

# Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688  
[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

**SPR13-32**

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Title	Action Requested
Military Service: Optional Form for Notification of a Party's Military Status	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Form CR-109/JV-145/MIL-100	January 1, 2014
Proposed by	Contact
Collaborative Justice Courts Advisory Committee	Carrie Zoller, 415-865-8829 <a href="mailto:carrie.zoller@jud.ca.gov">carrie.zoller@jud.ca.gov</a>
Hon. Richard Vlavianos, Chair	

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### **Executive Summary and Origin**

The Collaborative Justice Courts Advisory Committee proposes that a new optional form be used to inform the court that a party in a criminal or juvenile dependency court case is in the military. Knowledge of a party's status as a current or former member of the armed services or reserves will enable courts to address any legal issues for which military status is relevant and to better administer justice. It will also help courts comply with the sentencing requirements of Penal Code section 1170.9 and make it easier to identify when outside resources are available to military and former military court users. This proposal is responsive to Assembly Bill 2371 and a request to the Administrative Office of the Courts to amend Judicial Council forms to allow identification of court litigants who have a military affiliation.

### **Background**

Although the military or veteran status of a party may be relevant in many different kinds of court cases, there aren't any general Judicial Council forms that can be used in any case-type to notify the court of military status. According to government reports, there are 23,440,000 veterans in the United States, of which approximately 1.7 million are veterans of Iraq and Afghanistan. In 2012, the United States Census Bureau reported that California is home to more veterans than any other state, with more than 2 million veterans residing here. Significant numbers of veterans and active duty military personnel are involved with the court system. In addition to appearing in civil and family law cases where their military status may be a factor in terms of notice and other rights and protections, research from the Department of Justice indicates that approximately 1.2 million veterans are arrested annually, many of whom will face prosecution in court. Research has also shown that traditional services do not always adequately

*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.*

meet the needs of veterans. Fortunately, many veterans are entitled to treatment through the U.S. Department of Veterans Affairs (VA) and legislation, such as Penal Code section 1170.9, has recognized this and identified the VA as a resource that the court may be able to utilize in the administration of justice.

Penal Code section 1170.9 requires that whenever a person is convicted of a criminal offense, is eligible for probation, and alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems stemming from service in the U.S. military, the court must hold a hearing prior to sentencing to determine whether the defendant was in the military and if the crime was committed as a result of one of those related factors. If the court finds those factors to be present and places the defendant on probation, Penal Code section 1170.9 authorizes the court to place the defendant into a treatment program, entitles the defendant to receive sentence credits for residential treatment, and authorizes the court and an assigned treatment program to collaborate with the VA to maximize benefits and services available to those defendants.

In September 2012, the Legislature passed Assembly Bill 2371, which added subdivision (h) to Penal Code section 1170.9. This subdivision became effective January 1, 2013. Under subdivision (h), in some circumstances, a court may also grant restorative relief to eligible criminal defendants who acquire a criminal record due to a mental health disorder stemming from their service in the U.S. military. This form would assist courts in complying with Penal Code section 1170.9 while allowing a vehicle for veterans to self-identify.

In addition, the Administrative Office of the Courts received a letter, jointly authored by members of the judicial and legal communities, requesting amendment of all mandatory Judicial Council forms to include information about whether a party is a veteran of any branch of the U.S. armed forces. The request was rooted in the belief that providing the court with this information would allow it to better administer justice and better enable attorneys to represent the interests of their clients. The committee considered this request but determined that revising numerous forms, some of which have limited space, would create a workload burden on courts at this challenging fiscal time. The committee believes that creating a stand-alone optional form would meet the same goal in a less burdensome fashion. While the proposed form is directed for use in criminal and juvenile dependency proceedings, the committee seeks feedback on whether other case types should be included. For example, use of the form in family law cases could alert the court or the court-appointed child custody mediator or evaluator that a party may be eligible for services provided by the military or that visitation schedules may need to take into account active duty responsibilities.<sup>1</sup>

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<sup>1</sup> If the form's use is extended to include family law cases, a sentence cautioning that litigants filing for relief under the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. §§501-593) must still complete the applicable Military or Family Law forms would be added to the notice box.

In creating this optional form to identify military status, the Collaborative Justice Courts Advisory Committee believes courts will be able to process cases more efficiently while improving the fair administration of justice.

### **The Proposal**

This proposal would create a new optional one-page military form, CR-109/JV-145/MIL-100, *Notification of Military Status*, which could be used to inform the court that a party is a member or a veteran of the U.S. armed forces and this status is potentially relevant. The form alerts the filing party that if he or she is requesting sentencing or restorative relief under Penal Code section 1170.9 or relief from financial obligation during military service, a notification of military deployment and request to modify a support order, or other relief under the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. §§ 501–593), then the party must complete any other requirements of those codes, including completion of the appropriate forms, where applicable.

The optional *Notification of Military Status* form could be useful in implementing Penal Code section 1170.9, including the amendment made by the passage of Assembly Bill 2371, and is responsive to a request received for creating a way for courts to know when a party to an action is a veteran. The form could benefit the judicial branch, along with attorneys and self-represented litigants who use the forms, by creating a vehicle for parties to be identified as currently or formerly serving in the armed forces so that the court can have this potentially relevant information.

### **Alternatives Considered**

The committee considered proposing that all current Judicial Council forms where military or veteran status could be relevant be amended to include military status. However, modifying all the relevant Judicial Council forms would be costly to implement for the courts, so the more modest proposal of creating an optional stand-alone form was preferred. The issue of routinely identifying parties' military status could be left unaddressed, as it has been until now. However, this approach leads to an ad hoc system in which those who are knowledgeable or have the assistance of counsel are able to exercise their rights and employ the protections afforded them as current or former members of the military, whereas those who are self-represented or otherwise unaware of these rights and protections may entirely miss out on these benefits and may be unable to access relevant services that are available based on military status. This injects an element of unfairness in the justice system process that is due simply to the fact that courts are often unaware of the military status of parties.

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

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of implementing the form. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts. There is the potential for cost savings in that if the court is aware at an early stage of the proceeding that a party to the action has a military affiliation that is relevant to the case, it reduces the chance of needing additional hearings to address this issue once it is discovered at a later time.

## 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?
- Is an optional stand-alone form to be used in multiple case types an effective way to address the issue of allowing parties to notify the court of their military status?
- Should the form be available for use in case types other than criminal and juvenile dependency?
- Will litigants look for the form in the specific case type categories for which it can be used, or is it better to have it be in the more general military form category?

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 system, or modifying case management system.
- 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. Form CR-109/JV-145/MIL-100, at page 5

2. Assembly Bill 2371, at

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB2371](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2371)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: _____ ATTORNEY FOR ( <i>Name</i> ): _____	Draft Not approved by the Judicial Council
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>CASE NAME :</b>	
<b>NOTIFICATION OF MILITARY STATUS</b>	CASE NUMBER:

I (*name*):

1.  I am a party in a  criminal  juvenile dependency court case.
2.  I am currently a member of the state or federal armed services or reserves. My entry date is: \_\_\_\_\_, and I (*check all that apply*):
  - a.  am on active duty service
  - b.  have been called or ordered into active duty service
  - c.  am not on active duty service
  - d.  Other (*please explain*): \_\_\_\_\_
3.  I used to serve in the state or federal armed services or reserves. I was discharged on (*date*): \_\_\_\_\_
4.  I am informed and believe that (*name*): \_\_\_\_\_ is a party to the above entitled action and is a  member  veteran of the state or federal armed services.

I am requesting that the court be notified of the above military status for consideration of its relevance in the above entitled proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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

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

**NOTICE**

**Filing of this notification form does not substitute for filing of other forms or petitions that are required by your court case.** If you are requesting consideration or restorative relief under Penal Code, section 1170.9, this form alone will not meet the requirement that you assert to the court that the crime you were charged with was a result of a condition caused by your military service.