

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W17-03

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| Title | Action Requested |
| Juvenile Law: Commitment to Department of Corrections and Rehabilitation | Review and submit comments by February 14, 2017 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Revise form JV-732 | September 1, 2017 |
| Proposed by | Contact |
| Family and Juvenile Law Advisory Committee | Daniel Richardson, 415-865-7619 Daniel.richardson@jud.ca.gov |
| Hon. Jerilyn L. Borack, Cochair | |
| Hon. Mark A. Juhas, Cochair | |

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising the Judicial Council order form for the commitment of a minor ward to the California Department of Corrections and Rehabilitation Division of Juvenile Facilities (DJF) to ensure that the form reflects legally accurate commitment procedures. The form revisions would ensure that the court provides complete and accurate information needed for the acceptance of youth by the DJF, thus avoiding unnecessary delays in the court's disposition orders. Revisions to the form were requested by judicial officers, the Division of Juvenile Justice, and a public defender's office.

Background

On August 24, 2016, staff of the Judicial Council Center for Families, Children & the Courts received a formal letter from Mr. Anthony Lucero, director of the Division of Juvenile Justice (DJJ), suggesting updates and revisions to *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732), the mandatory Judicial Council form for ordering such commitments, to assist the court in providing the DJJ with complete and accurate information needed for the acceptance of youth to DJF facilities. Several edits were recommended, which the committee has incorporated into this proposal.

In addition, the committee received correspondence from the Los Angeles County Public Defender's office, raising concerns about the amount of time children are housed in local

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 These proposals are circulated for comment purposes only.

facilities due to errors related to form JV-732 as they await transfer to DJF. Specifically, youth who are sent to DJF for sex offenses are facing delays because the JSORRAT-II or Static-99 (sexual recidivism risk assessment tools for youth and adults, respectively) are not ordered or the wrong assessment is ordered. Judicial officers from Los Angeles also suggested revisions to the form and concurred with the request of the Los Angeles Public Defender's office.

The Proposal

This proposal is being made in response to concerns raised regarding the efficacy of the form JV-732 in procuring the court's disposition orders in a commitment of a ward to the DJF. Delays in the commitment of a ward to DJF because of errors with the information on the form have been reported. Several modifications are needed to both conform the form to statutory mandates and provide clarity as to sentencing and other information required by DJF to properly commit the youth to DJF and avoid delays while the youth is kept in local holding facilities.

Adding Checkboxes for Risk Assessment Tool for Sex Offenders

The committee proposes that the form be updated to conform to Welfare and Institutions Code section 706 and its requirements that the court use a State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) to assess a youth convicted of an offense requiring him or her to register as a sex offender.¹ Currently the form does not include an order that the court has considered the SARATSO in the appropriate case. When a youth is recommended transferred to DJF under an adjudication for an offense requiring him or her to register as a sex offender pursuant to section 290.008 of the Penal Code, the court is required to use a SARATSO selected under subdivision (d) or (e) of section 290.04 of the Penal Code to assess the youth and shall receive the SARATSO into evidence. The committee proposes that a new item 17 be added that will provide when a SARATSO is necessary and which SARATSO score is to be selected: the JSORATT-II when the youth was under 18 years of age at the time of the assessment or offense, or the Static-99 when the youth was 18 years of age at the time of assessment and 16 or 17 at the time of the offense.

Adding Checkbox for Probation Violations

The committee also proposes inserting another checkbox under item 5—as new item 5c—that will reflect those situations in which the youth is returned to DJF as a result of a probation violation under section 1767.35. Currently, the form does not include this option. Section 1767.35 became operative on January 1, 2013, subsequent to the previous amendments to the form in 2012. Consequently, the form does not reflect the procedures of section 1767.35. The committee proposes revising the form to include language to specify that the court is ordering that the youth be returned to the DJF for a probation violation under section 1767.35, followed by the court-ordered release date. In addition, the committee proposes deleting the current item 5c, as the options listed are no longer legally possible. Once a youth is discharged from DJF, DJF jurisdiction is terminated and the youth cannot then be recommitted to DJF under a prior commitment.

¹ All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

Clarifying the Sentencing Formula

Section 731(c) limits the period of confinement that may be imposed for a ward committed to the DJF by granting the court discretion to impose either the equivalent of the “maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses” committed by the youth or some lesser period based on the “facts and circumstances of the matter or matters that brought or continued” the youth under the court’s jurisdiction. One of the chief concerns about form JV-732 as it currently stands is that the maximum period of imprisonment that could be imposed on an adult and the maximum period of confinement ordered by the court for the juvenile are not distinct from each other. DJJ has reported confusion related to sentences that are being imposed by the court, leading to delays, and the form’s being returned to the court because of mistakes.

Maximum period of imprisonment for an adult

The committee proposes revising item 6 on form JV-732 to provide clarity regarding the maximum period of imprisonment that could be imposed on an adult. Revised item 6 would list the principal felony by code section, the maximum term, and enhancements, both by code section and length. The court would add the total of the maximum term and the enhancements to get the total maximum period of confinement for the principal felony. Below the principal felony, the court could add subordinate offenses, indicating whether they are felonies or misdemeanors; the midterm; and again enhancements, if appropriate. The court would then add the total of all these items together to get the total maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth before the court. Item 6 would also specify that the youth is committed only on the most recent offense, to ensure ineligible offenses are not listed which could increase delays.

Maximum period of confinement for the juvenile

As noted above, section 731(c) requires that the juvenile court determine the maximum period of confinement to DJF based on the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the juvenile court.² The committee proposes revising item 8 (item 7 in the revised form) to clarify the correct procedure for determining the maximum period of confinement for the juvenile and whether the court has used its discretion to modify the sentence under section 731(c).

Specifically, item 8 (item 7 in the revised form) would be amended to read as follows:

“After having considered the individual facts and circumstances of the case under section 731(c), the court orders that the maximum period of confinement is: _____ . (If lower than the total in item 6, the court has used its discretion to modify the maximum confinement period under section 731(c).)”

² See *In re Alex N.* (2005) 132 Cal.App.4th 18, 25–27; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1538.

The proposed language will ensure that the required analysis is done and also make clear the maximum period of confinement that the court is ordering. In addition, reports indicate that courts are not consistently checking the box in current item 8b to indicate that they have considered the facts and circumstances, leading to complications in the youth's commitment to DJF. The proposal would ensure this analysis is made when the court orders the maximum period of confinement. The form would also indicate that if the amount is lower than the total confinement time listed in item 6, it is because the court used its discretion under section 731(c).

The committee also proposes switching the order of current item 7 and current item 8 as recommended by DJJ. It makes logical sense for the court to read the credited time the youth has secured in custody after it states the confinement period. This change should also reduce confusion around the maximum confinement time. In addition, the committee proposes that the new item 8 distinguish between the credit for time served at DJF and a local holding facility, to ensure that the youth has not maxed out on the total commitment time at DJF if they are returned for a modification under section 1767.35 (see revised item 5c).

Finding Exceptional Needs

Section 1742 requires that when the court commits a juvenile identified as an individual with "exceptional needs," the court must furnish the juvenile's individualized education program (IEP) to the DJF before the youth is conveyed to the physical custody of the DJF.³ The committee proposes amending item 11, which addresses findings of exceptional needs, in several respects to help ensure compliance with section 1742. First, the proposal would add language in the heading to specify, in parentheses, that either box a, b, or c must be checked. This revision will help ensure that the court does indeed specify whether a finding of exceptional needs has been made. Second, the proposal would delete 11a because it leaves open the possibility of the court finding that the youth has exceptional needs but not requiring the furnishing of the youth's IEP. The new item 11a will require the court to include the IEP as an attachment, or to ensure that it will be furnished to DJF upon delivery of the youth. Finally, the proposal would revise item 11a to clarify that the youth's educational program is one developed through Education Code section 56340 et seq., which address what an education program entails.

Other Proposed Revisions

The committee proposes several other clarifying revisions to form JV-732:

- Removing former item 12, "The court requests that the youth be considered for programming related to:___". When a minor is committed to DJF the programs the youth will be involved in while at DJF are determined based on an assessment at intake rather than any input provided by the court at item 12; therefore, removing this item should not result in programming impacts.

³ The statutory reference to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities enacted under Government Code section 12838-12838.13, has not been applied to all code sections, including sections 1742 and 1755.4, which still refer to the Department of the Youth Authority.

- Revising item 15 (item 14 in revised form) to include language requiring that a completed *Application for Psychotropic Medication* (form JV-220) be attached, if applicable. As recommended by the DJJ, doing so will ensure that the DJF will have accurate information about the youth’s prescriptions for psychotropic medication, which furthers the mandate of protecting the health and short- and long-term well-being of a youth under the jurisdiction of the DJF as specified in section 1755.4.
- Revising item 17 (item 16 in revised form) to include an order for AIDS testing if there was a sustained sexual offense listed in Penal Code section 290.008. Penal Code section 1202.1 requires that every person convicted of a sexual offense listed in Penal Code section 290.008 “submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS) within 180 days of the date of conviction.” Both the DJJ and the Los Angeles County Public Defender’s office suggested adding an item to form JV-732 to address this requirement.

Alternatives Considered

The committee considered not revising the form but elected to proceed with the proposal for the reasons stated above. In addition, the form has not been revised since 2012.

Implementation Requirements, Costs, and Operational Impacts

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs in courts that continue to distribute printed copies of blank forms. The changes to the form will likely help to reduce the number of delays in the acceptance of youth at the Division of Juvenile Facilities, thus reducing extended stays at local facilities and additionally the need to redo paperwork.

Request for Specific Comments

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

- Is item 6 sufficiently clear regarding eligible offenses to include in the calculation of maximum commitment time?
- Will the proposed changes in item 7 of the revised form provide greater clarity of the court's order for the maximum custody time?
- Does the designation of custody time served as "served at Division of Juvenile Facilities" and "served at a local holding facility" in item 8 of the revised form provide a useful distinction of custody time that will assist the court in sentencing?
- Are there other changes to form JV-732 in addition to those included in this proposal that would improve the form's clarity? (Please specify the particular changes.)
- Are there other changes to form JV-732 in addition to those included in this proposal that would help ensure that the youth can be committed to the California Department of Corrections and Rehabilitation without unnecessary delays? (Please specify the particular changes.)

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. Form JV-732, at pages 7–8

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | FOR COURT USE ONLY DRAFT - Not approved by the Judicial Council |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| YOUTH'S NAME: | |
| COMMITMENT TO THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, DIVISION OF JUVENILE FACILITIES | CASE NUMBER: JUVENILE: |

1. a. Youth's name:
 b. Youth's date of birth:
 c. Parent's/Guardian's name: _____
2. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (name): _____
 c. Persons present:
 Youth Youth's attorney Mother Father Guardian Deputy district attorney
 Others as reflected on the attached minute order

THE COURT FINDS AND ORDERS:

3. The youth was under the age of 18 years at the time of the commission of the offense for which the youth is being committed to the Division of Juvenile Facilities.
4. The mental and physical condition and qualifications of this youth render it probable that the youth will benefit from the reformatory discipline or other treatment provided by the Division of Juvenile Facilities.
5. a. The youth is committed to the Division of Juvenile Facilities for a 90-day period of observation and diagnosis.
 b. The youth is committed to the Division of Juvenile Facilities for acceptance.
 c. The youth is returned to the Division of Juvenile Facilities for a modification, as a sanction for a serious violation or a series of repeated violations of the conditions of supervision, under Welfare and Institutions Code section 1767.35. The court ordered release date is: _____
6. The youth has been declared a ward of the court and is committed based on the most recent offense(s):

| | Code Section | | | | | Enhancements (code section and max term) | Total |
|-------------------------|---------------------------------|--------------------------------------|-----------------|--|--|--|-------|
| Principal felony is: | | with a max term of: | | | | | |
| Subordinate offense(s): | <input type="checkbox"/> Felony | <input type="checkbox"/> Misdemeanor | 1/3 midterm is: | | | | |
| | <input type="checkbox"/> Felony | <input type="checkbox"/> Misdemeanor | 1/3 midterm is: | | | | |
| | <input type="checkbox"/> Felony | <input type="checkbox"/> Misdemeanor | 1/3 midterm is: | | | | |
| | <input type="checkbox"/> Felony | <input type="checkbox"/> Misdemeanor | 1/3 midterm is: | | | | |
| | <input type="checkbox"/> Felony | <input type="checkbox"/> Misdemeanor | 1/3 midterm is: | | | | |

The maximum period of imprisonment that could be imposed upon an adult convicted of the offense or offenses which has brought the youth before the court is: _____

Continued on attachment 6.

7. After having considered the individual facts and circumstances of the case under section 731(c), the court orders that the maximum period of confinement is: _____
 (If lower than the total in number 6, the court has used its discretion to modify the maximum confinement period under section 731(c).)

| | |
|---------------|--------------|
| YOUTH'S NAME: | CASE NUMBER: |
| | JUVENILE: |

8. The youth has credit for time served at Division of Juvenile Facilities of (state number): _____ days.
 The youth has credit for time served at a local holding facility of (state number): _____ days.
9. The youth is ordered to pay a restitution fine of: \$ _____
10. The youth is ordered to pay victim restitution as stated in attachment 10.
11. Exceptional needs (a, b, or c must be checked):
- a. The youth has been identified as an individual with exceptional needs under Welfare and Institutions Code section 1742 and has an individualized education program under Education Code 56340 et. seq which (check one):
 - (1) is included as attachment 11a.
 - (2) will be furnished to the Division of Juvenile Facilities upon delivery of the youth.
 - b. The youth is not an individual with exceptional needs.
 - c. It does not appear that a determination has been made regarding any exceptional needs the youth may have.
12. The court requests that a copy of the Clinical Summary Report be sent to the youth's attorney (*name and address of attorney*): _____
13. The probation officer is directed to forward a copy of the youth's medical records to the Division of Juvenile Facilities before delivery.
14. The youth has has not _____ been prescribed psychotropic medication. If a JV-220 has been completed for the youth, attach as attachment 14.
 If there is no form JV-220, specify the type and dosage of medication: _____
- Continued on attachment 14.
15. Such psychotropic medication, if still necessary based on an evaluation by a Division of Juvenile Facilities physician, may be continued for a period not to exceed 60 days from the date of delivery to the Division of Juvenile Facilities reception center and clinic.
16. The youth is ordered to submit to AIDS testing:
- a. under Welfare and Institutions Code section 1768.9.
 - b. under Penal Code section 1202.1(e) due to a sustained Penal Code section 290.008 offense.
17. The youth has been committed for a sex offense under Penal Code section 290.008 requiring registration as a sex offender.
- a. The youth was 18 years of age at the time of assessment and 15 or younger at the time of offense or a female; no SARATSO tool was ordered.
 - b. The appropriate SARATSO score, selected under Penal Code section 290.04(d) or (e), was used to assess the minor. The court has read and considered the following risk assessment and received it into evidence:
 - (1) The youth was under 18 at the time of assessment and offense; the JSORATT-II was considered.
 - (2) The youth was 18 years of age at the time of assessment and 16 or 17 at the time of the offense; the Static-99 was considered.
18. The court has determined that the youth has been in at least one foster care or other Title 42, U.S. Code, Part IV-E-eligible placement during the course of a dependency or delinquency case.
19. Other findings and orders:
- a. See attached.
 - b. (*Specify*): _____

Date: _____ ▶

JUDICIAL OFFICER