ordered under section 361.5(b)(4), (5), or (6), the petitioner must show by clear and convincing evidence that the proposed change is in the best interests of the child.

1
2 ~~(D)~~(E) All other requests require a preponderance of the evidence to show that the
3 child's welfare requires such a modification.

4
5 (2) The hearing must be conducted as a disposition hearing under rules 5.690 and 5.695
6 if:

- 7
8 (A) The request is for removal from the home of the parent or guardian or to a
9 more restrictive level of placement;
10
11 (B) The request is for termination of court-ordered reunification services; or
12
13 (C) There is a due process right to confront and cross-examine witnesses.

14
15 Otherwise, proof may be by declaration and other documentary evidence, or by testimony,
16 or both, at the discretion of the court.

17
18 (i) ***

19
20 **Rule 5.695. Findings and orders of the court—disposition**

21
22 (a)–(g) ***

23
24 (h) **Provision of reunification services (§ 361.5)**

25
26 (1)–(12) ***

27
28 (13) If the mother, statutorily presumed father, or guardian is institutionalized, or
29 incarcerated, or detained by the United States Department of Homeland Security, or
30 has been deported to his or her country of origin, the court must order reunification
31 services unless it finds by clear and convincing evidence that the services would be
32 detrimental to the child, with consideration of the factors in section 361.5(e). The
33 court may order reunification services with an institutionalized, or incarcerated,
34 detained, or deported biological father whose paternity has been declared by the
35 juvenile court or another court of competent jurisdiction, if the court determines that
36 such services would benefit the child, with consideration of the factors in section
37 361.5(e).

38
39 (14)–(19) ***

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41
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1 **(i)-(l) *****
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4 **Rule 5.710. Six-month review hearing**
5

6 **(a)-(b) *****
7

8 **(c) Setting a section 366.26 hearing (§§ 366.21, 366.215)**
9

10 (1) The court may set a hearing under section 366.26 within 120 days if:
11

12 (A)-(C) ***
13

14 (D) The child was under the age of three when initially removed, or a member of a
15 sibling group described in section 361.5(a)(1)(C), and the court finds by clear
16 and convincing evidence that the parent has failed to participate regularly and
17 make substantive progress in any court-ordered treatment plan. If, however, the
18 court finds a substantial probability that the child may be returned within 6
19 months or within 12 months of the date the child entered foster care, whichever
20 is sooner, or that reasonable services have not been offered or provided, the
21 court must continue the case to the 12-month permanency hearing.
22

23 (i) In order to find a substantial probability that the child may be returned
24 within the applicable time period, the court should consider the
25 following factors along with any other relevant evidence:
26

- 27 a. Whether the parent or legal guardian has consistently and regularly
28 contacted and visited the child;
29
30 b. Whether the parent or legal guardian has made significant progress
31 in resolving the problems that led to the removal of the child; and
32
33 c. Whether the parent or legal guardian has demonstrated the capacity
34 and ability to complete the objectives of the treatment plan and to
35 provide for the child's safety, protection, physical and emotional
36 health, and special needs.

37
38 (ii) The court, in determining whether court-ordered services may be
39 extended to the 12-month point, must take into account any particular
40 barriers to a parent's ability to maintain contact with his or her child due
41 to the parent's incarceration, or institutionalization, detention by the
42 United States Department of Homeland Security, or deportation. The
43 court may also consider, among other factors, whether the incarcerated,
44 or institutionalized, detained, or deported parent has made good faith
45 efforts to maintain contact with the child and whether there are any other
46 barriers to the parent's access to services.

1
2 (2) ***
3

4 **(d) *****
5
6

7 **Rule 5.715. Twelve-month permanency hearing**
8

9 **(a) *****
10

11 **(b) Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**
12

13 At the hearing, the court and all parties must comply with all relevant requirements and
14 procedures in rule 5.708, General review hearing requirements. The court must make all
15 appropriate findings and orders specified in rule 5.708 and proceed as follows:
16

17 (1)–(3) ***
18

19 (4) If the court does not order return of the child to the parent or legal guardian and the
20 time period for providing court-ordered services has been met or exceeded, as
21 provided in section 361.5(a)(1), the court must specify the factual basis for its
22 finding of risk of detriment to the child and proceed as follows in selecting a
23 permanent plan:
24

25 (A) If the court finds that there is a substantial probability that the child will be
26 returned within 18 months or that reasonable services have not been offered or
27 provided, the court must continue the case for a permanency review hearing to
28 a date not later than 18 months from the date of the initial removal. If the court
29 continues the case for an 18-month permanency review hearing, the court must
30 inform the parent or legal guardian that if the child cannot be returned home by
31 the next hearing, a proceeding under section 366.26 may be instituted.
32

33 (i) In order to find a substantial probability that the child will be returned
34 within the 18-month period, the court must find all of the following:
35

- 36 a. The parent or legal guardian has consistently and regularly contacted
37 and visited the child;
38
39 b. The parent or legal guardian has made significant progress in
40 resolving the problems that led to the removal of the child; and
41
42 c. The parent or legal guardian has demonstrated the capacity and
43 ability to complete the objectives of the treatment plan and to
44 provide for the child's safety, protection, physical and emotional
45 health, and special needs.
46

- (ii) In determining whether court-ordered services may be extended to the 18-month point, the court must consider the special circumstances of a parent or legal guardian who is incarcerated or institutionalized or court-ordered to a residential substance abuse treatment program, or arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin, including, but not limited to, barriers to the parent's or legal guardian's access to services and ability to maintain contact with his or her child. The court must also consider, among other factors, good faith efforts that the parent or legal guardian has made to maintain contact with the child.

(B)-(C) ***

Rule 5.720. Eighteen-month permanency review hearing

(a) ***

(b) Determinations and conduct of hearing (§§ 361.5, 366.22)

At the hearing the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed as follows:

(1)-(2) ***

(3) If the court does not order return of the child to the custody of the parent or legal guardian, the court must specify the factual basis for its finding of risk of detriment and do one of the following:

(A) Continue the case for a subsequent permanency review hearing not later than 24 months from the date of the initial removal if the court finds that there is a substantial probability that the child will be returned within that time or that reasonable services have not been offered or provided. To extend services to the 24-month point, the court must also find by clear and convincing evidence that additional reunification services are in the best interest of the child and that the parent or legal guardian is making significant and consistent progress in a substance abuse treatment program, or a parent is recently discharged from incarceration, or institutionalization, or the custody of the United States Department of Homeland Security, and making significant and consistent progress in establishing a safe home for the child's return. The court must also inform the parent or legal guardian that, if the child cannot be returned home by the subsequent permanency review hearing, a hearing under section 366.26 may be instituted.

1 In order to find a substantial probability that the child will be returned within
2 the 24-month period, the court must find all of the following:
3

- 4 (i) The parent or legal guardian has consistently and regularly contacted and
5 visited the child;
- 6
- 7 (ii) The parent or legal guardian has made significant and consistent progress
8 in the prior 18 months in resolving the problems that led to the removal
9 of the child; and
- 10 (iii) The parent or legal guardian has demonstrated the capacity and ability
11 both to complete the objectives of his or her substance abuse treatment
12 plan as evidenced by reports from a substance abuse provider, as
13 applicable, or to complete a treatment plan postdischarge from
14 incarceration, ~~or institutionalization, or detention, or following~~
15 ~~deportation to his or her country of origin, or his or her return to the~~
16 ~~United States,~~ and to provide for the child's safety, protection, physical
17 and emotional health, and special needs.

18

19 (B)–(C) ***

20

21 (4)***