

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTIFICATION OF MILITARY/VETERAN STATUS</b>	CASE NUMBER:

I (*name*): declare as follows:

1.  I am a party in a  criminal  family  juvenile  civil  other (*specify*): court case.

2.  I am a current member of the state or federal armed services or reserves.

3.  I am a veteran of the state or federal armed services or reserves. I was discharged on (*date*):

4.  I am not a party to this case. I am filing out this form on behalf of: a party to the above entitled case.

My contact information is:

a.  I am the attorney for a party in this case.

(1)  My contact information is provided at the top of this form.

(2)  My contact information is:

Name:

Address:

Telephone No.:

4.  I understand that if this form is being submitted in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.

Date:

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



\_\_\_\_\_  
(SIGNATURE)

Local County Veterans Services Office Information (to be provided by local court):

## YOU SHOULD CONSULT WITH YOUR ATTORNEY ABOUT THE FOLLOWING INFORMATION

**If you are a current or former member of any branch of the US Military, you may be entitled to certain rights under the law.** Filing out the MIL-100 form is one way you can let the court know about your military status. It is an optional form. Letting the court know about your military experience may allow consideration of possible benefits and protections for your case.

**You are not required to have an honorable discharge, to have combat service, or to be accepted or involved in a Veterans Court to be eligible for the possible rights and protections under the law.**

Some examples of benefits for a defendant in a criminal case who is a veteran or is on active duty include possible consideration for alternative sentencing and restorative relief, and diversion in misdemeanor cases. If you are a current or former member of any branch of the US military who may be suffering from sexual trauma-also known as military sexual trauma (MST), traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be entitled to certain rights under the following California law:

### **California Penal Code 1170.9**

Below is a brief description of possible rights and protections under this code:

- Treatment instead of prison or jail time for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered, and early termination of probation;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes

### **California Penal Code 1001.80**

Below is a brief description of possible rights and protections under this code:

- Pretrial diversion program instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" for most purposes following successful completion of program

### **California Penal Code 1170.91**

Below is a brief description of possible rights and protections under this code:

- The court shall consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

**If you submit this form in a criminal case, you must file it with the court and serve a copy of it to the prosecuting attorney and defense counsel.**

**If you are a party to a civil case, you must complete the appropriate forms.**

Filing of this MIL-100 notification form does not substitute for filing of other required forms or petitions for your court case.

If you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order;
- For other relief under the Service Members' Civil Relief Act (50 App. U.S.C. §§ 501-597(b))

Please see form MIL-010 (*Notice of Petition and Petition for Relief From Financial Obligations During Military Service*) and form FL-398 (*Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*).

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ CDC or ID number: _____ Date of Birth: _____	CASE NUMBER: _____  <b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPARTMENT: _____
<b>PETITION FOR RESENTENCING BASED ON          HEALTH CONDITIONS FROM MILITARY SERVICE          LISTED IN PENAL CODE SECTION 1170.91(b)</b>	
<b>Instructions:</b> File this petition with the same court where you were sentenced. You will need to file a separate petition for each case in which you are asking for resentencing.	

I (name): \_\_\_\_\_ the defendant in the above-entitled case, declare as follows:

1.  I am currently serving a sentence for the felony conviction listed below.
  - I am currently in jail or prison.
  - I am on supervision because of my conviction (for example, probation, parole, PRCS, mandatory supervision).
2.  On (date of conviction): \_\_\_\_\_, I was convicted of the following felony offenses:

Code	Section	Name of Offense

If additional space is needed for listing offenses, use Attachment to Judicial Council Form (form MC-025).

- 3A.  I was a member of the United States military. I served in (branch of military) \_\_\_\_\_ from (date of entry into military): \_\_\_\_\_ until (last date served in the U.S. military) \_\_\_\_\_.
- 3B.  I am currently a member of the United States military. I serve in (branch of military) \_\_\_\_\_ and my entry date was \_\_\_\_\_.
4.  I believe that as a result of my military service, I am a person who may be suffering from the following health conditions (check all that apply)
  - Sexual trauma
  - Traumatic Brain Injury (TBI)
  - Post-Traumatic Stress Disorder (PTSD)
  - Substance Abuse
  - Mental Health Problems (list or describe): \_\_\_\_\_
5.  I believe that when I was sentenced, the judge did not consider my health condition resulting from my military service as a factor in deciding my sentence.
6.  I was sentenced before January 1, 2015.
7.  If available, attach relevant records or other documents supporting your claim (for example, military records, conviction documents mental health treatment records, medical records).

Dated: \_\_\_\_\_

\_\_\_\_\_  
 SIGNATURE OF PETITIONER/DEFENDANT

**Form CR-106 (Proof of Service for criminal cases) may be used to provide proof of service of this petition.** Page 1 of 1



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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**Date**

February 21, 2019

**Action Requested**

Please discuss and decide on action.

**To**

Collaborative Justice Courts Advisory  
Committee

**Deadline**

N/A

**From**

Amy Kimpel, Attorney  
Criminal Justice Services

**Contact**

Amy Kimpel  
(415) 865-7995  
[amy.kimpel@jud.ca.gov](mailto:amy.kimpel@jud.ca.gov)

**Subject**

Criminal Procedure: Update Standard of  
Judicial Administration 4.10, Guidelines for  
Diversion Drug Court Program

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The annual agenda for the Collaborative Justice Courts Advisory Committee (CJCAC) includes updating the Standard of Judicial Administration relating to Diversion Drug Courts, [Standard 4.10](#). Standard 4.10 was first adopted in 1998 and the only revision was its renumbering in 2007 as part of the reorganization of the California Rules of Court. This standard has not been substantively updated for more than two decades. At the in-person CJCAC meeting on October 26, 2018, this item was discussed, and a working group<sup>1</sup> was formed, to decide whether and how to update the standard. The working group convened by telephone on February 15, 2019 and decided against updating the standard. The working group leaves it to the full committee to decide whether to propose repeal of the outdated standard or to leave the outdated standard in place.

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<sup>1</sup> The working group consisted of Cherie Garofalo and Scott Brown.

Since the standard was first adopted in 1998, there have been significant changes to the understanding of drug court best practices. For example, the standard references *Defining Drug Courts: The Key Components*, developed by the National Association of Drug Court Professionals (NADCP) in 1997—a 32-page document. (Standard, 4.10(g).) This document was updated in 2004. In 2013, the NADCP authored the more comprehensive *Adult Drug Court Best Practice Standards, Volumes I & II*, which it recently updated in 2018. This newer work reflects the intervening years of research into drug courts and drug treatment. The newer volumes total over 150 pages.

As the understanding and research into drug courts has evolved, so has the criminal justice landscape in California. A.B. 109, the Criminal Justice Realignment Act of 2011 (Stats. 2011, ch. 15) shifted responsibility for some felony defendants from the state to the county. In November 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act (Proposition 47). Proposition 47 reduced certain drug-related and theft-related offenses that previously were felonies or “wobblers” to misdemeanors. (Pen. Code, § 1170.18, added by Prop. 47, § 14, approved by the voters at the Gen. Elec. (Nov. 4, 2014).) In November 2016, the California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, which “legalized the recreational use of marijuana and reduced the penalties on various marijuana-related charges.” (*People v. Smit* (2018) 24 Cal.App.5th 596, 598.) Then in 2017, A.B. 208 (Stats. 2017, ch.778) changed the deferred entry of judgment program for first time drug offenders to a pre-plea diversion program and expanded eligibility for this program. (Pen. Code, § 1000 et seq.) A.B. 208 also significantly updated the statutory framework for the use of medically assisted drug treatment for diversion drug court participants. (Pen. Code, § 1000.6.) With significant pretrial reform on the horizon due to the passage of S.B. 10 (Stats. 2018, ch. 224), the landscape is likely to shift again soon.

In discussing whether and how to update the current standard, the working group pointed out that there are few “diversion drug courts” still in operation. Ms. Garofalo opined that standard 4.10, if updated, could soon be out of date again due to pretrial reforms and emphasis on early intervention. Mr. Brown felt that the composition of drug courts had changed significantly because of legislative reforms and reported that most of the people in the drug courts he operates are experiencing co-occurring disorders, who struggle with both drug use and other mental health issues. He felt that developing a narrow drug court standard that didn’t address the expanded mental health needs of the drug court population would not be comprehensive or particularly useful. Both members believed that an updated drug court standard would do little not already accomplished by the comprehensive standards developed by the NADCP and the recently updated statutory framework for diversion in drug cases. (Pen. Code, § 1000 et seq.)

Given the significant undertaking it would be to update the current standard, and the limited utility of such a project, the working group proposes either: (1) leaving the outdated standard as it currently is, or (2) repealing it. The working group did think it would be useful to develop a standard regarding the use of risk/needs triage assessments to expedite case disposition, and/or a standard addressing best practices for courts receiving protected health information from substance-use disorder or mental health treatment providers.

### **Attachments and Links**

1. [Standard of Judicial Administration 4.10](#)
2. [National Association of Drug Court Professionals, Defining Drug Courts: The Key Components \(1997\).](#)
3. [National Association of Drug Court Professionals, Adult Drug Court Best Practice Standards \(2018\).](#)

# JUDICIAL COUNCIL OF CALIFORNIA

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT

[ItC prefix as assigned]-\_\_

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**Title**

Juvenile Law: Competency

**Action Requested**

Review and submit comments by June 7, 2019

**Proposed Rules, Forms, Standards, or Statutes**

Revise and renumber Cal. Rule of Court, rule 5.643; Revise Cal. Rule of Court, rule 5.645

**Proposed Effective Date**

January 1, 2020

**Proposed by**

Collaborative Justice Courts Advisory  
Committee  
Hon. Richard A. Vlavianos, Chair

**Contact**

Kerry Doyle, 415-865-8791  
kerry.doyle@jud.ca.gov  
Tareq Nazamy, 415-865-7666  
tareq.nazamy@jud.ca.gov

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

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**Executive Summary and Origin**

The Collaborative Justice Courts Advisory Committee and the Family and Juvenile Law Advisory Committee recommend amending and renumbering one rule, and amending one rule, to conform to recent statutory changes regarding a minor who is the subject of a petition filed under Welfare and Institutions Code section 601 or 602 when the court has a doubt as to the minor's competence to understand the court proceedings.

**Background**

Assembly Bill 1214 (Stone; Stats 2018, ch. 991) revises Welfare and Institutions Code sections 709 and 712 regarding a minor's competence to understand the court proceedings, to expand the duties of an expert evaluating the minor whose competence is in doubt and requires the Judicial Council to adopt a rule of court relating to the qualifications of those experts, in consultation with specified stakeholders.<sup>1</sup> The bill also mandates the Judicial Council to develop and adopt

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code and all further rule references are to the California Rules of Court, unless otherwise indicated.

*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.*

rules to implement the other requirements in subdivision (b) of section 709, also in consultation with specified stakeholders.

## **The Proposal**

### **Rule 5.643**

Current rule 5.645 would be renumbered and amended as rules 5.643 and 5.645. The portion of current rule 5.645 that addresses the procedures when the court believes a child is mentally disabled or may be mentally ill for commitment to a county facility, would be renumbered as rule 5.643 and would be amended to replace references to mental retardation with intellectual disability or developmental disability.

### **Rule 5.645**

Current rule 5.645 would be revised to address expert qualifications and court proceedings for competency evaluations.

Proposed rule 5.645(a) would be amended to remove the reference to Penal Code section 1367, as this section addresses adult's competency to stand trial, and to replace the current definition of competency with a cross-reference to the definition in section 709(a)(2).

Proposed rule 5.645(b) would be amended to identify the training and experience needed for an expert to be competent in forensic evaluations of juveniles.

Proposed rule 5.645(c) would be amended to identify the requirements of the court-appointed expert's interview of the minor.

Proposed rule 5.645(d) would be amended to address the mandate in section 709 that the expert must review all the available records, by requiring that each county, in its written protocol regarding competency required under section 709(h)(5)(C)(i), to include a description of the process for obtaining and providing the records to the evaluator to review.

Proposed rule 5.645(e) would be amended to identify the requirements for the expert's mandated consultation with the minor's counsel.

Proposed rule 5.645(f) would be amended to identify the requirements for the mandate that the expert gather a developmental history of the minor.

Proposed rule 5.645(g) would be amended to address the expert's written report requirements regarding whether the minor has the sufficient present ability to consult with counsel and whether the minor has a rational understanding of the proceedings.

## **Alternatives Considered**

The committees discussed multiple potential rule topics, several of which were deferred.

The committees discussed whether the rule should address the requirement that the expert must review all the records provided and specify the process such as who provides the records to the expert and how the expert obtains confidential records. The committees concluded it was best to allow each county to determine its own process and decided to propose amending the rule to require that the written protocol mandated under section 709(h)(5)(C)(i) include a description of the process for obtaining and providing the records to the evaluator to review, including who will obtain and provide the records to the evaluator.

The committees discussed whether the rule should address the requirement that the expert must administer age-appropriate testing unless the facts of the case render testing unnecessary or inappropriate. The committees discussed whether the rule should address the nature and content of evaluation tools and whether the rule should specify when testing is unnecessary or inappropriate. The committees concluded that these areas should be deferred to the expert evaluators and did not include this topic in the proposed rule.

The committees discussed whether the requirements that apply to court interpreters should apply to interpreters used by competency evaluators.<sup>2</sup> The committees decided that the requirements for a Judicial Council certified interpreter would be too difficult to meet, particularly in smaller counties and for more rare languages. The committees also noted that the interpreters used for mental health evaluations are more akin to medical interpreters than interpreters for court proceedings.

The committees discussed the new provision in section 709 that allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The committees discussed whether the rule should specify the qualifications for these experts and whether additional experts should be subject to the requirements in the new rule. The committees concluded that the phrase "additional qualified experts" is ambiguous in the statute and that an appellate court should decide what this phrase means, not the Judicial Council through the rule-making process. The committees concluded that the current rules provision that does not preclude involvement of clinicians with other qualifications as consultants or witnesses should remain in the rule.

The committees discussed whether the rule should be clarified to allow school psychologists to be appointed as experts in competency proceedings. This clarification would be made by removing the requirement that the school psychologists have a doctoral degree, and simply using the term "licensed psychologist." The committees discussed how this could create a larger pool of potential evaluators, but also discussed that school psychologists do not have the depth and breadth of training that one needs to obtain a doctoral degree. The committees concluded that the best approach would be to seek specific public comment on whether school psychologists who have an EdS degree--Education Specialist Psychologists--should be included in the list of psychologists who can be appointed as an expert in competency evaluations.

One of the more robust discussions was whether the rule should use the term "child" or "minor." The current rules all use the word "child" but the statute uses the term "minor." Since section 101(b) defines "child or minor" as a person under the jurisdiction of the juvenile court pursuant

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<sup>2</sup> Specifically, the committees reviewed Government Code sections 68561 et. seq. and rule 2.893.

to Section 300, 601, or 602, and because most children in delinquency court do not like to be called “child,” the committee concluded to use the word “minor” in any proposed amendments to the rule. The committee is aware that this makes the rule internally inconsistent and inconsistent with the other rules of court that use the term “child,” but concluded tracking the statutory language and recognizing that delinquency proceedings involve older children were more important.

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

- Cost for evaluations may increase due to more comprehensive evaluation and written report requirements—this would be an increase cost for courts
- Increased costs for local implementation to develop protocols as required by the statute
- Possibly more litigation because the reports will be more comprehensive and therefore there will be more to cross-examine the expert on. Alternatively, more thorough reports could lessen the need for contested hearings because the reports may speak for themselves.
- Longer timeframes to complete the reports because of additional requirements to interview minor’s counsel, attempt to interview the minor face-to-face, and increased written report requirements. Currently, the process involves 3-4 weeks. This time frame will likely increase.

However, the reports received will be of much higher quality than under current standards and will be more useful for good judicial decisions.

## Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Should rule 5.645(g)(1)(C)(i) be more specific regarding the records reviewed by the evaluator? Should the rule list out the sources listed in section 709(b)(3)?
- Should the rule be clarified to allow for school psychologist who have not received a doctoral degree, but have received an EdS degree, to be appointed as an expert in competency evaluations?

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. Cal. Rules of Court, rules 5.643 and 5.645, at pages 6-11
2. Assembly Bill 1214,

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1214](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1214)

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule ~~5.643~~ 5.645. Mental health or condition of child; court procedures**

2  
3 (a) – (b) \* \* \*

4  
5 (c) **Findings regarding ~~mental retardation~~ intellectual disability (§ 6551)**

6  
7 Article 1 of chapter 2 of part 1 of division 5 (commencing with section 5150)  
8 applies.

- 9  
10 (1) If the professional finds that the child is intellectually disabled~~mentally~~  
11 ~~retarded~~ and recommends commitment to a state hospital, the court may  
12 direct the filing in the appropriate court of a petition for commitment of a  
13 child as a developmentally disabled ~~mentally retarded~~ person to the State  
14 Department of Developmental Services for placement in a state hospital.  
15  
16 (2) If the professional finds that the child is not intellectually disabled~~mentally~~  
17 ~~retarded~~, the child must be returned to the juvenile court on or before the  
18 expiration of the 72-hour period, and the court must proceed with the case  
19 under section 300, 601, or 602.  
20  
21 (3) The jurisdiction of the juvenile court must be suspended while the child is  
22 subject to the jurisdiction of the appropriate court under a petition for  
23 commitment of an intellectually disabled ~~a mentally retarded~~ person, or under  
24 remand for 90 days for intensive treatment or commitment ordered by that  
25 court.  
26

27 **Rule 5.645. Mental health or condition of child; competency evaluations.**

28  
29 **~~(d)~~ (a) Doubt as to minor's competency ~~capacity to cooperate with counsel~~ (§§**  
30 **601, 602, 709. ; ~~Pen. Code, § 1367)~~**

- 31  
32 (1) If the court finds that there is substantial evidence that a child who is the  
33 subject of a petition filed under section 601 or 602 that raises a doubt as to  
34 the minor's competency as defined in section 709, ~~lacks sufficient present~~  
35 ~~ability to consult with counsel and assist in preparing his or her defense with~~  
36 ~~a reasonable degree of rational understanding, or lacks a rational as well as~~  
37 ~~factual understanding of the nature of the charges or proceedings against him~~  
38 ~~or her,~~ the court must suspend the proceedings and conduct a hearing  
39 regarding the child's competence. ~~Evidence is substantial if it raises a~~  
40 ~~reasonable doubt about the child's competence to stand trial.~~

41  
42 ~~(A)~~ (2) Unless the parties have stipulated to a finding of incompetency, the  
43 court must appoint an expert to examine the child to evaluate the minor and

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1            determine whether the minor child suffers from a mental illness, mental  
2            disorder, developmental disability, developmental immaturity, or other  
3            condition affecting competency and, if so, whether the condition or  
4            conditions impair the child's competency. the minor is incompetent as  
5            defined in section 709(a)(2).

6  
7            (3) Following the hearing on competence, the court must proceed as directed in  
8            section 709.

9  
10        **(b) Expert qualifications**

11  
12        ~~(B)~~(1)        To be appointed as an expert, an individual must be a:

13  
14            ~~(i)~~(A) Licensed psychiatrist who has successfully completed four years of  
15            medical school and either four years of general psychiatry residency,  
16            including one year of internship and two years of child and adolescent  
17            fellowship training, or three years of general psychiatry residency,  
18            including one year of internship and one year of residency that focus on  
19            children and adolescents and one year of child and adolescent  
20            fellowship training; or

21  
22            ~~(ii)~~(B)        Clinical, counseling, or school psychologist who has received a  
23            doctoral degree in psychology from an educational institution  
24            accredited by an organization recognized by the Council for Higher  
25            Education Accreditation and who is licensed as a psychologist; and

26  
27        ~~(C)~~(2)        The expert, whether a licensed psychiatrist or psychologist, must:

28  
29            ~~(i)~~(A) Possess demonstrable professional experience addressing child and  
30            adolescent developmental issues, including the emotional, behavioral,  
31            and cognitive impairments of children and adolescents;

32  
33            ~~(ii)~~ (B) Have expertise in the cultural and social characteristics of children  
34            and adolescents;

35  
36            ~~(iii)~~(C) Possess a curriculum vitae reflecting training and experience in the  
37            forensic evaluation of children;

38  
39            ~~(iv)~~(D) Be familiar with juvenile competency standards and accepted criteria  
40            used in evaluating juvenile competence;

41

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1           ~~(v)~~(E) Possess a comprehensive understanding of effective interventions, as  
2           well as treatment, training, and programs for the attainment of  
3           competency available to children and adolescents; ~~and~~

4  
5           ~~(vi)~~(F) Be proficient in the language preferred by the child, or if that is not  
6           feasible, employ the services of a certified interpreter and use  
7           assessment tools that are linguistically and culturally appropriate for the  
8           child; and;

9  
10          (G) Be familiar with juvenile competency remediation services available to  
11          the minor.

12  
13          ~~(2)~~(3) Nothing in this rule precludes involvement of clinicians with other  
14          professional qualifications from participation as consultants or witnesses or in  
15          other capacities relevant to the case.

16  
17          ~~(3) Following the hearing on competence, the court must proceed as directed in~~  
18          ~~section 709.~~

19  
20          (c) **Interview of minor**

21  
22          The evaluator must attempt to interview the minor face-to-face.

23  
24          (1) If an in-person interview is not possible due to distance, the interview may be  
25          conducted remotely, using videoconference or another form of remote  
26          electronic communication that allows the evaluator and the minor to  
27          communicate in real time and see each other during the interview, with no delay  
28          in aural or visual transmission or reception.

29  
30          (2) If an in-person interview is not possible because the minor refuses to interview,  
31          the evaluator must try to observe and make direct contact with the minor to  
32          attempt to gain clinical observations that may inform the evaluator's opinion  
33          regarding the minor's competency.

34  
35          (d) **Review of records**

36  
37          (1) The evaluator must review all the records provided as required by section 709.

38  
39          (2) The written protocol required under section 709(h)(5)(C)(i) must include a  
40          description of the process for obtaining and providing the records to the  
41          evaluator to review, including who will obtain and provide the records to the  
42          evaluator.

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **(e) Consult with minor’s counsel**

2  
3 (1) The expert must consult with minor’s counsel as required by section 709. This  
4 consultation must include asking minor’s counsel the following:

5  
6 (A) If minor’s counsel raised the question of competency, why minor’s  
7 counsel doubts that the minor is competent;

8  
9 (B) What has minor’s counsel observed regarding the minor’s behavior;  
10 and

11  
12 (C) A description of how the minor interacts with minor’s counsel.

13  
14 (2) No waiver of the attorney-client privilege shall be deemed to have occurred  
15 from minor’s counsel’s report of the minor’s statements to the evaluator, and all  
16 such statements are subject to the protections in (g)(2) of this rule.

17  
18 **(f) Developmental history**

19  
20 The expert must gather a developmental history of the minor as required by section  
21 709. This history must be documented in the report and must include the following:

22  
23 (1) Whether there were complications or drug use during pregnancy that could  
24 have caused medical issues for the minor;

25  
26 (2) When the child achieved developmental milestones such as talking, walking,  
27 and reading;

28  
29 (3) Psychosocial factors such as abuse, neglect, or drug exposure;

30  
31 (4) Adverse childhood experiences, including early disruption in the parent–  
32 child relationship;

33  
34 (5) Mental health services received during childhood and adolescence;

35  
36 (6) School performance, including Individualized Education Plan, testing,  
37 achievement scores, and retention;

38  
39 (7) Acculturation issues;

40  
41 (8) Biological and neurological factors such as neurological deficits and head  
42 trauma; and

43

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1           (9) Medical history including significant diagnoses, hospitalizations, or head  
2           trauma.

3  
4           **(g) Written report**

5  
6           (1) Any court-appointed evaluator must examine the minor and advise the court  
7           on the minor's competency to stand trial. The expert's report must be  
8           submitted to the court, to the counsel for the minor, to the probation  
9           department, and to the prosecution. The report must include the following:

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11           (A) A statement identifying the court referring the case, the purpose of the  
12           evaluation, and the definition of competency in the state of California;

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14           (B) A brief statement of the expert's training and previous experience as it  
15           relates to evaluating the competence of a minor to stand trial;

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17           (C) A statement of the procedure used by the expert, including:

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19                   (i) A list of all sources of information considered by the expert;

20  
21                   (ii) A list of all sources of information the expert tried or wanted to  
22                   obtain but, for reasons described in the report, could not be  
23                   obtained;

24  
25                   (iii) A detailed summary of the attempts made to meet the minor face-  
26                   to-face and a detailed account of any accommodations made to  
27                   make direct contact with the minor; and

28  
29                   (iv) All diagnostic and psychological tests administered, if any;

30  
31           (D) A summary of the developmental history of the child;

32  
33           (E) A summary of the evaluation conducted by the expert on the minor,  
34           including the current diagnosis or diagnoses which meet criteria under  
35           the most recent version of the *Diagnostic and Statistical Manual of*  
36           *Mental Disorders*, when applicable, and a summary of the minor's  
37           mental or developmental status;

38  
39           (F) A detailed analysis of the competence of the minor to stand trial under  
40           section 709, including the minor's ability or inability to understand the  
41           nature of the proceedings or assist counsel in the conduct of a defense  
42           in a rational manner as a result of a mental or developmental  
43           impairment;

Rules 5.643 and 5.645 of the California Rules of Court would be amended, effective January 1, 2020, to read:

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(G) An analysis of whether and how the minor’s mental or developmental status is related to any deficits in abilities related to competency;

(H) A summary of an assessment-conducted for malingering or feigning symptoms, if clinically indicated, which may include psychological testing;

(I) If the minor has significant deficits in abilities related to competency, an opinion with explanation as to whether treatment can reduce the impairments related to the minor’s deficits in competency abilities, the nature of that treatment, its availability, and whether restoration is likely to be accomplished within the statutory time limit;

(J) If psychotropic medication is considered appropriate and necessary, whether the treatment will likely restore the minor to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer psychotropic medication in the county juvenile hall, and whether the minor has capacity to make decisions regarding psychotropic medication. If the expert is of the opinion that a referral to a psychiatrist is necessary to address these issues, the expert must inform the court of this opinion and recommend that a psychiatrist examine the minor; and

(K) A recommendation, as appropriate, for a placement or type of placement and treatment that would be most appropriate for restoring the minor to competency.

(2) Statements made to the appointed expert during the minor’s competency evaluation and statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of these statements, must not be used in any other hearing against the minor in either juvenile or adult court.

**Advisory Committee Comment**

Welfare and Institutions Code section 709(b) mandates that the Judicial Council develop and adopt rules regarding the qualification of experts to determine competency for purposes of juvenile adjudication. Upon a court finding of incompetency based on a developmental disability, the regional center determines eligibility for services under Division 4.5 of the Lanterman Developmental Disabilities Services (Welf. & Inst. Code, § 4500 et seq.).



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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Date

February 8, 2019

Action Requested

Submit nomination information by requested  
deadline

To

Justices of the Supreme Court  
Justices of the Courts of Appeal  
Judges, Commissioners, and Referees of the  
Superior Courts  
Clerk/Executive Officer of the Supreme Court  
Clerk/Executive Officers of the Courts of  
Appeal  
Court Executive Officers of the Superior  
Courts  
Judicial Council Members  
Judicial Council Advisory Committee and  
Task Force Members  
Bar Associations  
Law-Related Community Organizations  
Interested Others

Deadline

March 29, 2019

Contact

Roma Cheadle  
415-865-7640  
[roma.cheadle@jud.ca.gov](mailto:roma.cheadle@jud.ca.gov)

Maria Kwan  
415-865-4543

[maria.kwan@jud.ca.gov](mailto:maria.kwan@jud.ca.gov)

From

Laura Speed, Director  
Amber Barnett, Principal Manager  
Roma Cheadle, Supervising Analyst  
Leadership Services Division

Subject

2019 Judicial Council Advisory Body  
Nominations

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The Executive and Planning Committee of the Judicial Council of California is soliciting nominations to fill vacancies on the Judicial Council advisory bodies.

The Judicial Council is the policymaking body of the California courts. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council establishes policies and sets priorities for the judicial branch of government. It is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice on behalf of the public and the court system as a whole.

#### Advisory Body Vacancies

The Chief Justice appoints advisory body members according to positions or categories prescribed by the California Rules of Court and by statute. Positions held by members vary according to the focus of the committee. For example, the Appellate Advisory Committee includes the categories of appellate justice and trial court judge with appellate experience; the Family and Juvenile Law Advisory Committee includes the categories of District Attorney assigned to juvenile delinquency cases. The 2019 advisory body nomination form lists the positions for which nominations are being solicited in this cycle.

#### Advisory Body Responsibilities and Time Commitment

The council's advisory bodies regularly monitor certain topics or areas of law as they impact the judicial branch. Each advisory body reviews and makes recommendations on programs, legislation, rules, standards, forms, and other policy initiatives within its purview. Membership requires a commitment of 10 hours per month on average but may vary considerably from month to month, depending on the projects under way. Advisory bodies meet in person up to one time per year and by telephone conference 5 to 10 times per year.

#### Advisory Body Members' Terms

Terms of service for advisory body members are generally three years, although some terms are for only one or two years. Terms of service for those appointed in this nomination cycle will begin on September 15, 2019. For a description of the membership, terms, functions, and duties of advisory bodies, see rules [10.30 through 10.70](#) of the California Rules of Court.

#### How to Apply

Please complete and submit a nomination form along with the nominee's biography or curriculum vitae by **March 29, 2019**, to:

Judicial Council of California  
Judicial Council Support  
Attn: Maria Kwan  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
Fax: 415-865-4391  
Email: [jcsupport@jud.ca.gov](mailto:jcsupport@jud.ca.gov)

Before nominating someone, please ascertain that the nominee is interested and is available to serve if selected. Self-nominations are highly encouraged.

February 8, 2019

Page 3

Alternatively, the nomination forms can be completed online or downloaded from the California Courts website at <http://www.courts.ca.gov/4650.htm>.

We appreciate your contribution to this important process. If you have any questions, please contact Judicial Council Support at 415-865-4543.

LS/AB/RKC/mk

Enclosure

# AB 1810 MENTAL HEALTH DIVERSION REGIONAL ROUND TABLES

To help support the implementation of mental health diversion under Assembly Bill 1810 (Pen. Code, §§ 1001.35, 1001.36), the Judicial Council of California, Criminal Justice Services, is organizing regional round tables for judicial officers and court administrators.

## Anticipated round table topics include:

- + AB 1810 Mental Health Diversion Law Overview
- + Determining Appropriate Treatment  
& Monitoring Treatment
- + Solving Procedural Problems
- + Screening Tools & Evaluation

Due to space limitations, participation is **only** open to judicial officers and court administrators. Travel and lodging are the responsibility of the attendee.



## Northern Round Table

Friday, April 5th, 2019, 9:15am - 4:15pm

Judicial Council of California

Veranda A, B, & C (4th Floor)

2860 Gateway Oaks Drive, Suite 400

Sacramento, CA, 95833

## Southern Round Table

Monday, May 20th, 2019, 9:15am - 4:15pm

Vineyard Training Center

9607 Business Center Drive

Building 13, Suite B

Rancho Cucamonga, CA, 91730

Continuing Judicial Education &  
Rules of Court hours available



JUDICIAL COUNCIL  
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION  
CRIMINAL JUSTICE SERVICES

Contact: [CrimJusticeOffice@Jud.Ca.Gov](mailto:CrimJusticeOffice@Jud.Ca.Gov)  
for round table registration or any questions

# Save the Date

## California Association of Collaborative Courts Annual Conference

October 28 - 30, 2019

Holiday Inn –  
Downtown Arena  
300 J Street  
Sacramento, CA 95814

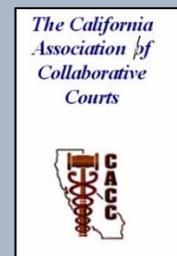
Reserve your room:  
[bit.ly/CACCCConf2019](http://bit.ly/CACCCConf2019)



Meet National/State Justice Leaders, Treatment  
Experts, Court Teams

- ◆ Substance Abuse
- ◆ Mental Health
- ◆ Homelessness
- ◆ Tribal Justice
- ◆ Justice Reforms
- ◆ Family/Juvenile Issues
- ◆ Membership Meeting
- And More!

Stay tuned for more information!



[www.CA2C.org](http://www.CA2C.org)