

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR15-22**

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Title	Action Requested
Juvenile Delinquency: Documenting Wobbler Determination	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form JV-665	January 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination.

### The Proposal

Form JV-665 is an optional disposition form that states required findings and orders in delinquency cases. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.<sup>1</sup> Item 3 currently reads: “The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows.”

In the case *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 [60 Cal.Rptr.2d 889, 930 P.2d 1255], the California Supreme Court concluded that section 702 is unambiguous and “requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult.” *Manzy* further noted that “the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its

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<sup>1</sup> Welf. & Inst. Code, § 702: “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.”

*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 These proposals are circulated for comment purposes only.*

discretion to determine the felony or misdemeanor nature of a wobbler.” (*Id.* at p. 1209.) The current language at item 3 was drafted to comply with *Manzy W.* A recent unpublished case, however, noted that the language on the form is unclear with regard to the court’s determining whether an offense is a felony or a misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form.<sup>2</sup> See *In re S.J.* (H040997), footnote 6:

We take judicial notice of the existence and contents of the Judicial Council’s form order entitled JURISDICTION HEARING—JUVENILE DELIQUENCY (JV-644 [Rev. Jan. 1, 2012]). (See Evid. Code, §§ 452, subd. (c), 459.) The form provides space for a court to list allegations that have been admitted and found true after the child’s admission or no contest plea. By checking the appropriate box, the court may declare each listed statutory violation to be a misdemeanor or a felony or it may indicate the status of the statutory violation will be specified at disposition. It contains additional preprinted language with respect to those allegations: “The court has considered whether the above offense(s) should be felonies or misdemeanors.” A juvenile court adopts this language by checking the adjacent box.

The Judicial Council may wish to consider revising Judicial Council form JV-665 to provide for the identification or separately listing of each statutory violation that “would in the case of an adult be punishable alternatively as a felony or a misdemeanor” (§ 702) and to clearly reflect that the court is exercising its discretion pursuant to section 702 and explicitly declaring the status of each such offense. The rebuttable presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 [“In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]”].)

The committee considered this suggestion and determined that the language on form JV-665 is unclear and should be revised consistent with form JV-664, *Jurisdiction Hearing—Juvenile Delinquency*. The committee recommends changing the order of the columns in item 3 and more clarification of enhancements in the final column. In addition, the committee also recommends technical changes to form JV-665 to improve the parallelism of subpoints in item 11 and to update cross references to other forms listed as attachments after the judicial officer’s signature line at the bottom of page 2. The current cross references list out-of-date form names.

### **Alternatives Considered**

The committee considered whether amending the form as suggested by the court in *In re S.J.* was necessary but concluded that amending the language as suggested would provide helpful clarity.

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<sup>2</sup> California Rules of Court, rule 8.1115(a), states that an unpublished opinion “must not be cited or relied on by a court or a party in any other action.” This case is cited here to provide background information for this form change.

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

Implementation will require some changes in court procedures and training, as well as reproduction costs. Implementation should also result in greater clarity with regard to wobbler determinations, resulting in fewer remands and associated costs.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Proposed form JV-665, at pages 4–5

CHILD'S NAME:	CASE NUMBER:
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**DISPOSITION—JUVENILE DELINQUENCY**

- The court has read and considered the social study prepared by the probation officer and any other relevant evidence.
- The child has been detained and is at risk of entering foster care. The probation officer believes that child will be able to return home, and the social study includes a case plan as described in Welfare and Institutions Code section 636.
- The probation officer has recommended initial or continuing placement in foster care, and the social study includes a case plan as described in Welfare and Institutions Code section 706.6.

**THE COURT FINDS AND ORDERS**

1.  Notice has been given as required by law.
2.  The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
3.  The court previously sustained the following counts. The court has considered whether the offenses below should be considered a misdemeanor or a felony and determined as follows:

Count number	Statutory violation	Misdemeanor	Felony	Enhancement (specify)
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.  The child resides in (specify): \_\_\_\_\_ County.
5.  The case is transferred to (specify): \_\_\_\_\_ County for disposition. *Juvenile Court Transfer Orders (form JV-550)* will be completed and transmitted.
6.  For the reasons stated on the record, the petition is dismissed  in the interests of justice  because the child does not need treatment or rehabilitation.
7.  The child is placed on probation for up to six months under Welfare and Institutions Code section 725(a) under conditions described in an attachment to this form.
8.  Deferred entry of judgment is  granted  denied.
9.  The child is  declared  continued as a ward of the court.
10.  The recommended findings and orders contained in the probation report dated \_\_\_\_\_ at pages \_\_\_\_\_ are adopted  as modified by the court as its own, a copy of which is attached and incorporated herein.
11.  The child is to reside
  - a.  in the custody of parent (name): \_\_\_\_\_  mother  father
  - b.  in the custody of parent (name): \_\_\_\_\_  mother  father
  - c.  in the custody of legal guardian (name): \_\_\_\_\_
  - d.  in the custody without probation supervision.
  - e.  in the custody under the supervision of the probation officer  for out-of-home placement. Form JV-667, *Custodial or Out of Home Placement Disposition Attachment* is completed and attached.
  - f.  in the custody under terms and conditions described in the attached form.
12.  The child and legal parent are to pay a restitution fine  of \$ \_\_\_\_\_  as specified on the attached form.
13.  The child, with his or her parent, is to pay restitution  as described on the attached restitution order.  to each victim (name each):
  - a. \_\_\_\_\_ c. \_\_\_\_\_
  - b. \_\_\_\_\_ d. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_  in the amount and manner determined by the probation office, with the opportunity for review by the court if disputed by the child or the parents.

CHILD'S NAME:	CASE NUMBER:
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- 14.  The child, with his or her parents, is to pay a fine in the amount of \$ \_\_\_\_\_ , plus a penalty assessment in the amount of \$ \_\_\_\_\_ , for a total of \$ \_\_\_\_\_
- 15.  Terms regarding vehicles. The child must
  - a.  participate in and successfully complete (specify): \_\_\_\_\_
  - b.  only drive to and from school, work, and/or counselling programs.
  - c.  surrender license to  court  probation officer.
- 16.  The child's driver's license is
  - suspended.
  - revoked.
  - delayed
    - for a period of \_\_\_\_\_ months \_\_\_\_\_ years.
    - until the child attains 18 years of age.
- 17.  Court will notify the Department of Motor Vehicles of the judgment. The DMV has independent authority to suspend, revoke or delay driving privileges.
- 18.  The child is ordered to register pursuant to Penal Code section 290.
- 19.  The child is ordered to submit to DNA collection pursuant to Penal Code section 296.
- 20.  Other (specify): \_\_\_\_\_

21.  **The next hearing will be:**

Date:	Time:	Dept:
Date:	Time:	Dept:

- 22.  The child is ordered to return to court on the above date and time.
- 23.  The child is advised of his or her right to appeal.
- 24.  The child is advised that his or her appointed attorney has a continuing obligation to represent the child on this case, until counsel is relieved by the court pursuant to California Rules of Court, rule 5.663.
- 25.  All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

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

\_\_\_\_\_  
JUDICIAL OFFICER

The following attachments are incorporated by reference as findings and orders:

- Custodial and Out Of Home Placement Disposition Attachment (form JV-667)
- Terms and Conditions (form JV-624)
- Juvenile Court Transfer Orders (form JV-550)
- Notice of Hearing and Temporary Restraining Order—Juvenile (form JV-250)
- Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (form JV-732)
- Order for Victim Restitution (CR-110/JV-790)
- Order Regarding Application for Psychotropic Medication—Juvenile (JV-223)
- Order Designating Educational Rights Holder (JV-535)
- Parentage—Findings and Judgment (JV-501)

- Additional attachments:
- Indian Child Welfare Act
  - Order for Repayment of Cost of Legal Services (form JV-135)
  - Responses from tribes or BIA
  - Victim Identification Form
  - Probation officer's case plan approved by the court
    - As submitted
    - As amended and stated on the record
  - Other (specify): \_\_\_\_\_