

Juvenile Law Issues Meeting

Call In Number: 877.820.7831

Listen Only Passcode: 3059688

FEBRUARY 18, 2016
11:00 A.M. - 3:15 P.M.
SAN FRANCISCO, CA



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 11, 2015

Title

Judicial Council–Sponsored Legislation:
Juvenile Competency

Agenda Item Type

Action Required

Effective Date

December 11, 2015

Rules, Forms, Standards, or Statutes Affected

Welf. & Inst. Code, § 709

Date of Report

November 23, 2015

Recommended by

Policy Coordination and Liaison Committee

Hon. Kenneth K. So, Chair

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Collaborative Justice Courts Advisory
Committee

Hon. Richard Vlavianos, Chair

Hon. Rogelio R. Flores, Vice-Chair

Mental Health Issues Implementation Task
Force

Hon. Richard J. Loftus, Jr., Chair

Contact

Dr. Amy Bacharach, 415-865-7913
amy.bacharach@jud.ca.gov

Mr. Alan Herzfeld, 916-323-3121
alan.herzfeld@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee, Family and Juvenile Law Advisory Committee, Collaborative Justice Courts Advisory Committee, and Mental Health Issues Implementation Task Force recommend amending Welfare and Institutions Code section 709 to clarify the legal process and procedures in proceedings that determine the legal competency of juveniles.

Recommendation

The Policy Coordination and Liaison Committee, Family and Juvenile Law Advisory Committee, Collaborative Justice Courts Advisory Committee, and Mental Health Issues Implementation Task Force recommend that the Judicial Council sponsor legislation to amend Welfare and Institutions Code section 709. The proposed amendments are to address the questions that arise when doubt is expressed regarding a minor's competency, including the following:

- Who may express doubt regarding competency in minors?
- Who has the burden of establishing incompetency?
- What is the role of the forensic expert in assessment and reporting on competency in minors?
- What is the process for determining competency in minors?
- What is the process for determining whether competency has been remediated?
- What is the process for ensuring that proceedings are not unduly delayed?
- What is the process for ensuring due process and confidentiality protections for minors during the proceedings?

The text of the proposed statute is attached at pages 6–9.

Previous Council Action

The council has taken no previous action on this recommendation. However, it has received prior reports addressing the need for legislation related to competency, including the *Juvenile Delinquency Court Assessment 2008* and the final report from the Task Force for Criminal Justice Collaboration on Mental Health Issues in 2011. Also in 2011, the council amended California Rules of Court, rule 5.645(d), to specify the qualifications of experts evaluating minors' competency to participate in juvenile proceedings as required by changes to Welfare and Institutions Code section 709 enacted in 2010. The rule change was effective January 1, 2012.

Rationale for Recommendation

The Family and Juvenile Law Advisory Committee, Collaborative Justice Courts Advisory Committee, and Mental Health Issues Implementation Task Force formed a joint working group in 2014 composed of members of each entity, as well as judges from a cross-section of courts, a chief probation officer, a deputy district attorney, a deputy public defender, and a private defense attorney. The working group met 10 times to discuss appropriate amendments to Welfare and Institutions Code section 709 before sending a draft to the full committees for further discussion and finalization.

Competency is currently defined as lacking sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding or lacking a rational as well as factual understanding of the nature of the charges or proceedings. The standard to determine competency for juveniles is different from that for determining competency for adults, as discussed in *Bryan E. v. Superior Court*, 231 Cal.App.4th 385 (2014), 390–391. In *Bryan E.*, the appellate court held that the trial court incorrectly applied the standard of competency for adult proceedings, rather than the standard required in juvenile proceedings. The

appellate court cited a litany of cases addressing the difference between adult and juvenile competency determinations.¹ Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone (*Timothy J. v. Superior Court*, 150 Cal.App.4th 847 (2007)). Although the standards for competency for adults and juveniles differ, the purpose of competency determinations for adults and juveniles is similar. Therefore, the recommended changes to Welfare and Institutions Code section 709 add language that mirrors that in Penal Code section 1367, which applies to adults.

The recommended changes benefit minors who may be incompetent by providing them with a clear standard for determination, clarifying the procedure for the competency hearing, attributing to the minor the burden of establishing incompetence, clarifying what is expected from an expert who is appointed to evaluate a minor, requiring minors who are found incompetent to receive appropriate services, and requiring the Judicial Council to develop a rule of court outlining the training and experience needed for juvenile competency evaluators.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the summer 2015 cycle, from July 14 to August 24, 2015, yielding a total of 24 comments. Of those, 1 agreed with the proposal, 4 agreed with the proposal if modified, and 19 did not indicate a position. A chart with all comments received and committee responses is attached at pages 10–93. The chart is organized by topic, and commentators may have responded to more than one topic.

Commentators made remarks about several general topics, including who can declare doubt about a minor’s competency, who should have the burden to prove incompetency, and what qualifications evaluators should have. Members of the joint working group met 10 times, including three calls following the comment period, and had an extensive discussion regarding these and other topics, discussed below.

The original proposal broadened the number of people who could raise a doubt about a minor’s competency to understand the proceedings and assist with the defense. Several commentators expressed concern about allowing anyone to express a doubt about a minor’s competency, and some specifically noted that prosecutors should not be able to express a doubt. The working group decided to maintain the language in paragraph (a)(2) that only the court and the minor’s counsel can express doubt as to the minor’s competency, while specifying that the court may receive information from any source regarding a minor’s competency. Defense attorneys did not believe that prosecutors should be explicitly stated as participants who may express a doubt of a minor’s competency, whereas prosecutors thought that they should be explicitly included. Defense attorneys were concerned about the potential for prosecutorial overreach, whereas prosecutors were concerned that their exclusion from the list of people who could raise a doubt could violate the current law as stated in *Drope v. Missouri* (420 U.S. 162 (1975)).

¹ *In re Christopher F.* (2011) 194 Cal.App.4th 462; *In re Alejandro G.* (2012) 205 Cal.App.4th 472; *In re John Z.* (2014) 223 Cal.App.4th 1046.

This proposal clarifies the procedure for the competency hearing and attributes to the minor the burden of establishing by a preponderance of evidence that he or she is incompetent to stand trial. This language is in subdivisions (c) and (g). In the case of *In re R.V.* (May 18, 2015, S212346), the California Supreme Court held that section 709 contains an implied presumption that a minor is competent. The working group looked to this case, as well as to Evidence Code sections 605 and 606, and concluded that the burden to prove incompetency is most appropriately the minor's.² Nearly all commentators agreed that the burden of proof should be placed with the minor. By so specifying, the proposal addresses the gap in the existing statute and alleviates the need to rely on the general provisions of Evidence Code section 606.

If the court orders the suspension of proceedings and there is neither a stipulation nor a submission as to the minor's competence, the court is required to appoint an expert to evaluate whether the minor is competent. Subdivision (b) specifies the training requirements for an expert, as well as the expert's responsibilities regarding information gathering and report writing for the court. Commentators were split about whether specific training requirements and information gathering direction should be included in the statute or be put into a rule of court. The working group believed that at least brief qualifications should be in the statute. In addition, subsection (b)(4) ensures that statements made to the expert during the competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of such statements shall not be used in any other delinquency or criminal adjudication against the minor. The working group decided on the current proposed language, citing *People v. Arcega*, 32 Cal.3d 504 (1982). In *Arcega*, the Supreme Court held that to admit the psychiatrist's testimony at trial on the issue of guilt was an error because it violated the rule that neither the statements made to the court-appointed psychiatrist during a competency evaluation nor the fruits of such statements may be used in a trial on the issue of guilt. The original proposal included dependency court. However, some commentators were concerned that prohibiting these statements in a dependency proceeding may unduly prevent the protection of the minor when abuse or neglect is discovered. The working group thus removed dependency court proceedings from the language.

Commentators also made remarks about diversion programs, services for incompetent violent youth, and the parties responsible for costs associated with remediation services. After extensive discussion, the working group decided that a formal diversion program in the statute was less desirable than the existing practice where local jurisdictions create programs unique to the needs of each jurisdiction. In addition, the working group realized that incompetent violent minors present additional challenges; however, the proposal discusses only the process and procedures to establish competency because the issue of the minor's dangerousness is beyond the scope of the proposal. Finally, the working group discovered that not all counties pay for remediation services in the same way. Some counties already have protocols in place that address remediation services

² "The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (Evid. Code, §606.)

and funding; others do not. The working group decided not to address the specific issue of funding.

All members of the Family and Juvenile Law Advisory Committee, Collaborative Justice Courts Advisory Committee, and Mental Health Issues Implementation Task Force also reviewed the proposal and, after making minor modifications, voted to approve the amended statute.

Implementation Requirements, Costs, and Operational Impacts

With no statewide procedure in place currently, courts have different criteria and requirements for determining and dealing with juvenile incompetency. Because of this, this proposal may result in some courts spending more time and money on determining competency and others less than they do under the current county-by-county regime. The proposal could also result in additional hearings and expert appointments. However, by clarifying procedures, allowing minors to be remediated in the least restrictive setting, and enforcing timelines for determinations of competency, a minor's stay in juvenile hall may be shortened.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed legislative amendments support the policies underlying Goal I, Access, Fairness, and Diversity. Specifically, this legislation revision supports Goal I.4, which provides that the Judicial Branch should “[w]ork to achieve procedural fairness in all types of cases.” The proposed legislative amendment also supports the policies of Goal IV, Quality of Justice and Service to the Public, specifically that the judicial branch should “[p]rovide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes” (Goal IV.3) and “[p]romote the use of innovative and effective problem-solving programs and practices that are consistent with and support the mission of the judicial branch” (Goal IV.4).

Attachments

1. Text of the proposed legislation, at pages 6–9
2. Chart of comments, at pages 10–93

Welfare and Institutions Code section 709 would be amended, effective January 1, 2017, to read:

1 709. (a) Whenever the court has a doubt that a minor who is subject to any juvenile proceedings
2 is mentally competent, the court must suspend all proceedings and proceed pursuant to this
3 section.

4 (1) A minor is mentally incompetent for purposes of this section if he or she is unable to
5 understand the nature of the delinquency proceedings, including his or her role in the
6 proceedings, or to assist counsel in conducting a defense in a rational manner,
7 including a lack of a rational or factual understanding of the nature of the charges or
8 proceedings. Incompetency may result from the presence of any condition or
9 conditions, including, but not limited to, mental illness, mental disorder,
10 developmental disability, or developmental immaturity. Except as specifically
11 provided otherwise, this section applies to a minor who is alleged to come within the
12 jurisdiction of the court pursuant to Section 601 or Section 602.

13 (2) ~~(a) During the pendency of any juvenile proceeding, the minor's counsel or the court~~
14 ~~may receive information from any source regarding the~~ express a doubt as to the
15 ~~minor's competency. A minor is incompetent to proceed if he or she lacks sufficient~~
16 ~~present ability to understand the proceedings. Minor's consult with counsel or the~~
17 ~~court may express a doubt as to the minor's competency. Information received or~~
18 ~~expression of doubt and assist in preparing his or her defense with a reasonable~~
19 ~~degree of rational understanding, or lacks a rational as well as factual understanding,~~
20 ~~of the nature of the charges or does not automatically require suspension of~~
21 ~~proceedings against him or her. If the court has finds substantial evidence raises a~~
22 ~~doubt as to the minor's competency, the court shall suspend the proceedings shall be~~
23 ~~suspended.~~

24 (b) Unless the parties stipulate to a finding that the minor lacks competency, or the parties are
25 willing to submit on the issue of the ~~Upon suspension of proceedings, the court shall order~~
26 ~~that the question of the minor's lack of competency, competence be determined at a~~
27 ~~hearing, the court shall appoint an expert to evaluate the minor and determine whether the~~
28 ~~minor suffers from a mental illness, mental disorder, developmental disability,~~
29 ~~developmental immaturity, or other condition affecting competency and, if so, whether the~~
30 ~~minor is competent to stand trial. condition or conditions impair the minor's competency.~~

31 (1) The expert shall have expertise in child and adolescent development; and ~~training in~~
32 ~~the forensic evaluation of juveniles, and shall be familiar with~~ for purposes of
33 adjudicating competency, standards and shall be familiar with competency standards
34 and accepted criteria used in evaluating juvenile competency, and shall have received
35 training in conducting juvenile competency evaluations. ~~competence.~~

36 (2) The expert shall personally interview the minor and review all the available records
37 provided, including, but not limited to, medical, education, special education,
38 probation, child welfare, mental health, regional center, court records, and any other
39 relevant information that is available. The expert shall consult with the minor's
40 attorney and any other person who has provided information to the court regarding the
41 minor's lack of competency. The expert shall gather a developmental history of the

1 minor. If any information is unavailable to the expert, he or she shall note in the
2 report the efforts to obtain such information. The expert shall administer age-
3 appropriate testing specific to the issue of competency unless the facts of the
4 particular case render testing unnecessary or inappropriate. In a written report, the
5 expert shall opine whether the minor has the sufficient present ability to consult with
6 his or her attorney with a reasonable degree of rational understanding and whether he
7 or she has a rational, as well as factual, understanding of the proceedings against him
8 or her. The expert shall also state the basis for these conclusions. If the expert
9 concludes that the minor lacks competency, the expert shall make recommendations
10 regarding the type of remediation services that would be effective in assisting the
11 minor in attaining competency, and, if possible, the expert shall address the likelihood
12 of the minor's attaining competency within a reasonable period of time.

13 (3) The Judicial Council shall ~~develop and~~ adopt a rules of court identifying the training
14 and experience needed for an expert to be competent in forensic evaluations of
15 juveniles and shall develop and adopt rules for the implementation of ~~other these~~
16 requirements related to this subdivision.

17 (4) Statements made to the appointed expert during the minor's competency evaluation,
18 statements made by the minor to mental health professionals during the remediation
19 proceedings, and any fruits of such statements shall not be used in any other
20 delinquency or criminal adjudication against the minor in either juvenile or adult
21 court.

22 (5) The prosecutor or minor may retain or seek the appointment of additional qualified
23 experts who may testify during the competency hearing. The expert's report and
24 qualifications shall be disclosed to the opposing party within a reasonable time prior
25 to the hearing and not later than five court days prior to the hearing. If disclosure is
26 not made in accordance with this paragraph, the expert shall not be allowed to testify
27 and the expert's report shall not be considered by the court unless the court finds good
28 cause to consider the expert's report and testimony. If, after disclosure of the report,
29 the opposing party requests a continuance in order to prepare further for the hearing
30 and shows good cause for the continuance, the court shall grant a continuance for a
31 reasonable period of time.

32 (6) ~~(f)~~ If the expert believes that the minor is developmentally disabled, the court shall
33 appoint the director of a regional center for developmentally disabled individuals
34 described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5,
35 or his or her designee, to evaluate the minor. The director of the regional center, or his
36 or her designee, shall determine whether the minor is eligible for services under the
37 Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with
38 Section 4500)), and shall provide the court with a written report informing the court
39 of his or her determination. The court's appointment of the director of the regional
40 center for determination of eligibility for services shall not delay the court's
41 proceedings for determination of competency.

42 (7) ~~(g)~~ An expert's opinion that a minor is developmentally disabled does not supersede
43 an independent determination by the regional center ~~whether regarding the minor is~~

1 eligible minor's eligibility for services under the Lanterman Developmental
2 Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

3 (8) ~~(h)~~ Nothing in this section shall be interpreted to authorize or require the following:

4 A. ~~(1) The court to place~~ Placement of a minor who is incompetent in a
5 developmental center or community facility operated by the State Department of
6 Developmental Services without a determination by a regional center director,
7 or his or her designee, that the minor has a developmental disability and is
8 eligible for services under the Lanterman Developmental Disabilities Services
9 Act (Division 4.5 (commencing with Section 4500)).

10 B. ~~(2) The director of the regional center, or his or her designee, to make~~
11 Determinations regarding the competency of a minor by the director of the
12 regional center or his or her designee.

13 (c) The question of the minor's competency shall be determined at an evidentiary hearing
14 unless there is a stipulation or submission by the parties on the findings of the expert. The
15 minor has the burden of establishing by a preponderance of the evidence that he or she is
16 incompetent to stand trial.

17 (d) If the minor is found to be competent, the court shall reinstate proceedings and proceed
18 commensurate with the court's jurisdiction.

19 (e) If the court finds incompetent by a preponderance of evidence that the minor is
20 incompetent, all proceedings shall remain suspended for a period of time that is no longer
21 than reasonably necessary to determine whether there is a substantial probability that the
22 minor will attain competency in the foreseeable future, or the court no longer retains
23 jurisdiction. During this time, the court may make orders that it deems appropriate for
24 services, subject to subdivision (h), that may assist the minor in attaining competency.
25 Further, the court may rule on motions that do not require the participation of the minor in
26 the preparation of the motions. These motions include, but are not limited to, the following:

27 (1) Motions to dismiss.

28 (2) Motions ~~by the defense~~ regarding a change in the placement of the minor.

29 (3) Detention hearings.

30 (4) Demurrers.

31 (f) Upon a finding of incompetency, the court shall refer the minor to services designed to help
32 the minor to attain competency. Service providers and evaluators shall adhere to the
33 standards stated in this statute and the California Rules of Court. Services shall be provided
34 in the least restrictive environment consistent with public safety. Priority shall be given to
35 minors in custody. Service providers shall determine the likelihood of the minor's attaining
36 competency within a reasonable period of time, and if the opinion is that the minor will not
37 attain competency within a reasonable period of time, the minor shall be returned to court at
38 the earliest possible date. The court shall review remediation services at least every 30
39 calendar days for minors in custody and every 45 calendar days for minors out of custody.

40 (g) Upon receipt of the recommendation by the remediation program, the court shall hold an
41 evidentiary hearing on whether the minor is remediated or is able to be remediated unless
42 the parties stipulate to or submit on the recommendation of the remediation program. If the
43 recommendation is that the minor has attained competency, and if the minor disputes that
44 recommendation, the burden is on the minor to prove by a preponderance of evidence that

1 the minor remains incompetent. If the recommendation is that the minor is unable to be
2 remediated and if the prosecutor disputes that recommendation, the burden is on the
3 prosecutor to prove by a preponderance of evidence that the minor is remediable. If the
4 prosecution contests the evaluation of continued incompetence, the minor shall be
5 presumed incompetent and the prosecution shall have the burden to prove by a
6 preponderance of evidence that the minor is competent. The provisions of subdivision (c)
7 shall apply at this stage of the proceedings.

8 (1) ~~(d)~~ If the court finds that the minor is found to be competent has been remediated, the
9 court may proceed commensurate with the court's jurisdiction shall reinstate the
10 delinquency proceedings.

11 (2) If the court finds that the minor is not yet been remediated, but is likely to be
12 remediated, the court shall order the minor returned to the remediation program.

13 (3) ~~(e) This section applies to a~~ If the court finds that the minor will not achieve
14 competency, the court must dismiss the petition. The who is alleged to come within
15 the jurisdiction of the court pursuant to Section may invite all persons and agencies
16 with information about the minor to the dismissal hearing to discuss any services that
17 may be available to the minor after jurisdiction is terminated. Such persons and
18 agencies may include, but are not limited to, the minor and his or her attorney;
19 probation; parents, guardians, or relative caregivers; mental health treatment
20 professionals; the public guardian; educational rights holders; education providers;
21 and social service agencies. If appropriate, the court shall refer the minor for
22 evaluation pursuant to Welfare and Institutions Code Sections 601 or 6025300 et seq.
23 or 6550 et seq.

24 (h) The presiding judge of the juvenile court; the county probation department; the county
25 mental health department; the public defender and/or other entity that provides
26 representation for minors; the district attorney; the regional center, if appropriate; and any
27 other participants that the presiding judge shall designate shall develop a written protocol
28 describing the competency process and a program to ensure that minors who are found
29 incompetent receive appropriate remediation services.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
<p>Declaring Doubt (who can declare doubt)</p>	<p>San Bernardino Public Defender By Richard Sterling, Supervising Deputy Public Defender</p>	<p>AM</p>	<p>Concerned with anyone other than an attorney or judge declaring a doubt.</p> <p><i>Parent</i></p> <ul style="list-style-type: none"> • Who would advise the parent and provide legal advice? The minor is represented by his attorney, but that attorney cannot advise the parent. • Would every parent be given an attorney? Some parents, guardians, siblings do not act in the minor's best interest. • What if the parent and attorney have a conflict? • Would the attorney advise the parent to request that an attorney be provided to them? <p><i>Family Members.</i></p> <ul style="list-style-type: none"> • What procedure would be in place for the family member to tell the court that the minor has mental issues and may not understand the proceedings? Many judges do not allow them to speak or allow them to ask any questions. Would the judge be required to make some sort of finding in each case that the minor is competent before going forward? • Would the court inquire from each family member whether they believe the minor is competent and why? What about family members that disagree with each other (divorced parents, siblings)? <p><i>Substantial Evidence</i></p> <ul style="list-style-type: none"> • Also, on the first court appearance, other than the family member telling the court and/or attorney that the minor has mental issues, what other evidence 	<p><i>Parent and Family Member/ Substantial Evidence</i></p> <p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>would amount to substantial evidence to declare a doubt? They may bring documentation, but many do not. In that instance, the attorney based on what he is told should declare the doubt about competency</p>	
	<p>Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department</p>	<p>AM</p>	<p>Yes [to adding Participants], they probably know more than an attorney can determine and they are generally very involved in the youth’s life.</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>
	<p>Roger A. Luebs, Juvenile Judge Superior Court of California, County of Riverside</p>		<p><i>Participants</i> Subsection (a)(1) creates confusion by allowing any “participant” in the proceedings to “express a doubt” thereby triggering a duty of inquiry by the court. This is especially true because subdivision (b) indicates that the competence of the minor can be resolved by “stipulation”. As drafted, it appears that the prosecutor</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>and the defense counsel can simply agree that the minor is or is not competent. If counsel can resolve the issue by “stipulation”, what role do the other participants have in “expressing a doubt”?</p> <p>I see no good purpose for conveying legal standing on “participants” to “express a doubt”. The judge and minor’s attorney should be trusted with the responsibility of “expressing doubt” when all the information available to them, including information offered by other “participants”, suggests it is appropriate.</p> <p>Subdivision (b) seems to me to be drafted poorly. Since getting an expert evaluation occurs before conducting an evidentiary hearing, I think sentence three in that subdivision should precede the first two sentences. Also, sentence three indicates that the opinion should address whether the minor has “impair[ed]” capacity, but the issue is not “impairment”, it is absence or presence of capacity. Almost every child who appears in juvenile court suffers from some degree of impairment, but that does not render them incompetent. I suggest that the third sentence be changed to read: “Upon suspension of the proceedings, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or</p>	<p><u>proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p> <p>That is different from the court suspending proceedings and potentially appointing an evaluator to determine a minor’s competency. The stipulation or submission by the parties in subdivision (b) allows the court to appoint an evaluator without having to hear additional evidence about whether the minor may or may not be competent.</p> <p>The advisory bodies agree to rewrite the language in the first sentence of (b) to clarify the intent. The language is: <u>Unless the parties stipulate or are willing to submit on the expression of doubt, the Court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>other condition affecting competence and, if so, whether the condition or conditions render the minor incompetent as defined in subdivision (a).” I also suggest this change in language because I do not think it is a good idea to repeat, in various forms, the definition of “incompetence” throughout the statute.</p>	<p><u>condition affecting competence, and if so, whether the minor is incompetent to stand trial as defined above.</u></p>
	<p>Ashleigh E. Aitken, President On behalf of Orange County Bar Association</p>		<p>No [to adding additional participants] No additional individuals should be added to the list of individuals who can raise a doubt.</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>
	<p>Kiran Savage-Sangwan, Director of Legislation and Advocacy on behalf of the</p>	<p>A</p>	<p>Yes [to adding additional participants] Family members or caregivers are often in the best position to provide information and raise doubt as to competency of a child.</p> <p>Family members and caregivers witness the child’s behavior on a regular basis, and over time. Teachers and</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	National Alliance on Mental Illness (NAMI)		other providers of services such as health care should be able to raise doubt as to competency. Depending on the unique circumstances of each child, the adults best able to provide the information necessary to the proceedings may vary. The language included in § 709(a)(1) adequately addresses this issue.	<u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u>
	Hon. Michael I. Levanas, Presiding Judge, and Commissioner Robert Leventer, Superior Court of California, Los Angeles County, Juvenile Court		<p><i>Participants</i></p> <p>No [to adding additional participants] Allowing any party or participant to intervene in the court process would be confusing and might cause the court to impermissibly interfere in the attorney-client relationship.</p> <ul style="list-style-type: none"> • The decision about whether a minor is competent is a legal decision not just a mental health observation. <ul style="list-style-type: none"> ○ [“More is required to raise a doubt as to competence than mere bizarre action or bizarre statements. A lack of objectivity and possibly self-destructive emotional approach to self-representation does not equate to substantial evidence of incompetence to stand trial.” People v. Halvorsen, 42 Cal. 4th 379, 403 (2007).] • The proposal does not define who is a party or participant, but would invite just about anyone to weigh in on the mental health condition of the minor. 	<p><i>Participants</i></p> <p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>Certainly it is the obligation of minors’ counsel and the court to consider information that parents, relatives, teachers, therapist, etc., have provided about the mental health of the minor.</p> <p><i>Confidentiality</i> The court should not be obligated to invite, or even encouraged to make an inquiry, about a minors’ competence or mental health from participants in the courtroom. Such an inquiry is fraught with confidentiality and other legal and strategical implications which are necessarily left with minor’s counsel.</p> <p><i>Substantial Evidence</i> “Substantial evidence” is the long-standing legal standard in adult competency matters and there is ample case law on this standard to give the courts guidance. “Sufficient evidence” is ambiguous and would seem to take away judicial discretion on whether to suspend proceedings and initiate a costly and burdensome process.</p> <ul style="list-style-type: none"> • [If the court finds substantial <u>sufficient</u> evidence that raises a reasonable doubt as to the minor's competency] 	<p><i>Confidentiality</i> The advisory bodies believe the rewrite addresses this issue.</p> <p><i>Substantial Evidence</i> The advisory bodies believe the rewrite addresses this issue.</p>
	Sue Burrell, Staff Attorney on behalf of the		<p><i>Participant</i> We are opposed to the proposed broadening of individuals who may raise the issue of competence.</p>	<p><i>Participants</i> The advisory bodies have considered all the comments regarding parties and participants. The</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Youth Law Center		<p>Specifically, we are opposed to allowing prosecutors raise the issue. Retain the existing language on who may express a doubt as to competency.</p> <ul style="list-style-type: none"> • Recommending to retain the current language of Section 709, subdivision (a), subsection (1), providing that the minor’s counsel or the court may express a doubt. <p>In California, adults found incompetent may be held for up to three years in state hospitals. It is hardly a secret that prosecutors sometimes seek a finding of incompetence as a way to obtain custodial time in cases they might have difficulty proving, either because of the defendant’s disabilities or because the evidence is weak.</p> <ul style="list-style-type: none"> • We are concerned that allowing prosecutors to raise competence as an issue would introduce that kind of subterfuge into juvenile proceedings. The impact would be even worse for juveniles because, unlike the adult system, we have no state hospitals with adolescent programs. This means that incompetent youth needing a custodial setting would most likely be warehoused in juvenile detention or correctional facilities. <p>Of all the parties involved in juvenile cases, prosecutors are in the worst position to know whether competence should be raised.</p> <ul style="list-style-type: none"> • The California Supreme Court has expressly discounted the capacity of prosecutors in relation to juvenile competence. In <i>In re R.V.</i> (2015) 61 	<p>advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>Cal.4th 181, 196, the Attorney General argued that “imposition of the burden of proof on a minor who claims incompetency comports with policy concerns because, like an adult criminal defendant, the minor and minor's counsel have superior access to information relevant to competency.” Our Supreme Court agreed, stating that the defendant and defense counsel likely have better access to the relevant information (<i>Ibid.</i>, citing <i>People v. Medina</i> (1990) 51 Cal.3d 870, 885)</p> <ul style="list-style-type: none"> • The current provisions, allowing either defense counsel or the court to raise the issue are adequate to provide an avenue for parents or other caregivers to bring attention to conditions that could impact competence. • Part of the ethical duties of defense counsel include interviewing and communicating with parents or guardians, so parents or guardians have a ready avenue in which to offer concerns about competence. The court provides an important check and balance on this process. If for example, defense counsel has not raised the issue when it seems apparent to the court that it should have been raised, the court may raise the issue on its own motion to assure the integrity of the process. • The court can do this without the baggage that would inevitably taint an assertion of incompetence by the prosecutor. Our office has worked on 	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>juvenile incompetence issues for nearly a decade now, and we have not heard of a single case or situation in which the current language would have been inadequate to protect the rights of the young person before the court.</p> <p><i>Substantial Evidence</i> Substantial to “sufficient” and adding “reasonable.” Our review of the cases suggests that “substantial” and “sufficient” are interchangeable (<i>see, e.g., People v. Stankewitz</i> (1982) 32 Cal.3d 80, 92-93, “substantial evidence of incompetence is sufficient to require a full competence hearing even if the evidence is in conflict”), so we have no objection to that change.</p> <p>However, we do object to the addition of the word “reasonable.” That appears to be interjecting a standard that is new and unsupported. We are concerned that adding “reasonable” will be viewed as adding some additional burden to what is currently required to justify the declaration of a doubt.</p> <p>Recommendation: Change “substantial” to “sufficient,” but omit the proposed addition of “reasonable.”</p>	<p><i>Substantial Evidence</i> The advisory bodies believe the rewrite addresses this issue.</p>
	<p>Margaret Huscher, Supervising Deputy Public</p>		<p>I do not share the advisory bodies concern that a parent or caretaker may be the only person with sufficient information to raise a doubt.</p> <ul style="list-style-type: none"> • Sometimes, it is immediately obvious that there is 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	<p>Defender III, Law Office of the Public Defender, Shasta County</p>		<p>an unavoidable incompetency issue and we declare the doubt early in our representation. More frequently, however, we will meet repeatedly with the minor, talk with family, review school records, consult with hall staff, etc. to explore alternatives to incompetency.</p> <p><i>Family Member</i></p> <p>Conversely, I have a grave concern that a family member may not understand the legal process and, albeit with good intentions, create legal chaos.</p> <ul style="list-style-type: none"> • Family members generally do not know the collateral consequences to having an incompetent child or be able to weigh the risk to and benefits of declaring a doubt. • When we represent a child where there is a concern that the child may not be comprehending the proceedings, we have a heightened responsibility to that child: it is a balancing act between the child's express interests and what we think is best for the child. • Adding the uncertainty of the parents' opinion could potentially make the process more emotionally difficult and uncertain for the child, as well as create conflict between the family member and the minor's attorney. <p><i>Substantial Evidence</i></p>	<p>language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor's ability to understand the proceedings. Minor's counsel or the court may express a doubt as to the minor's competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor's competence, the court shall suspend the proceedings</u></p> <p>The advisory bodies believe the rewrite addresses this issue.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>In all the years that I have practiced, I have never had a judge, after a doubt has been declared, hold a hearing on whether there is substantial evidence to suspend proceedings. Judges rely on defense attorneys to identify clients who are struggling to participate in the criminal process and to declare a doubt appropriately. However, it is unlikely that judges will have a professional relationship with the family members such that judges can rely upon the family’s judgment in order to know whether to suspend proceedings.</p> <p>The proposed amendment requires the judge to make a finding of incompetency based upon sufficient evidence, but fails to provide guidance as to what sufficient evidence might be.</p> <ul style="list-style-type: none"> • In the scenario where minor’s attorney remains quiet and the parent, in an attempt to provide sufficient evidence, spews forth information about the minor, what finding is the judge supposed to make? Assuming the judge relies upon the attorney’s judgment in <i>not</i> declaring a doubt, on what basis does the court make a finding that insufficient evidence was offered by the parents? <p><i>Evidentiary Hearing</i></p> <p>Why is this sentence necessary? As defense attorneys, we routinely stipulate to the doctor’s reports on the issue of competency rather than presenting live testimony. However, this sentence seems to suggest that</p>	<p>The advisory bodies believe the rewrite of subdivision (b) addresses this issue to clarify the intent of the subdivision:</p> <p>The advisory bodies agree to rewrite the language in the first sentence of (b) to clarify the</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>the parties could stipulate to incompetency without a doctor’s report as a foundation for that stipulation.</p> <p>As an experienced defense attorney, there is a temptation to declare a doubt when the client is argumentative and simply <i>will not listen to or follow</i> the attorney’s advice. Likewise, there is a temptation to declare a doubt when the strategy is to delay the inevitable. If this language is to be included, I am concerned that an unfettered stipulation could be abused by attorneys’ agreement to avoid difficult clients/cases.</p>	<p>intent. The language is: <u>Unless the parties stipulate or are willing to submit on the expression of doubt, the Court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competence, and if so, whether the minor is incompetent to stand trial as defined above.</u></p>
	<p>Greg Feldman, Deputy Public Defender, on Behalf of San Francisco Office of the Public Defender</p>		<p>We strongly object to allowing other parties express a doubt.</p> <ul style="list-style-type: none"> • It is the defender and the resources and training that we dedicate to the determination of client competence who is in the best position to express a doubt. We are concerned that allowing other parties to express a doubt invites possible abuse of the competency process by other parties to delay proceedings especially when the majority of our clients are in custody. • Because there are almost no alternative placements for youth in various stages of the competency process, youth remain in custody without appropriate services for months. It is no surprise that they deteriorate with extended exposure to long term detention suffering from anxiety, depression, anger, and even suicidal ideation. The prosecutors 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			are bound by their ethical obligation to not communicate with a child who is represented by counsel. They are in no position to express a doubt on behalf of a youth facing delinquent charges.	
	Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California		Yes, [to adding additional participants] Since the raising of doubt is merely for the court’s consideration and does not result in the suspension of proceedings automatically, we agree with adding “participants.”	The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is: <u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u>
	Michelle Linley, Chief, Juvenile Division, on behalf of the San Diego county District Attorney’s Association		No, [to adding additional participants] We would oppose the modification allowing any party or participant to raise the issue of competency. In the comments preceding the proposed legislation it is stated that it is believed that this legislation and the proposed timelines will reduce stays in Juvenile Hall. In practice some of the juveniles that are not competent are also very violent. The focus should be, not only on reducing	The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is: <u>During the pendency of any juvenile proceedings, the court may receive information</u>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>Juvenile Hall stays, but on public safety.</p> <ul style="list-style-type: none"> • When any party may raise the issue of competency we have a concern that non-attorneys will not understand the legal requirements for competency which will increase the number of allegations of incompetency. • This could result in unnecessary delays in the case, longer detention in Juvenile hall and misallocation of precious mental health resources. If instead, the concerns were brought to the attention of a Juvenile Justice Partner those allegations would be investigated by those with knowledge of the legal system and presented to the court in the appropriate circumstances. 	<p><u>from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p> <p>The advisory bodies acknowledge that youth who commit violent crimes present additional challenges. This legislation clarifies process and procedure.</p>
	<p>Adrienne Shilton, Director, Intergovernmental Affairs, County Behavioral Health Directors Association of California</p>		<p>Yes, [to adding additional participants] CBHDA recommends that this should primarily include adults who have been known by the individual youth for at least one year.</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
				<u>doubt as to the minor’s competence, the court shall suspend the proceedings</u>
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		<p><i>Participant</i></p> <p>We strongly object to allowing other parties express a doubt as to a child’s competency to assist his or her attorney.</p> <ul style="list-style-type: none"> • We are strongly opposed to any broadening of the individuals who may raise the issue of competence. Currently, the Court or counsel for the child may raise a doubt as to his or her competency. • The child’s defender, and the delinquency judge are the two individuals who are in the best position to express a doubt. • The proposed language to add any party opens the door to possible abuse of the competency process by other parties, including for reasons to delay proceedings, especially when the majority of children are in custody. Because there are almost no alternative placements for youth in various stages of the competency process, and California has no state hospitals with programs for children and adolescents, youth remain in custody without appropriate services for months, with concomitant deterioration in their mental well-being. • Prosecutors especially should not be permitted to raise a doubt. They are bound by their ethical obligation to not communicate with a child who is 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>represented by counsel. They cannot speak with the child to get to know the child’s capabilities and limitations, and therefore they are the least able to express a doubt on behalf of a youth facing delinquent charges.</p> <ul style="list-style-type: none"> The California Supreme Court recently discounted the ability of prosecutors to have complete knowledge in a competency proceeding, as the minor and the minor’s counsel have superior access to relevant information. (<i>In re R.V.</i> (2015) 16 Cal.4th 181, 196, <i>citing People v. Medina</i> (1990) 51 Cal.3d 870, 885). <p><i>Reasonable Evidence (Substantial/Sufficient)</i> The proposed changes introduces an unsupported concept of “reasonable” evidence, which we oppose.</p> <ul style="list-style-type: none"> While case law supports the proposition that “substantial” and “sufficient” are interchangeable, the addition of the word “reasonable” in the proposed legislation has no basis in the law and introduces a new standard or additional burden of what evidence is required to raise a doubt. “Reasonable” is not used in Penal Code 1369. 	<p>The advisory bodies believe the rewrite of subdivision (a) addresses this issue.</p>
	<p>Roger Chan, Executive Director on behalf of the East Bay Children’s</p>		<p>No, [to adding additional participant] We are strongly opposed to broadening the number of persons who can raise a doubt beyond the court or minor’s counsel.</p> <ul style="list-style-type: none"> Other parties or participants in the case will not know the legal issues and factual investigation 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Law Offices		<p>necessary to evaluate a minor’s competency. While other participants, such as parents or relatives, may have relevant information regarding the minor’s competency, it is the responsibility of the minor’s attorney to ascertain that information in the course of her investigation.</p> <ul style="list-style-type: none"> • Allowing “any party” or “participant” to express a doubt may cause unnecessary court delays to the detriment of the minor’s due process rights, potential undermining of the attorney-client relationship, and interference with or violation of confidential case strategy. • In any event, the categories of “any party” or “participant” are too broad. For example, Welf. & Inst. Code § 676 enumerates 28 offenses in which members of the public can be admitted to juvenile proceedings and become “participants.” <p>Recommendation: Retain the current language of Section 709(a), providing that the minor’s counsel or the court may express a doubt.</p>	<p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>
	Endria Richardson, Staff Attorney, Legal Services for Prisoners with Children (“LSPC”)		<p>By limiting the parties who may express doubt as to a minor’s competency to the minor’s counsel or the court, existing law may make it more likely that youth who are not, in fact, fit to stand trial, do not even have their competency considered by the court.</p> <p>By broadening the number of people who are able to</p>	<p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>raise competency issues—including specialists who may have adequate time to meet with and evaluate the minor, the minor’s parents and loved ones who know them best, teachers who have observed the minor in an educational setting—as well as the criteria used to consider whether a minor is not competent to stand trial, the Advisory Committees are taking significant steps to ensure that a more comprehensive evaluation of justice involved juveniles.</p> <p>One of the most serious decisions the state makes about a young person is whether to send him or her through the criminal system. It is a decision that deserves a thorough, thoughtful review by an unbiased decision-maker who considers many factors.</p> <p>Developmental and neurological evidence about adolescents and young adults concludes that the process of cognitive brain development continues into early adulthood—for boys and young men especially, this developmental process continues into the mid-20s. The still-developing areas of the brain, particularly those that affect judgement and decision-making, are highly relevant to criminal behavior and culpability.</p> <p>The fact that teens are still developing neurologically and emotionally may mean that a thorough evaluation of their competence must be performed by an expert—one who is not burdened by excessive caseloads (as many</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>public defenders are), and is a competent assessor of the healthy development of youth and adolescent brains (as courts are not).</p> <p>These amendments are an encouraging step towards ensuring that youth receive adequate services and are not simply ushered through the juvenile justice system as a matter of course.</p> <p>Studies have shown that that approximately 65%-70% of youth in juvenile detention have a diagnosable mental health disorder. (Skowyra, Kathleen, and Joseph Coccozza. "Research in Brief." <i>Communications</i> 21.4 (1996): n. pag. <i>National Center for Mental Health and Juvenile Justice</i>. June 2006. Web.)</p>	
	<p>Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department</p>		<ul style="list-style-type: none"> • Should participants be added to the list of individuals who can raise doubt? If probation departments are included in "...social services agencies...", then there is no need to identify our agency specifically. 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
				<p><u>suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>
	<p>Angela Igrisan, Mental Health Administrator, on behalf of the Riverside County Department of Mental Health</p>		<p>The statute says “any party or participant can raise doubt” which is sufficient.</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>
	<p>Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California</p>		<p>Expanding who may Raise Doubt of Minor’s Competency: We are supportive of the changes to allow additional parties to question the competency of a youth.</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
				<p><u>from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p>
Burden of Proof	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department	AM	Yes [the burden of proof should be placed on the minor], this makes sense in being consistent with the adult court. However, if you are saying they cannot contribute to their own defense, how do they then contribute to defending that they are incompetent to do so?	<p>The advisory bodies agree.</p> <p>The defense attorney has a duty to communicate with their client and take direction from their client. However, the ability for an attorney to perform these tasks may be limited based on a minor’s ability to understand the proceedings. The attorney for the minor still has a duty to zealously advocate for his or her client.</p>
	Ashleigh E. Aitken, President On behalf of Orange County Bar Association		Yes, the burden to prove incompetency is best placed upon the minor.	The advisory bodies agree.
	Sue Burrell, Staff Attorney on behalf of the Youth Law Center	AM	<p>Agrees on using the suggested language if language in (a)(1) remains the same. Do not expand the language to allow additional parties to raise the issues of competence.</p> <ul style="list-style-type: none"> • The suggested change appears to incorporate the 	The advisory bodies agree that the minor has the burden of proof. The advisory bodies believe the rewrite of subdivision (a) addresses the remaining issues.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>burden of proof recognized in <i>In re R.V.</i> (2015) 61 Cal.4th 181, placing the burden on the minor. This provision points out the absurdity of allowing other parties such as the prosecutor to raise the issue of competence. If that were allowed, the minor’s counsel would be in the position of being responsible to show incompetence in case in which they did not raise it. If the law is expanded to allow additional parties to raise the issue of competence, we believe the burden should be placed on the person raising the issue.</p>	
	<p>Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California</p>		<p>Yes, the Burden of proof to prove incompetency should be placed on the minor</p>	<p>The advisory bodies agree.</p>
	<p>Amanda K. Roze, Attorney at Law, Sebastopol, CA</p>		<p>The Invitation and proposed changes appear to contain conflicting information about the implied presumptions at such a hearing. According to information in the Invitation (p. 5), “the proposal places the burden of proof on the minor to prove, by a preponderance of the evidence, that the minor is incompetent.” The proposed change themselves, though, seem to make a distinction based on whether the recommendation is that competency has been remediated. It appears that if the recommendation is that the minor has not attained</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>competency, that the prosecution has the burden to prove that he or she is remediable. The language therefore suggests that the prosecution would have the burden to prove competence, if it sought to make competence itself an issue at that point.</p> <p>Where a minor has been found incompetent, competency services have been provided, and an expert opines that he has attained competency, there is some basis in reason to assign the burden to the minor to establish that he remains incompetent. However, it would defy reason to presume a minor competent at a remediation/attainment of competency hearing where he has previously been found incompetent and the provider of remediation services and/or the appointed expert states that competency has not yet been attained.</p> <ul style="list-style-type: none"> It is implicit in section 709 that once a minor is determined to be incompetent, he is presumed to remain incompetent until he is shown to have attained competency. (See § 709, subd. (c).) That is, after all, the purpose of the hearing on attainment of competency. Therefore, proposed subdivision (l) should be amended to clearly provide that the prosecution has the burden to establish competence where the recommendation is that the minor remains incompetent and/or whose competency has not 	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>been remediated. To establish parallelism in the provisions, subdivision (l) could provide:</p> <p>If the recommendation is that the minor’s competency has been remediated, and if the minor disputes that recommendation, the burden is on the minor to prove, by a preponderance of evidence, that the minor remains incompetent. If the recommendation is that the minor is not able to be remediated, and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. <i><u>If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed incompetent, and the prosecution shall have the burden to prove that the minor is competent.</u></i></p> <p>On a related issue, the proposed changes do not address the situation where anew section 602 petition is filed against a minor who has been found incompetent. In Alameda County’s competency protocol, for instance, the minor is always presumed competent when new charges are filed. Under a section titled New Offenses, the protocol states:</p> <ul style="list-style-type: none"> • The minor is presumed competent. ... If the court determines that there is not substantial evidence the minor is incompetent, the new case will not be suspended and the court will proceed with the new underlying juvenile proceedings. The issue of the 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>Upon receipt of the recommendation by the remediation program, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated, unless the parties stipulate to or submit on the recommendation of the remediation program. If the recommendation is that the minor’s competency has been remediated, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that the minor remains incompetent. If the recommendation is that the minor is not able to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed incompetent and the prosecution shall have the</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>minor’s competence on the previously suspended petition/notice will remain as is, until the court makes a finding regarding competence on the matter. (Alameda County Competency Protocol, p. 20.)</p> <p>Thus, the Protocol posits the logically and legally untenable proposition that a minor can be both incompetent and competent simultaneously, i.e. currently incompetent as to prior suspended petitions but competent as to newly-filed petitions. To avoid such a result, it must be accepted that once a minor is found incompetent, he is presumed to remain incompetent until it is proven that he has attained competency, or until the appointed expert or an expert remediation provider opines that his competency has been remediated.</p>	<p><u>burden to prove by a preponderance of evidence that the minor is competent.</u></p>
	<p>Michelle Linley, Chief, Juvenile Division, on behalf of the San Diego county District Attorney’s Association</p>		<p>It is unclear what legal authority is the basis for shifting the burden to the Prosecution when there is an allegation that the minor cannot be remediable. We would oppose shifting of the burden in the event the prosecutor disputed the recommendation that the minor is not able to be remediated.</p>	<p>The advisory bodies disagree. In re R.V. clearly addresses that the minor has the burden to prove incompetence and cites Evidence Code 605 and 606 to fill the void. The advisory bodies agree that the minor has the burden of proof to prove incompetency, which logically follows that the prosecution has the burden to prove the opposite.</p>
	<p>Adrienne Shilton, Director, Intergovernmental Affairs, County</p>		<p>CBHDA recommends that the burden of proof be placed on the State. CBHDA further recommends that the Judicial Council of California convene experts to develop well thought-out set of consequences for</p>	<p>The advisory bodies disagree. The In re R.V decision clearly states that the burden rests on the minor.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Behavioral Health Directors Association of California		children who commit serious crimes but who may not understand the legal system well enough to assist in their own defense.	
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		<p>Additionally, the suggested change regarding burden of proof proposed for subdivision (b), which appears to codify the <i>In re R.V.</i> decision that held that the burden of proof is on the child, illustrates that is illogical to let the prosecutor raise the issue of competency – minor’s counsel would then be put in the position of being responsible for proving incompetency, when she did not raise the issue.</p> <ul style="list-style-type: none"> • The current provisions of Section 709 that permit either defense counsel or the court to raise the issue of competency are adequate to provide an avenue for parents or other caregivers to bring attention to conditions that could impact competence. Pursuant to their ethical obligations, defense counsel must interview and communicate with a juvenile client’s parents or guardians, so they already can avail themselves of the defender 	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p> <p>The advisory bodies believe that the rewrite addresses the issues raised by the commentator.</p>
	Roger Chan, Executive Director on behalf of the East		As noted in <i>In re R.V.</i> (2015) 61 Cal.4th 181, “It necessarily follows from a presumption of competency that the burden of proving incompetency is borne by the party asserting it.” Unless the presumption of	The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Bay Children’s Law Offices		<p>competency is changed to a presumption of incompetency (e.g. following a prima facie showing of incompetency) similar to the presumption of incapacity under Penal Code § 26, the burden should not change.</p> <p>However, this underscores the impracticalities of adding participants to the list of individuals who can raise a doubt. The two proposed changes construed together would result in the absurd situation where the minor’s counsel would be responsible to prove incompetence in cases where they did not raise it.</p> <p>In addition, the threshold requirement of “sufficient evidence, that raises a reasonable doubt” to suspend the proceedings creates a different standard than that for adults. Penal Code § 1368(a) references when “a doubt arises in the mind of the judge...” To avoid interjecting a new standard for juveniles, the word “reasonable” should be omitted.</p> <p>Recommendation: Retain the proposed language in Section 709(a)(1) without adding individuals who may raise a doubt. Omit “reasonable” as modifying the court’s “doubt.”</p>	<p>language is:</p> <p><u>During the pendency of any juvenile proceedings, the court may receive information from any source regarding the minor’s ability to understand the proceedings. Minor’s counsel or the court may express a doubt as to the minor’s competency. Information received or expression of doubt does not automatically require suspension of the proceedings. If the court has a doubt as to the minor’s competence, the court shall suspend the proceedings</u></p> <p>The advisory bodies believe that the rewrite addresses the issues raised by the commentator.</p>
	Tari Dolstra, Division Director, Juvenile Services		<p>Yes, it is agreed the burden of proof should be placed upon the minor.</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Riverside County Probation Department			
	Angela Igrisan, Mental Health Administrator, on behalf of the Riverside County Department of Mental Health		<p>This appears to be a question best left for legal counsel to answer who can better define ‘burden of proof’ and the implications. Our initial thoughts are that it is inappropriate to place this burden on a protected class of people. Timothy J vs. Superior Court (2007) as referenced in the document ruled that a child could be ruled incompetent by developmental immaturity alone.</p> <ul style="list-style-type: none"> • Hence, is there a double bind here? • Should incompetence of a minor be the presumptive stance? • Otherwise, minors would be granted the full rights and responsibilities of adults? 	<p>The advisory bodies read In re R.V. as presuming that the minor is competent. Once someone raises a doubt, the court considers that information when determine whether to suspend proceedings. It is clear that juvenile proceedings are different from adult proceedings, including juvenile competency proceedings.</p>
	Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California		<p>Responsibility to Prove Incompetency We agree that the individual asserting incompetency should bear the responsibility of proving such incompetency as is consistent with In re R.V. (May, 18, 2015, S212346).</p>	<p>The advisory bodies believe that minor bears the burden of proving incompetency.</p>
Evaluators	Roger A. Luebs, Juvenile Judge Superior Court of California, County of Riverside		<p>Regarding subsection (b)(2), requiring the expert to consult with the minor's attorney interjects an unnecessary opportunity for advocacy into what should be an objective scientific process. Should the expert also be required to consult with the prosecutor to get the prosecutor’s views on the competence of the minor? If the minor’s counsel has objective information that</p>	<p>The advisory bodies believe that evaluator should consult the minor’s attorney as the minor’s attorney may have additional information about the minor regarding his or her ability to understand the legal process.</p> <p>The advisory bodies disagree that the</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>would assist the expert in forming an opinion regarding the minor’s competence, that information should be required to be furnished in written form which should reduce the risk of advocacy and also make the whole process more transparent</p>	<p>information should be in written form. The attorney may not know what questions until the evaluator asks. The evaluator may not know what questions to ask until the evaluator has reviewed the materials. Requiring the answers in writing also seem burdensome and are not conducive to answering follow –up questions if the evaluator has any,</p>
	<p>Kiran Savage-Sangwan, Director of Legislation and Advocacy on behalf of the National Alliance on Mental Illness (NAMI)</p>		<p>Regarding subsection 709(b)(2) state “The expert shall personally interview the minor and review all the available records provided, including but not limited to medical, education, special education, child welfare, mental health, regional center, and court records. The expert shall consult with the minor’s defense attorney and whoever raised doubt of competency, if that person is different from the minor’s attorney and if that person is not the judge, to ascertain his or her reasons for doubting competency. <u>The expert shall consult with family members and caregivers to the minor, when possible, to review information regarding the minor’s developmental and psychological history.</u> The expert shall consider a developmental history of the minor.”</p>	<p>The advisory bodies agree with this concept. The advisory bodies rewrote the section to state: <u>The expert shall personally interview the minor and review all the available records provided, including, but not limited to medical, education, special education, probation, child welfare, mental health, regional center, court records, and any other relevant information that is available.</u></p>
	<p>Margaret Huscher, Supervising Deputy Public Defender III, Law Office of the Public Defender,</p>		<p>I am very pleased with the idea that the evaluator makes an opinion regarding the type of treatment and whether the minor can attain competency within a reasonable time.</p> <ul style="list-style-type: none"> • It would be helpful to have the evaluator’s opinion regarding “the least restrictive environment” 	<p>The advisory bodies agree with this concept. The advisory bodies rewrote the section to state: <u>Services shall be provided in the least restrictive environment consistent with public safety.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Shasta County		<p>possible is in order to receive remediation services.</p> <ul style="list-style-type: none"> ○ With our regional center clients, we have had extensive arguments regarding whether the client needs to be in a group home and/or at Porterville Developmental Center in order to receive remediation. Indeed, these arguments have been based upon gut instinct and speculation. A psychologist’s opinion would be very helpful. 	
	Janice Thomas, Ph.D. Alameda County Behavioral Health Care Services		<p>I especially support the language which directs the expert to “consult with the minor’s defense attorney and whoever raised a doubt of competency.” However, I would note that not all defense attorneys are willing to describe their perceptions of a youth's competency-related deficits and impairments.</p> <ul style="list-style-type: none"> • Although I have never encountered any difficulty in obtaining supporting records from defense attorneys, I have encountered difficulty when I have asked attorneys to complete the “Attorney CST Questionnaire” described in Evaluating Juveniles’ Adjudicative Competence: A Guide for Clinical Practice (Grisso, 2005). One defense attorney explained that he did not want to become a witness to a competency proceeding by stating his observations in an interview or by completing the “Attorney CST Questionnaire.” • When defense attorneys do not report to evaluators their perceptions of their clients’ deficits, the expert can certainly report in the evaluation that he or she 	<p>The advisory bodies agree.</p> <p>Information only. No comment needed</p> <p>Information only; no comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>contacted the defense attorney and that the defense attorney did not choose to participate in the consultation. I suppose that would suffice in terms of the expert meeting the requirements of the statute. But still, I wonder if problems are raised when defense attorneys discuss their cases with court-appointed evaluators and whether there is a legitimate issue to be addressed.</p>	
	<p>Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California</p>		<p>Competency Evaluations: We would like the statute to be more explicit as to who is responsible to fund the evaluations and reports. Without such specificity we fear that the county, or probation more definitively, will bear the burden of those costs. The reports, in our view, are meant to aid the court in determining how to proceed with the minor’s case and as such we believe the court and/or state should bear the cost of the evaluation and any accompanying reports.</p>	<p>The advisory bodies believe that funding decisions for the evaluation and reports should be at the discretion of the jurisdiction.</p>
<p>Expert Qualifications</p>	<p>Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department</p>	<p>AM</p>	<p>No [do not take out of statute and put in rule of court]. I think it is helpful to have the information in one place. When statute refers to some other source, it becomes difficult to keep track. It will be much simpler for those who are not attorneys to follow. And since any party can now participate, less complicated may be appreciated.</p> <p>Same as above. [Keep expert qualifications in the rule of court] It is clear cut when we do not have to jump from one source to another to get information that is</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			pertinent.	
	<p>Roger A. Luebs, Juvenile Judge Superior Court of California, County of Riverside</p>		<p>With regard to subdivision (c), this would essentially put an evidentiary privilege created by judges into statute. Since a rule created by judges can be changed by judges, I do not think it is a good idea to make it less changeable by placing it in statute. It should be noted that the privilege as drafted applies to “[s]tatements made [by anyone] to the appointed expert”, not just statements made by the minor to the expert. Is this really the law, or is it an expansion of the existing judge made privilege?</p> <p>In addition, the statute creates not only an evidentiary privilege with respect to the minor's statements to the evaluator, but also precludes the use of “any fruits of the minor’s competency evaluation [not fruits of the minor's “statements”, but fruits of the “evaluation”.] Does this proposed legislation mean the prosecutor in other proceedings against the minor must prove that any evidence offered against the minor is not a “fruit of the minor's competency evaluation”?</p> <p>Finally, assuming the privilege against using the minor’s statements in a criminal or delinquency context should be memorialized in statute, what is the basis for applying this judge made rule to dependency proceedings?</p>	<p>The advisory bodies disagree per <i>People v. Arcega</i>, 32 Cal.3d 504. Originally the advisory bodies made reference to Evidence Code Section 1017. However Evidence Code Section 1017 applies to communications made during the course of an evaluation relating to “a plea based on insanity or to present a defense based on his or her mental or emotional condition.” A hearing to determine competence to stand trial is neither of these things. It is not necessary to mention a code section to convey the prohibition of using information gathered by an expert during a competency evaluation in a latter juvenile or adult adjudication.</p> <p>The advisory bodies added the following language: <u>Statements made to the appointed expert during the minor’s competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of such statements shall not be used in any other delinquency or criminal adjudication against the minor in either juvenile or adult court.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>It seems to me that the issue of the use of the minor’s statements should be left to judges to decide in accordance with case law in effect at the time the issue is raised.</p> <p>There is a confusing reference in the second sentence of subdivision (i). What does subdivision (d) have to do with the court making orders for services?</p>	<p>Because of the cross-over issues, the advisory bodies believe that these statements should not be used in dependency proceedings. Under Welfare and Institutions code 827, the parties with access to the delinquency files are the same as dependency files. The rules regarding protecting information need to be the same for both files.</p> <p>The advisory bodies agree. This was a drafting error. The reference should be to subdivision (j), not (d)</p>
	<p>Ashleigh E. Aitken, President On behalf of Orange County Bar Association</p>		<p>Expert qualifications and training are best left contained in a rule of court which can be more easily amended when needed than a statute.</p>	<p>The advisory bodies believe that at least brief qualifications should be in the statute.</p>
	<p>Kiran Savage-Sangwan, Director of Legislation and Advocacy on behalf of the National Alliance</p>		<p>Due to the specialized nature of these evaluations for juveniles with mental illness, the qualifications and training requirements should be in a statute as currently proposed.</p> <ul style="list-style-type: none"> • Likewise, the directions for the process the experts shall follow in conducting the competency evaluation should be statute. 	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	on Mental Illness (NAMI)		<ul style="list-style-type: none"> We recommend that this process include conferring with family members and caregivers when possible. Family members and caregivers are often in the best position to provide information about the child's behavior and changes over time. It is important that the expert evaluator have this information when providing an opinion to the court 	
	Hon. Michael I. Levanas, Presiding Judge, and Commissioner Robert Leventer, Superior Court of California, Los Angeles County, Juvenile Court		<p>This amendment [<i>§709(c) Statements made to the appointed expert ... shall not be used in any other delinquency, dependency, or criminal adjudication against the minor in either juvenile or adult court.</i>] is excellent and should also be extended to statements made to remediation instructions.</p> <p>The proposed amendment of subsection (d) would seriously undermine the Los Angeles County Protocol and by doing so, impose a significant costs to the county general fund. This procedure has worked successfully because our panel of experts is trusted by both sides.</p> <p>When a request is made for a competency evaluation, a psychologist is selected from a panel of approved experts. A rate of reimbursement is negotiated with this panel. The minor's counsel maintain the confidentiality of the competency evaluation obtained for investigative purposes by providing that they may choose not to disclose the evaluation until, and unless, a doubt is expressed. The district attorney, or the minor's counsel</p>	<p>Mention of remediation instructions has been removed. The advisory bodies added the following language:</p> <p><u>Service providers and evaluators shall adhere to the standards set forth in this statute and the California Rules of Court.</u></p> <p>Information only; no comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>may request another competency evaluation upon a showing of “good cause”.</p> <ul style="list-style-type: none"> • A thorough competency evaluation is costly and time-consuming. We have been advised that repeated competency testing is unreliable and contraindicated. • Repeated competency testing also imposes a significant burden on the minors (who miss school), parents (who miss work) and the court (which has to schedule additional hearings). <p>If the initial testing was incomplete or new relevant information became available then the court could find good cause to order a second evaluation. This procedure has successfully limited the number of evaluations and curtailed the use of “hired guns” by opposing parties.</p>	
	<p>Mike Roddy, Executive Officer, Superior Court of California, County of San Diego</p>		<p>It is important to include something like this so that the minor can speak freely during the evaluation and not risk self-incrimination, but our court believes the proposed language is too vague and overly broad and could lead to litigation as to its meaning.</p>	<p>The advisory bodies agree.</p>
	<p>Sue Burrell, Staff Attorney on behalf of the Youth Law Center</p>		<p>The Youth Law Center agrees with the proposed language and with putting it [Evaluator information] into statute. Although we understand the desire not to freeze in law requirements that could change, it is difficult to imagine that anything in the proposed language would change over time. There is need for just the sort of guidance this language provides.</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>Notice and process when additional experts are to be used. We support adding requirements for handling the process when additional experts will be used. We are worried that limiting the notice requirements to when counsel “anticipates” presenting the expert’s testimony may provide too much wiggle room. The better rule would be to simply require 5 days notice before an expert may testify or have his/her report presented.</p> <p>Recommendation: We suggest removing the language that could provide excuses for not disclosing expert reports and expected testimony, as follows:</p> <p><u>(d) The prosecutor or minor may retain or seek the appointment of additional qualified experts, who may testify during the competency hearing. In the event a party seeking to obtain an additional report anticipates presenting The expert’s testimony and/or report, the report and the expert’s qualifications shall be disclosed to the opposing party within a reasonable time prior to the hearing, and not later than five court days prior to the hearing, or the expert may not testify and the report may not be received in evidence. If, after disclosure of the report, the opposing party requests a continuance in order to prepare further for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time.</u></p>	<p>The advisory bodies agree with this concept. The advisory bodies rewrote the section to state: <u>The prosecutor or minor may retain or seek the appointment of additional qualified experts, who may testify during the competency hearing. The expert’s report and qualifications shall be disclosed to the opposing party within a reasonable time prior to the hearing, and not later than five court days prior to the hearing. If disclosure is not made in accordance with this subparagraph, the expert shall not be allowed to testify, and the expert’s report shall not be considered by the Court, unless the Court finds good cause to consider the expert’s report and testimony. If, after disclosure of the report, the opposing party requests a continuance in order to prepare further for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time.</u></p>
	Mike Roddy,		Our court likes most of the changes to subdivision (b),	The advisory bodies believe that at least brief

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Executive Officer, Superior Court of California, County of San Diego		<p>especially the clarification regarding the burden of proof. That said, the level of detail in (b)(2) is normally reserved for rules of court, and rules of court are much easier to revise as revisions become necessary; therefore, it may be better to shift some of the details to the rules of court for ease of amending later should the need arise.</p> <p>Our court likes most of the changes to subdivision (b), especially the clarification regarding the burden of proof. That said, the level of detail in (b)(2) is normally reserved for rules of court, and rules of court are much easier to revise as revisions become necessary; therefore, it may be better to shift some of the details to the rules of court for ease of amending later should the need arise.</p> <p>I agree with subdivision (d) although it is possible that the process will become too drawn out and it may lead to over detention of incompetent youth.</p> <p>I agree with subdivision (e), (f), and (g) but as an alternative, these sections could all be combined into one subdivision with subparts, which may be easier to understand.</p>	<p>qualifications should be in the statute.</p> <p>No comment needed.</p> <p>No comment needed.</p>
	Janice Thomas, Ph.D. Alameda County		<p><i>Directing experts</i></p> <p>I do not see the harm in the statute containing direction to experts. The proposal lays out general requirements</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Behavioral Health Care Services		<p>which anyone who is qualified would presumably follow independently of being directed.</p> <ul style="list-style-type: none"> • The requirements therefore benefit the Court, without interfering with the judgment of a trained, independent expert, by informing the Court as to what should be included. These requirements would hopefully add efficiency to the Court's ability to assess the quality of an evaluation and would improve quality across jurisdictions. • I would prefer, in fact, that a requirement be added. I have seen evaluations in which an opinion of mental retardation or intellectual disability has been offered without the benefit of standardized testing. I would recommend that standardized testing be required to support any opinion regarding intellectual disability or mental retardation. Such a requirement would conform to best practices as laid out in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (American Psychiatric Association, 1994), where the diagnostic criteria of mental retardation require "an IQ of approximately 70 or below on an individually administered IQ test ... " (p. 46). <p><i>Qualifications of experts</i> Whether expert qualifications and training currently</p>	<p>Information only, no comment needed.</p> <p>The advisory bodies have discussed whether to add the requirement of standardized testing. However, in reading <i>In re R.V.</i>, the expert in that case tried to administer standardized testing, but the youth would not cooperate. Also, the advisory bodies believe the experts have the knowledge regarding whether or not standardized testing is needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>found in rule 5.645 be explicitly put into the statute or left to a rule of court.</p> <ul style="list-style-type: none"> • I would recommend that expert qualifications and training be explicitly included in the statute. For one, non-lawyers would probably find it helpful to have the qualifications spelled out in the statute. It might also be helpful to legal professionals who are considering retaining an expert. • Most importantly, it would seem that these requirements are the bare minimum and that no harm would come from spelling out the minimum credentials. If any local jurisdiction wants additional requirements, then those requirements could be included in a rule of court. <p>In closing, overall the revisions reflect a great improvement over the existing statute. My main concerns have to do with the revisions pertaining</p>	<p>The advisory bodies agree.</p> <p>Information only. No comment needed.</p>
	<p>Amanda K. Roze, Attorney at Law, Sebastopol, CA</p>		<p>The standards for appointed experts leave too much room for unqualified individuals to conduct evaluations. Proposed section 709, subdivision (b)(1) provides: “The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence.” While subdivision (b)(3) provides that the Judicial Council shall develop a rule of court outlining the</p>	<p>Information only, no comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>training and experience needed, that rule would likely be unnecessarily limited due to the language in subdivision (b)(1).</p> <ul style="list-style-type: none"> • Juvenile competency evaluations are highly complex and involve considerations beyond those present in adult evaluations. • They require special expertise and more extensive review of materials and interviews of witnesses than required for adults. Isolated impressions of a minor are not necessarily reliable indicators of his abilities. (Grisso, <i>Evaluating Juveniles' Adjudicative Capacities</i>, at pp. 21-22.) • A comprehensive expert assessment based on multiple sources and spanning a longer period of time is necessary to accurately measure a youth's capabilities. (<i>Ibid.</i>) <p>As proposed, subdivision (b)(1) is insufficient to protect the rights of minors. It calls for an expert to have expertise in forensic evaluation of juveniles and familiarity with competency standards and accepted criteria used in evaluating competency.</p> <p><i>Forensic Evaluation</i></p> <ul style="list-style-type: none"> • The term forensic evaluation is not limited to <i>competency</i> determinations, and the requirement of familiarity with competency evaluations does not necessarily include <i>juvenile</i> competency. As a result, the provision does not exclude a witness who 	<p>Information needed. No comment needed</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>has never conducted a juvenile competency evaluation, and who has done no more than reviewed the JACI (Juvenile Adjudicative Competency Interview) format to conduct a juvenile competency evaluation.</p> <p>Therefore, the provision should be amended to provide: The expert shall have expertise in child and adolescent development and forensic evaluation of <u>juveniles for the purposes of adjudicative competency</u>, and shall be familiar with competency standards and accepted criteria used in evaluating <u>juvenile competence and have received training in conducting juvenile competency evaluations</u>.</p> <p>Additionally, subdivision (b)(2) should be amended to <u>include that experts shall conduct multiple interviews with the minor, and also interview other relevant individuals who have not been listed such as family members and school staff, and in the case of cross-over children, CASA workers, and the minor’s delinquency attorney and social worker. A basis of a juvenile competency determination is the capacity to learn.</u> (Grisso, Evaluating Juveniles’ Adjudicative Capacities, supra, at pp. 21-22.)</p> <ul style="list-style-type: none"> • This factor cannot be assessed without retesting for retention at a later date because all that is being tested at the first session is the ability to parrot back 	<p>The advisory bodies believe that by rewriting (b)(2) and adding the language for the evaluator to review all relevant information, this concern is addressed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>information. (<i>Ibid.</i>) Evidence of learning is meaningless without evidence that the information is retained and can be applied. Additionally, Thomas Grisso, the recognized expert in the field has also opined that multiple sources of information are required. Therefore, more than a single interview with the minor and his or her attorney should be required.</p> <p><i>Permitting prosecution experts to evaluate the minor</i> The provisions should include the ability of the minor’s counsel to observe the interview through a two-way mirror, or to have the interview audio recorded.</p> <ul style="list-style-type: none"> • Where questions are raised about the minor’s competency, he or she is not a reliable witness for relaying information to defense counsel about the interview process. Therefore, without an objective means of evaluating the prosecution expert’s interview and the minor’s responses, defense counsel is placed at a disadvantage. Since it is a violation of due process to force an incompetent person to trial, counsel must be given every reasonable means of evaluating prosecution expert evidence 	<p>Information only. No comment needed</p> <p>The advisory bodies believe that each evaluator should determine the best way to evaluate the child and whether it would be helpful to have minor’s counsel observe the evaluation.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Adrienne Shilton, Director, Intergovernmental Affairs, County Behavioral Health Directors Association of California		<ul style="list-style-type: none"> • CBHDA recommends that it should be in the rule of court; not in the statute. • CBHDA recommends that the qualifications should be in a rule of court. 	The advisory bodies believe that at least brief qualifications should be in the statute.
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		<p>There may be a reason for the child’s statements to the appointed expert to be used in a dependency proceeding involving the child.</p> <ul style="list-style-type: none"> • The experts appointed by the court may be mandated reporters, and statements made to the expert by the child regarding abuse or neglect she has experienced are the sort of thing they would have to raise with child protective services. The proposed language refers to “dependency... adjudication <i>against</i> the minor...” (emphasis added), but dependency cases are not brought <i>against</i> a child; they are <i>for</i> the child’s benefit. We appreciate the recognition that statements should not be used against a child in a criminal prosecution or juvenile adjudication, and think that language should remain, but believe that the reference to dependency court should be deleted. <p>Children should be held in the least restrictive</p>	<p>The advisory bodies agree and have rewritten the statement:</p> <p><u>Statements made to the appointed expert during the minor’s competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of such statements shall not be used in any other delinquency or criminal adjudication against the minor in either juvenile or adult court.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>environment if he or she is found incompetent. Section (i) should include language stating that at all times, the minor should be held in the least restrictive environment.</p>	<p>The advisory bodies do not believe that section (i) is the appropriate place to add a statement regarding least restrictive placement. Least restrictive placement is in subdivision (k)</p>
	<p>Roger Chan, Executive Director on behalf of the East Bay Children’s Law Offices</p>		<p>We agree with the proposed language (<i>discussion directing experts in Subdivision (2) of paragraph (b) be taken out of the statute and placed in a local rule of court</i>) and with including the discussion in statute. The proposed language provides needed guidance and uniformity in the evaluation of a minor’s competency.</p> <p>However, proposed Section 709(c)’s prohibition on using statements and any other fruits of the competency evaluation in dependency proceedings may unduly prevent the protection of the minor when abuse or neglect is discovered. Often, initiating dependency proceedings is appropriate and necessary for these youth where competence is in question.</p>	<p>The advisory bodies agree.</p> <p>The advisory bodies agree.</p>
	<p>Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department</p>		<p>It is believed both the direction to experts and the qualifications and training required should be comprehensively addressed in either the statute <i>or</i> the Rules of Court.</p>	<p>The advisory bodies understand that the commentator would like all information either in the statute or rule of court. The advisory bodies believe that some direction in the statute on expert qualifications is warranted to provide consistency among evaluators statewide.</p>
	<p>Angela Igrisan,</p>		<p>We prefer that the qualifications and directing experts</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Mental Health Administrator, on behalf of the Riverside County Department of Mental Health		<p>be kept in statute. This would move more closer to statewide equity for the children.</p> <ul style="list-style-type: none"> • For example, if a child on Riverside county probation committed a crime in Sacramento County while in placement, would the argument about both directing experts and the qualifications of the experts result in a delay to court proceedings for the child? • Also, the question of more concern is had the determination of competency raised by an expert with one set of qualms be different than one with another set? • Would there be a difference in justice served? It also provides everyone with a clear and directive base to start the discussion. If left to court discretion, they would potentially be changing each time a new judicial team was appointed. <p>Again, we support keeping the qualifications clear and specific in statute as indicated above.</p>	
	Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California		<p>Expert’s Access to Records: In subsection (b)(2) the proposed language outlines all the records that the expert shall be permitted to review and does not reference probation. Was the intent not to include probation or did the joint committees and task force believe that probation falls under the category of court records? If probation’s records are not covered under court records, we believe that probation records should</p>	<p>The advisory bodies agree that probation records should be included. In most counties, the probation department is responsible for providing all the records. However, in those counties where the probation department does not collect the records for the evaluator, probation records should be given.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			be listed in statute.	
Remediation Services	San Bernardino Public Defender By Richard Sterling, Supervising Deputy Public Defender	AM	<p>There should be clarification on what a reasonable period of time is for remediation, such as no longer than 6 months for out of custody and a defined shorter period of time for a minor in custody.</p> <ul style="list-style-type: none"> • At the end of a certain time period, the law should state the minor will not gain competency in the foreseeable future and dismiss the case. • What is the remediation time frame? • How often is the remediation treatment provided? One time per week or more? 	<p>The advisory bodies treat each minor on a case-by-case basis. As such, it is difficult to put a time limit on remediation services. “Reasonable period of time” is the current statutory structure as is “foreseeable future.” The advisory bodies chose not to define these terms to give the court discretion to treat each minor differently according to the circumstances of their case.</p> <p>The advisory bodies did not address a remediation time frame as each minor should be evaluated on a case-by-case basis. The remediation treatment goes beyond the scope of this proposal. This proposal discusses only the process and procedures to establish competency</p>
	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department		<p>Unfunded statute:</p> <ul style="list-style-type: none"> • Who is responsible for the cost of remediation, especially where developmentally delayed is concerned. • It is cost prohibitive to create a remediation program for this population when a county may or may not get one or two candidates per year. 	<p>The advisory bodies are aware that each county and court addresses funding for remediation services in different ways. The development of the protocol as required by statute should address who is responsible for cost of remediation and address a situation where a county has very few of these cases.</p>
	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County	AM	<p>It does not address who is responsible for providing remediation services</p> <ul style="list-style-type: none"> • Who pays for them? In counties where there are not very many competency cases, it is cost prohibitive to put together a program, especially for developmental 	<p>The advisory bodies specifically did not address cost in this proposal as cost is determined differently in each county.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Probation Department		immaturity, where there is no specific agency that might be set up to address this (unlike developmentally delayed and mentally ill).	
	Ashleigh E. Aitken, President On behalf of Orange County Bar Association		Continuing current local county practice for payment is best. Expert fees can vary greatly across the counties. Specific payment information included in the statute will discourage each county from negotiating the best fees for such services which are available for that locale.	The advisory bodies agree.
	Kiran Savage-Sangwan, Director of Legislation and Advocacy on behalf of the National Alliance on Mental Illness (NAMI)		We support the development of a written protocol and program for remediation services and diversion programs at the county level, as specified in Sec. 709 (j). We recommend that the Judicial Council consider requiring the presiding judge of the juvenile court to also designate family and consumer advocates to participate in the development of the protocols and programs. By adding these perspectives to those of the Court, the County Probation Department and the County Mental Health Department, juveniles may be better served by the programs and treatment they receive.	The advisory bodies rewrote subsection h: <u>The presiding judge of the juvenile court; the County Probation Department; the County Mental Health Department; the Public Defender and/or other entity that provides representation for minors; the District Attorney; the regional center, if appropriate; and any other participants the presiding judge shall designate shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.</u>
	Hon. Michael I. Levanas, Presiding Judge, and		Los Angeles limits remediation services to minors who are detained, or have an open or sustained 707(b) or Penal Code §290.008(c) petition, or have three or more open or sustained petitions within a three year period.	Information only. No comment needed.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	<p>Commissioner Robert Leventer, Superior Court of California, Los Angeles County, Juvenile Court</p>		<p>[All Regional Center clients are eligible to receive remediation services through Regional Center as specified in their Individualized Program Plan.]</p> <ul style="list-style-type: none"> • We try to divert minors who do not meet these criteria to programs and services, separate from our remediation program, which will address their underlying delinquent behaviors. • This, we believe, is most consistent with the purposes of the juvenile court. It typically takes well over a year from the time a petition is filed and a doubt is expressed through the completion of a remediation program and ultimate disposition of a case. During that time there will have been many court hearings, therapist appointments and weeks or months of remediation training. The cost of the remediation program, as well as the burden on the parents and minor in attending court hearings and appointments, is enormous. There is no reason to think that after this lengthy delay minors charged with misdemeanors or lower level felonies will be "accountable" for their delinquent behavior in any meaningful sense or that public safety will be enhanced by a formal grant of probation. Mandating that all minors participate in a remediation program is harmful and wasteful in many, if not most, cases where a minor is found incompetent. 	
	<p>Margaret Huscher,</p>		<p>My experience has been, when departmental resources are scarce, there seems to be more focus on inter-</p>	<p>The advisory bodies understand that resources are scare. The local protocol should set forth</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Supervising Deputy Public Defender III, Law Office of the Public Defender, Shasta County		<p>departmental fighting than on an individual minor’s best interests; therefore, it would be helpful if the statute set forth which department is responsible for providing the county’s remediation program.</p> <ul style="list-style-type: none"> • Developmental immaturity is not a recognized mental illness or disorder, and if that is the foundation for the incompetency, I can predict our mental health department will not cooperate in providing services. There must be a funding source for a remediation program. • The adoption of standards and rules of court setting forth the contents of a remediation program could clarify probation’s role with incompetent minors. Likewise, standards for remediation programs could solve our current difficulty with the regional center treatment provider who is contracted to provide restoration services yet does not have practical experience with the court’s processes. 	<p>which department is responsible for providing the county’s remediation program.</p> <p>Information only. No comment needed</p>
	Janice Thomas, Ph.D. Alameda County Behavioral Health Care Services		<p>I read the proposed revisions to say that the specifics of the “Remediation Program” will be left to local jurisdictions.</p> <ul style="list-style-type: none"> • There are many good reasons for this as the empirically-based, peer-reviewed scientific basis of remediation is still in early stages. However, while giving discretion on the one hand, the proposed revisions are prescriptive on the other. • Specifically, the Remediation Program is charged with giving an opinion as to the likelihood of the 	<p>The advisory bodies agree that the remediation program should be left to local jurisdictions. The commentator raises an issue regarding whether the remediation program would have a psychologist or psychiatrist on staff to render an opinion as to whether the youth has attained competency. The advisory bodies discussed this</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>youth attaining competency. In my opinion, this charge is outside the scope of expertise for such an undefined entity. Given that the nature of the remediation programs would vary by jurisdiction, there is no guarantee that the remediation program would include a qualified expert to render an opinion as to the minor's attainment of competency or the minor's likelihood of attainment of competency.</p> <ul style="list-style-type: none"> • As laid out here, the Remediation Program might have a remediation counselor render an opinion, which is a practice I have seen in at least one other jurisdiction. <p><i>Definition of Remediation Counselor</i></p> <ul style="list-style-type: none"> • Furthermore, the proposal uses the phrase “remediation counselor” but does not define remediation counselor. • The remediation phase involves not only legal instruction, but also involves case management and treatment. • It would be useful to clarify the role of the remediation counselor with respect to these entirely different roles of instructor, case manager, and treatment provider. In Alameda County, I have found capable case managers as critical to competency remediation and although essential to any Remediation Program are not trained to render 	<p>issue and dealt with it by allowing counsel for the minor or people request another evaluation.</p> <p>The advisory bodies chose not to define remediation counselor as each program would define the roles and responsibilities of the remediation counselors.</p> <p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>opinions about attainment of competency.</p> <ul style="list-style-type: none"> • A case manager has expertise in community-based services, knows the qualifications needed for the patient to access those services, can identify funding complexities, e.g., re-applying for Medi-Cal after the minor was an inmate for an extended period of time, and knows which programs require a youth to be a 602 and which do not. <ul style="list-style-type: none"> ○ A case manager might also assist with obtaining additional services, e.g., legal advocacy in those instances in which a youth needs additional school-based mental health services. In short, a case manager can implement a plan that has been laid out by the evaluator or by a multi-disciplinary team; but they have not been trained and do not have experience in evaluating competency. • A rehabilitation counselor might be defined as someone who instructs the youth in the legal proceedings. <ul style="list-style-type: none"> ○ One jurisdiction has considered utilizing special education teachers as rehabilitation counselors. In fact, the rehabilitation counselor, as defined as the instructor, might have a legitimate opinion about the youth's attainment of factual knowledge, but whether or not the 	<p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>youth has rational understanding and whether the youth can consult with his or her attorney would likely be outside the scope of the rehabilitation counselor.</p> <p>In short, I do not think the proposed revisions should prescribe that the "Remediation Program shall determine the likelihood of the minor attaining competency ..." I think opinions of this nature should be excluded from the Program's charge.</p> <ul style="list-style-type: none"> • Instead, I believe the Courts are better served by an opinion from a qualified expert who can take into consideration the minor's progress in the Remediation Program and form an opinion based on the progress, or lack thereof, and based on the totality of information <p>The totality of information might include the fact that mental health services have not been adequate and that had services been adequate, the youth might attain competency. Assessment of the relationship between disorders, services, and attainment is outside the scope of the rehabilitation counselor's expertise.</p>	<p>The advisory bodies believe that it is up to the defense or prosecution to ask for further evaluation if they do not believe the opinion from the Remediation program.</p>
	<p>Amanda K. Roze, Attorney at Law, Sebastopol, CA</p>		<p>There are additional concerns regarding the "remediation" phase. The Invitation (p. 5, fn. 17) posits the choice as being between the terms restoration and remediation. Certainly, between those choices, remediation is preferable. However, an even better, or at least alternate, term would be "attainment" of competency. Since juveniles maybe, and very often will</p>	<p>The advisory bodies considered many alternatives to restoration. The advisory bodies selected the term remediation to use throughout the proposal. As noted in the recent article in the <i>Juvenile and Family Court Journal</i> (Spring 2014), some scholars prefer the term <i>remediation</i> rather than <i>restoration</i> when referring to</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>be, deemed incompetent on the basis of developmental immaturity, the question is whether they have attained competency, not whether they have been restored. (Compare § 709, subd. (c) [Whether minor will “attain” competency] with Pen. Code, § 1372 [whether adult has “recovered” competency.]</p> <ul style="list-style-type: none"> • The term remediation connotes a need to “correct something that is wrong or damaged or to improve a bad situation.” (http://dictionary.cambridge.org/us/dictionary/english/remediate.) • There is nothing wrong with children who are not competent to stand trial. They are often simply immature. Using the term attainment will avoid denigrating minors and will be consistent with the use of the term “attain” in subdivision (i) of section 709. It would serve the additional benefit of avoiding confusion between the terms restoration and remediation, and therefore further emphasize the differences between adult and juvenile competency procedures. <p>If the term remediation is retained, perhaps it is more accurate and less damaging to state that competency has been remediated, rather than that the minor him- or herself has been remediated. [See e.g. Invitation, p. 5, “If the court finds the minor is remediated ... ”].)</p>	<p>juveniles because, in some states, juveniles may be found to be incompetent due to developmental immaturity as well as because of mental illness and intellectual deficits or developmental disabilities. Remediation involves utilization of developmentally and culturally appropriate interventions along with juvenile/child-specific case management to address barriers to adjudicative competency. See Shelly L. Jackson, PhD, Janet I. Warren, DSW, and Jessica Jones Coburn, “A Community-Based Model for Remediating Juveniles Adjudicated Incompetent to Stand Trial: Feedback from Youth, Attorneys, and Judges” (Spring 2014), Vol. 65, Issue 2, <i>Juvenile and Family Court Journal</i> 23–38.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Proposed section 709’s use of these constructions is inconsistent. Subdivision (l) refers to whether the “minor’s competency has been remediated” but also refers to a recommendation when “the minor is not able to be remediated.” (See Proposed changes, p. 5.) • The remediation/attainment phase should also have a time limit for remediation services prior to dismissal, in order to provide for statewide consistency. Currently, some counties such as Los Angeles County appear to have a 120-day limit (<i>In re Jesus G.</i>(2013) 218 Cal.App.4th 157, 162), while others like Alameda County appear to have no limit <p>(http://www.acbhcs.org/providers/documentation/SOC/AC_Juvenile_Competency_Protocol.pdf).</p> <p>There are also concerns with the standards at the remediation/attainment hearing.</p>	
	<p>Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center</p>		<p>The court shall review remediation services, <u>the continuing necessity of detention if the minor is detained, and the welfare of the minor</u> at least every 30 <u>14</u> calendar days for minors in custody, and every 45 <u>60</u> calendar days for minors out of custody. <u>If the minor is detained in custody, such a review must consider the effect of the minor’s continued detention on his or her physical and emotional well-being, and include an update on the status of the minor’s remediation. If</u></p>	<p>The advisory bodies disagree and feel that a 14-day rule would be burdensome to all parties.</p> <p>The advisory bodies agree that minors should be placed in the least restrictive environment and have rewritten:</p> <p><u>Upon a finding of incompetency, the court shall refer the minor to services designed to help the</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p><u>remediation services are not being provided, or are ineffective, the minor should be released from custody and placed in the least restrictive environment.</u></p>	<p><u>minor to attain competency. Service providers and evaluators shall adhere to the standards set forth in this statute and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety. Priority shall be given to minors in custody. Service providers shall determine the likelihood of the minor attaining competency within a reasonable period of time, and if the opinion is that the minor will not attain competency within a reasonable period of time, the minor shall be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.</u></p>
	<p>Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California</p>		<p>Written Protocols and Remediation Program CPOC agrees that WIC 709 is gravely in need of improvement, but those improvements go beyond clarifying the legal process and procedures as outlined in the proposal. In clarifying legal process and procedures, the joint entities putting forward the proposal are also tasking counties with developing written protocols and a remediation program without clearly defining how such activities are to be funded. We believe that protocols and a remediation program would greatly benefit youth who may be incompetent to</p>	<p>The advisory bodies understand that funding is an issue. However, many counties have already addressed this issue in protocols. Also, the purpose of this proposal is to help clarify the court process and procedures.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>stand trial; however, by choosing not to address the underlying and all important issue as to how to fund these services, the risk then becomes that disparate programs will be developed due to lack of resources – in the form of capitol and service capacity – at the county level. In your executive summary it is noted on page 5 that subsection (j) is intended to ensure that all youth who are found incompetent receive appropriate services; however, without funding to accompany the changes to WIC 709 it is unfair to assume that all counties will be positioned to establish and operate a remediation program. The proposed statute is silent as to whether the state, courts or counties are to assume this responsibility and how the program is to be funded. We contend that this is a state responsibility. Further, appropriate services are not defined nor is there guidance as to the core elements of a successful remediation program.</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
<p>Remediation Timeframe / Foreseeable Future</p>	<p>San Bernardino Public Defender By Richard Sterling, Supervising Deputy Public Defender</p>	<p>AM</p>	<p>The expert appointed should address in their competency evaluation whether the minor will attain competency in the foreseeable future. If that answer is no and remediation will have no impact per the expert as addressed in their report, the case should be dismissed based on lack of jurisdiction as soon as possible. However, the dismissal may not occur, or it may take months of litigation. This issue is the subject of litigation between DA's office and Public Defender, as the DA will not accept the expert's opinion on that issue and courts are reluctant to dismiss cases in general when crimes are committed. Many minors due to developmental disabilities or otherwise are incompetent and will never become competent. Once the expert states that in their report, the case should be dismissed soon thereafter. Unfortunately, they are not.</p>	<p>The current proposal requires the expert to address the likelihood that the minor can attain competency within a reasonable period time rather than "foreseeable future." The advisory bodies understand that there may be some reluctance to terminate cases based on incompetency when there has been a serious crime. Subdivision (d) of the proposal states that the prosecutor or minor may see the appointment of additional qualified experts.</p>
	<p>Roger A. Luebs, Juvenile Judge Superior Court of California, County of Riverside</p>		<p>The last sentence of subsection (b)(2) contains a misstatement of the law pertaining to time frames. I suggest that it be changed to read: "The expert shall also state the basis for these conclusions, make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency, and, if possible, express an opinion regarding what would be a reasonable time within which to determine the likelihood that the minor might attain competency within the foreseeable future".</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Phyllis Shibata, Commissioner of the Superior Court of California, County of Los Angeles, Juvenile Court	NI	As a bench officer who has presided over many competency hearings, I would find it helpful if we had a clear definition of the term “foreseeable future” in the context of whether a substantial probability exists that an incompetent minor will attain competency in the foreseeable future. If one of the concerns of the legislation is to limit the amount of time a minor spends in juvenile hall, knowing what the outside time limit is essential.	This proposal eliminates “foreseeable future” in favor of “reasonable period of time” (b)(2).
	Hon. Michael I. Levanas, Presiding Judge, and Commissioner Robert Leventer, Superior Court of California, Los Angeles County, Juvenile Court		<p>Only trained psychologists or psychiatrists can render an opinion on the likelihood of a minor attaining competency.</p> <ul style="list-style-type: none"> Remediation instructors generally do not have these credentials. In Los Angeles the initial competency evaluation includes an assessment of the likelihood of the minor attaining competency. The court will only send those minors likely to attain competency to a remediation program. Spending the time and resources on remediation when attainment is not likely is not necessary. 	The advisory bodies agree. The remediation program recommendations in subdivision (l) are anticipated to be from a trained psychologist or psychiatrist. If not, then the parties can seek an independent evaluation.
	Sue Burrell, Staff Attorney on behalf of the Youth Law Center		We agree with the rationale for limiting the use of statements made to an expert in evaluating competency. The only limitation we wonder about is the one on not using statements in dependency proceedings. For example, couldn’t there be times when a young person’s statements would be relevant and helpful in establishing the need for dependency jurisdiction or obtaining needed services in a dependency case? Is there a way to	<p>The advisory bodies agree and has rewritten the section:</p> <p>(4) <u>Statements made to the appointed expert during the minor’s competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of such statements</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>allow such use at the request of the minor? One way to handle this would be to add a clarifying sentence.</p> <p>Recommendation: Add the following sentence to the end of Section 709, subdivision (c): Nothing in this section shall prohibit the use of such statements at the request of the minor.</p>	<p><u>shall not be used in any other delinquency or criminal adjudication against the minor in either juvenile or adult court.</u></p>
	<p>Sue Burrell, Staff Attorney on behalf of the Youth Law Center</p>		<p><i>Remediation and Timelines</i></p> <p>We have two suggestions for this section. First, the court should review remediation services for detained youth at least every 15 days, just as it does the cases of youth detained pending placement (Welf. & Inst. Code § 737). The proposed 30 days is far too long a period between reviews for youth in custody.</p> <p>Second, the language appears to suggest that there is only one kind of remediation program, when in fact remediation services make take many different forms. Some youth may be appropriately sent to the kind of curriculum-based training in which they learn court concepts. Others may benefit from medication or mental health services. Others may benefit from regional center services. Any of these services could contribute to the attainment of competence. We suggest revising the language slightly to reflect this.</p> <p>Recommendation: Revise the proposed language as</p>	<p>The advisory bodies have considered all the comments regarding parties and participants. The advisory bodies decided to rewrite subdivision (a)(1) to address all these issues. The new language is:</p> <p><u>Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor to attain competency as described in (m). Service providers and evaluators shall adhere to the standards set forth in this statute and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety. Priority shall be given to minors in custody. Service providers shall determine the likelihood of the minor attaining competency within a reasonable amount of time, and if the opinion is that the minor will not attain competency, the minor shall be returned to court at the earliest possible time.</u></p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p><u>follows:</u></p> <p>(k) Upon a finding of incompetency, the court shall refer the minor to <i>services designed to help the minor to attain competency</i> the county's remediation program, as described in (m). <i>Service providers</i> Remediation counselors and evaluators shall adhere to the standards set forth in this statute and the California Rules of Court. The program shall provides Services shall be provided in the least restrictive environment consistent with public safety. Priority shall be given to minors in custody. <i>Service providers</i> The Remediation Program shall determine the likelihood of the minor attaining competency within a reasonable amount of time, and if the opinion is that the minor will not, the minor shall be returned to court at the earliest possible time. The court shall review remediation services at least every 15 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.</p>	<p><u>The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.</u></p>
	<p>Amanda K. Roze, Attorney at Law, Sebastopol, CA</p>		<p>Finally, while <i>In re R.V.</i> concluded that a minor is presumed competent, it is important to note that this finding applies only to the initial competency determination. <i>In re R.V.</i> did not concern post-incompetency determination or remediation/ attainment proceedings.</p> <ul style="list-style-type: none"> • A presumption of incompetence must be preserved for this aspect of the proceedings, both as a matter of due process, logic, and 	<p>Information purposes only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>public trust in the process.</p> <ul style="list-style-type: none"> • Once a child has been declared incompetent, he cannot be presumed competent in the absence of the expert’s evaluation that he has attained competency through the remediation services. • This conclusion is consistent with California’s approach toward child competency in other areas. Minors are incompetent to authorize most medical treatment, buy cigarettes or alcohol, vote, marry without written parental consent and a court order, or possess an unrestricted driver’s license. (Cal. Const., art. 2, § 2; Bus. & Prof. Code, § 25658; Fam. Code., §§ 302, 6500 et seq., 6900 et seq.; Health & Saf. Code, §119405; Pen. Code, § 308; Veh. Code, § 125812.) • They are permitted to disaffirm contracts and cannot enter an admission in juvenile court without the consent of an attorney. (Fam. Code, § 6710; Welf. & Inst. Code, § 657; Rule 5.778(d).) California law even protects minors from tattoos and body piercings. (Pen. Code, §§ 613, 652, subd.(a).) <p>It stands to reason that a child should be protected from a presumption of competence once he or she has been found to be incompetent. This is especially true for children under the age of 14 who are presumed incapable of committing a crime and are categorically</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>ineligible for prosecution as adults. (Pen. Code, § 26; Welf & Inst. Code, §707, subd. (b).)</p> <p>It would defy reason to suggest that a child who is presumed incapable of committing a crime is nevertheless competent to stand trial.</p>	
Dismissal of Petition	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department	AM	<p>Indicating that the court is to invite people to discuss and allows them to make a referral for evaluation implies that they are still involved and still have jurisdiction and some level of control over the matter.</p>	<p>The advisory bodies believe the language is clear that the court must dismiss the petition. The additional language is permissive state that the court may invite persons to a dismissal hearing. If parties object to this invitation, then it will be up to the court to decide whether to proceed.</p>
	Sue Burrell, Staff Attorney on behalf of the Youth Law Center		<p>The proposed language appears appropriate, except that in subdivision (l) (3), “may” should be substituted for “shall.” We believe that there might be occasions when the minor could meet the definition or “gravely disabled” but there are reasons not to refer him or her to the involuntary treatment system under the Lanterman-Petris Short Act (LPS). Changing the word “shall” refer to “may” refer would preserve the intention of the proposal without locking the court into an LPS referral when the minor could be cared for adequately without that.</p> <p>Recommendation: Change “shall” refer to “may” refer.</p>	<p>The advisory bodies believe that the language as written is permissive. This language appears at the hearing to dismiss the petition. The language is, “<u>If appropriate, the court shall refer the minor for evaluation pursuant to Welfare and Institutions Code Section 6550 et seq. or Section 5300 et seq.</u>” The court must make a determination of appropriateness prior to making the referral.</p>
	Margaret Huscher, Supervising Deputy Public Defender III, Law		<p>A law without teeth (such as a judge without jurisdiction) is useless.</p> <ul style="list-style-type: none"> Judges are routinely concerned about dismissing a minor’s petition when the minor is not progressing 	<p>The advisory bodies disagree and believe that statutory authority is needed to allow the court to bring people together.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Office of the Public Defender, Shasta County		<p>adequately towards restoration and yet continues to need treatment and supervision. Already, judges have the power to bring stakeholders together to discuss appropriate services for the minor after the court loses jurisdiction.</p> <ul style="list-style-type: none"> • Why codify a judge’s leadership position to cajole and suggest? 	
	Michelle Linley, Chief, Juvenile Division, on behalf of the San Diego county District Attorney’s Association		<p>In the proposed language of WIC 709 (1)(3), we would oppose the dismissal of the petition prior to referral of the minor for evaluation pursuant to WIC 6550 et seq. or WIC 5300 et seq. The referral, evaluation and determination of eligibility should occur prior to dismissal of the petition. This is especially true in cases where there is a significant danger to the public due to the actions of the minor.</p> <ul style="list-style-type: none"> • The changes to WIC 709 apply to a myriad of charges. Our concern centers around the application to some of our cases where the minor is charged with murder, rape and other serious and violent felony charges. We as a county use the diversion type process on many of our less serious offenses, however, straight dismissal on serious and violent offenses is of grave concern to us in light of the danger to the minor and the public. 	<p>The advisory bodies believe the court has the discretion to make a referral pursuant to section 6550 et seq. or section 5200 et seq. However, the advisory bodies believe the serious and violent offenders is outside the scope of this legislation. The advisory bodies realize that these minors present additional challenges. However, this proposal discusses only the process and procedures to establish competency, as the issue of the minor’s dangerousness is beyond the scope of the proposal.</p>
	Rosemary Lamb McCool, Deputy Director, Chief Probation Officers		<p>Dismissal of Petition due to Inability to Remediate Subsection (1)(3) outlines what happens if it appears that a youth will not achieve remediation and directs the court to dismiss the petition. The proposed language</p>	<p>The advisory bodies agree that probation should be listed in the statute.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	of California		permits the court to invite all persons and agencies with information about the minor to the dismissal hearing and lists persons and entities that may be included. While the list is not intended to be exhaustive since the word “may” is used, we believe probation should be listed in statute.	
Protocol	Roger A. Luebs, Juvenile Judge Superior Court of California, County of Riverside		<p>My greatest concern is that your proposal does not sly address the need to insure that remediation services are made available to incompetent minors.</p> <ul style="list-style-type: none"> • Proposed subdivision (k) states that the court "shall" refer the incompetent minor to the "county's Remediation program, as described in (m)". However, there is no subdivision "(m)" in the proposed legislation and, indeed, there is no real description of the required remediation program in the proposed legislation. • Subdivision (J) requires that the court and county agencies create a "protocol" to provide remediation services, but the proposed legislation does not address how remediation services will be provided while these protocols are developed or what power the juvenile judge has to require agencies to provide the needed services. <ul style="list-style-type: none"> ○ I believe the proposed legislation should include some additional language in subdivision G) reading something like: “In the absence of a protocol, or in the event the court finds the adopted protocol insufficient to address the remediation needs of the 	<p>The advisory bodies agree that the reference to subdivision (m) is an error and should be a reference to subdivision (j).</p> <p>The advisory bodies did not describe or give detail regarding remediation services because each individual county may design their remediation programs to suit the local counties needs and resources.</p> <p>The advisory bodies took into consideration input from many local counties regarding their remediation process. Currently, in section 709 (c), the law allows the court to make order that it seems appropriate for services that may assist the minor in attaining competency. The advisory bodies acknowledge it may take counties some time to develop protocols. However, their current process of helping a minor attain competency should be used until a protocol is established.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>minor, the court may order the County Probation Department to provide, directly or through engaging the services of others, such remediation services as the court finds reasonable and appropriate.” A comprehensive rewrite of the juvenile competency law must address the “elephant in the room”, the provision of remediation services.</p>	
	<p>Sue Burrell, Staff Attorney on behalf of the Youth Law Center</p>		<ul style="list-style-type: none"> • We strongly disagree with making diversion an optional feature in county protocols. Our state is in dire need of a dismissal/diversion option for use in cases involving potentially incompetent youth. • We agree with the requirement of having each county prepare its own protocol, but request that the scope be broadened and that additional parties be added to the list of who should develop it. <p>The proposed language appears to limit the protocol to consideration of remediation services. In our experience, it has been useful in the counties that have protocols, to cover the entire competence process. This has enabled counties to insert specific timelines, to address things like appointment of experts, and to provide other expectations about the local process.</p> <p>Also, we believe it is important to include the public defender, the prosecutor, and the regional center in</p>	<p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>development of the protocol. We took out the optional diversion language, as that has been replaced by a statewide provision in paragraph 5.</p> <p>Recommendation: Revise the proposed language as follows:</p> <p>(j) The presiding judge of the juvenile court, the County Probation Department, the County Mental Health Department, <i>the public defender or other entity that provides representation for minors, the prosecutor, the regional center</i>, and any other participants the presiding judge shall designate, shall develop a written protocol <i>describing the competency process</i> and a program to ensure that minors who are found incompetent receive appropriate services for the remediation of competency. <i>The written protocol may include remediation diversion programs.</i></p>	
	<p>Mike Roddy, Executive Officer, Superior Court of California, County of San Diego</p>		<p>I agree with subdivision (h) if the minor is found to be competent, the court shall reinstate proceedings and proceed commensurate with the court’s jurisdiction.</p>	<p>The advisory bodies agree.</p>
	<p>Greg Feldman, Deputy Public Defender, on Behalf of San Francisco Office of the Public</p>		<p>San Francisco competence committee has already established a strong protocol that supports dismissal of charges where there is a substantial likelihood that the minor will not gain competence in the foreseeable future. Without such a requirement of dismissal, youth can face grave consequences due to prolonged detention</p>	<p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Defender		<p>and the lack of adequate service delivery to meet the individualized needs of the youth. The trial judge is in a unique position to view the behavior and the mental health evidence and records presented and should have the authority to dismiss in the interest of justice and the best interests of the minor. We would support a provision in the legislation to mandate dismissal within a reasonable period of time.</p> <p>We have learned that the collaborative process in developing San Francisco’s competence protocol included the active participation of the juvenile court, the probation department, mental health department, district attorney, and defense counsel. By having a shared and transparent process, San Francisco was able to develop a protocol that served the integrity of the process while also addressing public safety and the best interests of the minor. We would recommend that the parties listed above be incorporated into the legislation to develop a written protocol.</p>	
	Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California		Yes, The language in subdivision (3) of paragraph (i) clearly portrays that a minor may not be kept under the court’s jurisdiction once a determinate finding is incompetence has been made.	The advisory bodies agree.
	Adrienne Shilton, Director,		CBHDA believes that it is not clear from this language that the minor may not be kept under the court’s	The advisory bodies disagree with adding this language. The advisory bodies realize that the

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Intergovernmental Affairs, County Behavioral Health Directors Association of California		jurisdiction once a determinate finding of incompetence has been made. CBHDA recommends that the paragraph read: “A minor who is found mentally incompetent and is not a threat to public safety will not be under juvenile court jurisdiction”.	youth who dangerous are a special population. However, once a determination is made that competency cannot be attained, the court has no choice but to dismiss proceedings.
	Roger Chan, Executive Director on behalf of the East Bay Children’s Law Offices		<p>The proposed language in proposed Section 709(1)(3) appears appropriate. However, this provision would be strengthened by specifying a maximum timeline after which the petition shall be dismissed (perhaps distinguishing felonies from misdemeanors).</p> <ul style="list-style-type: none"> • Similarly, the period for review of remediation services in paragraph (k) should be changed to every 15 calendar days for minors in-custody, and every 45 calendar days for minors out-of-custody. • The 15 day timeline is consistent with Welf. & Inst. Code § 737, requiring court review pending execution of a disposition order. <p>Likewise for minors in-custody, the court should review the effect of detention upon the minor in addition to the remediation services.</p> <p>However, detention based on incompetence for the purpose of remediation should be discouraged. One of the earliest opinions on juvenile competence found that, “...a finding of incompetence in a juvenile proceeding should not result in a confinement order or its</p>	<p>The advisory bodies discussed the timelines in depth and agreed that 30 calendar days for youth in custody and 45 calendar days for youth out of custody is an appropriate timeframe. The advisory bodies understand that youth should not be detained longer than necessary and work needs to be done to move these youth to the least restrictive placement. However, the remediation services need time to work for the youth and the advisory bodies believe that 30 days is a minimum length that services should be offered to determine whether the youth has attained competency.</p> <p>Information only, no comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>equivalent.” In re Patrick H. (1997) 54 Cal.App.4th 1346, 1359.</p> <p>The proposed legislation should re-emphasize this principle and avoid unintentionally promoting in-custody remediation options.</p>	<p>The advisory bodies agree that youth should be in the least restrictive placement possible.</p>
	<p>Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department</p>		<p>Yes; however, is it intended that the court will order identified persons or agencies to be present at this hearing in order to discuss services following dismissal? In Riverside County, the current protocol outlines a “Juvenile Competency Attainment Team” (JCAT) who develops a remediation plan and reports to the court (via a Probation Memorandum) the progress of the minor throughout the proceedings. Members of this team include: Probation, Department of Mental Health, Riverside County Office of Education, Department of Public Social Services, and the Inland Regional Center. Following thorough execution of remediation services, and a final forensic psychological evaluation supporting that the minor has not, and will not reach competency, a plan for continued services is submitted to the court prior to dismissal. While it is supported that information should be gathered from all involved parties (parents, the minor, counsel, etc.) it is believed JCAT (or a similarly organized group) should be the formal organized party to develop a ‘post-dismissal’ service plan, as they are the parties most appropriately experienced in services available in the community.</p>	<p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Angela Igrisan, Mental Health Administrator, on behalf of the Riverside County Department of Mental Health		Does the language in subdivision (3) of paragraph (1) clearly portray that a minor may not be kept under the court’s jurisdiction once a determinate finding of incompetence has been made? Yes, the language is completely clear.	The advisory bodies agree.
Diversion Program	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department	AM	The court’s needs may be served on one level, but one of the tools encouraging completion of diversion is the assurance of not taking it to court. <ul style="list-style-type: none"> • If taking it to court upon failure of diversion is not an option, what is the consequence of not being compliant with diversion? Also, this likely puts the burden on probation without the support of the court.	The protocol may address a diversion program and any consequences of not completing diversion.
	Ashleigh E. Aitken, President On behalf of Orange County Bar Association		Yes, the option of diversion program in local protocols can fulfill the need of the court. In many instances, had a minor not been found incompetent, a diversion program would have been already available to the minor.	The advisory bodies agree.
	Hon. Michael I. Levanas, Presiding Judge, and Commissioner Robert Leventer, Superior Court of California, Los		The juvenile court needs statutory authority for a diversion program which allows for judges to order services for minors which address the underlying reasons for their delinquent behavior while proceedings are suspended. This authority needs to be expressly stated. <ul style="list-style-type: none"> • <i>A minor who is charged with an assault might benefit</i> 	The advisory bodies did try to include a diversion program into previous drafts. However, commentators to those drafts were confused by the diversion language and no consensus could be reached regarding the applicability in each local court. The advisory bodies therefore moved the option of a diversion program into the

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Angeles County, Juvenile Court		<p><i>from anger management counseling. A minor charged with possession of drugs may benefit from drug counseling. A minor with mental health problems may benefit from therapy. Presently the court does not have the authority, and Probation does not have the mandate, to provide services to minors without juvenile court jurisdiction. If the court had the ability to allow minors to participate in a diversion program which offered these services, without punishment, in exchange for a dismissal, we could enhance public safety and assist the minor in becoming crime free in most competency cases.</i></p>	<p>protocol to address the concerns of the larger and smaller courts.</p>
	Sue Burrell, Staff Attorney on behalf of the Youth Law Center		<p>Of all the proposed changes, we were the most troubled by the failure to include a dismissal or diversion mechanism. Relegating it to a permissible option in county level protocols is totally inadequate, given the tremendous need to provide a path out of lengthy competence proceedings in some cases. All of the previous drafts of the proposed changes have included such a provision. We will oppose this measure in the Legislature if it fails to include a statewide mechanism for dismissal.</p> <p>For more than a decade, our office has heard from probation officers, lawyers, experts and courts that some youth simply do not belong in the juvenile justice system, and/or will be ill-served by being forced to endure lengthy competence proceedings potentially</p>	<p>The advisory bodies did try to include a diversion program into previous drafts. However, commentators to those drafts were confused by the diversion language and no consensus could be reached regarding the applicability in each local court. The advisory bodies therefore moved the option of a diversion program into the protocol to address the concerns of the larger and smaller courts.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>followed by prosecution. We also know that some defenders walk their clients through inauthentic admission, not because they believe their client is competent, but to avoid the negative impact of lengthy proceedings. We also know what happens to youth with cognitive limitations in custody. They are often isolated out of a misguided attempt to protect them, and their mental status almost inevitably deteriorates. Their needs require an inordinate amount of staff time, and few juvenile halls have staff who are adequately trained to work with youth who are very young, have intellectual challenges or suffer from serious mental illness.</p> <ul style="list-style-type: none"> • The Chief Probation Officers of California commissioned an entire monograph on this issue, <i>Costs of Incarcerating Youth with Mental Illness: Final Report</i> (Ed Cohen and Jane Pfeifer, 2008). Congressman Henry Waxman published a paper on <i>Incarceration of Youth Who Are Waiting for Community Mental Health Services in California</i> (2005). There is very much a need to assure that young people with intellectual challenges and mental illness are treated in the right system, and having a dismissal mechanism in the competency process may provide an opportunity to redirect some of these youth. • There are also practical considerations for the court and prosecutors. A substantial number of cases involving cognitively impaired youth will result in 	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>dismissals months down the road because of Penal Code 26 issues, or statements found to be involuntary or in violation of <i>Miranda</i>. Others will be dismissed because, in the passage of time, witnesses have disappeared or no longer remember what happened. And from the standpoint of the court, forcing all youth to go through formal competence proceedings and “remediation” puts the court in the difficult position of trying cases involving youth who didn’t understand what was happening then, and surely do not understand any better months down the road. Many youth who were found incompetent, but are later deemed “remediated,” are still barely functioning. As a matter of fundamental fairness, we need to provide an alternative path for handling at least some of these cases.</p> <ul style="list-style-type: none"> • Finally, everything and more that we would do at the end of formal competence proceedings could be done at the beginning. In fact, the services provided after a finding of incompetence must be limited to services designed to help the minor attain competence, but the services prior to such a finding are not so limited. <p>We recognize that some cases may involve alleged behavior so serious that the proceedings will need to go forward with a formal hearing and remediation, but at</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>least some cases could fairly be disposed of if the court were satisfied that the behavioral issues are being addressed, or in the interest of justice if the minor is unlikely to attain competence in the foreseeable future. Maybe the stumbling point on this has been that what is called for isn't "diversion" in the sense of the person agreeing to do certain things (since some of the youth may actually be incompetent), but instead is a facilitated dismissal. These comments offer a possible solution. This is an attempt to address previous sticking points such as whether admissions are needed, and also to require a full evaluation to assure that dismissal occurs in cases that truly merit it.</p> <p>Recommending to add 709 (a)(2) providing for dismissal without formal proceedings. <i>When a doubt has been declared and the expert appointed pursuant to subsection (a), the court may, upon motion of the minor or on the court's own motion, set a hearing to consider whether the case may be dismissed without formal competency proceedings. Upon receipt of the expert report, or such additional expert reports and evidence as may be presented, the court may dismiss the case in the interest of justice where there is a substantial likelihood that the minor is incompetent and will not attain competence in the foreseeable future, or where services and supports can be arranged to adequately address the behavior that</i></p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p><i>brought the minor to the attention of the court.</i></p> <p><i>The court may employ the joinder provisions of Section 727, subdivision (a), subsection (4), to facilitate the involvement of other agencies with legal duties to the minor, and may invite the participation of family members, caregivers, mental health treatment professionals, the public guardian, educational rights holders; education providers, and social service agencies.</i></p>	
	<p>Adrienne Shilton, Director, Intergovernmental Affairs, County Behavioral Health Directors Association of California</p>		<p>CBHDA recommends that a diversion program should be available, especially for minor offenses. There are some that are evidence-based and may be the better choice, for example. It would appear that treatment programs would also be included in local protocols, if only for intervention purposes.</p>	<p>The advisory bodies agree.</p>
	<p>Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California</p>		<p>Yes, a diversion program in the local protocols fulfills the need of the court.</p>	<p>The advisory bodies agree.</p>
	<p>Adrienne Shilton, Director, Intergovernmental Affairs, County</p>		<p>CBHDA’s chief concern regarding these recommendations has to do primarily with:</p> <ul style="list-style-type: none"> • What happens after the child is determined incompetent. This proposal largely addresses the 	<p>The advisory bodies are aware that there are many issues to juvenile competency. This legislation is limited to process and procedure. This legislation is not proposed to solve all the</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Behavioral Health Directors Association of California		<p>actual qualification process and not the truly difficult matter of what happens after the decision is made that the child is incompetent to stand trial.</p> <ul style="list-style-type: none"> • The programs to restore competency or remediation services will vary wildly from inpatient to an array of outpatient services. <ul style="list-style-type: none"> ○ Youth who are violent will more likely require an inpatient service. ○ These services should be evidence-based and provided in the least restrictive setting. ○ The 30 day review process for those who have a severe mental illness seems arbitrary and not likely to be fruitful; many evidence-based programs are of much longer duration. <p>The issue of how to serve children who are found incompetent is very complex, and far more involved than the qualification process as contained in the Judicial Council’s proposal.</p>	issues that surround our incompetent youth.
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		<p>The proposed statutory language does not include a mechanism for early dismissal or diversion, which must be included.</p> <p>The proposed language fails to include procedures for early dismissal or diversion, and it should not be left to be discretionary and up to the courts county-by-county to have different standards.</p> <ul style="list-style-type: none"> • The statutory language should call for the dismissal of charges where there is a substantial likelihood that the minor will not gain competence in the 	The advisory bodies believe that each local court protocol should address timelines for diversion. Adding a specific requirement of when the case should be dismissed would limit judicial discretion. These minors need to be treated on a case-by-case bases.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>foreseeable future. Without such a requirement of dismissal in the interest of justice, youth can face grave consequences due to prolonged detention.</p> <ul style="list-style-type: none"> • We also believe that if remediation services are not being provided, or are ineffective, the child should be released from detention. • We propose that the general rule should be that if a minor charged with a misdemeanor has not gained competency within six months, the case should be dismissed; and if a minor charged with a felony has not gained competency with 12 months, that the case be discharged. <p>We understand that some cases may involve charges so serious that the proceedings need to proceed to a hearing and disposition, but in those cases, the Court could use its inherent joinder power under Welfare & Institutions Code section 727(b)(1) to ensure that other agencies and professionals are involved in the treatment of the youth.</p>	
	<p>Roger Chan, Executive Director on behalf of the East Bay Children’s Law Offices709</p>		<p>No, Diversion programs should not be an optional component of county protocols. Nearly every county is struggling with what to do when youth are found to be incompetent and proceedings are suspended. Diversion programs are often a desired outcome as they may potentially address a minor’s family, social, and educational, supervision or mental/developmental health needs, as well as public safety concerns. While it is appropriate for each county to develop its own</p>	<p>Mention of a diversion program was eliminated.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>protocol, the scope should be broadened beyond remediation services and the statute should specifically identify additional participants in the protocol’s development, including the district attorney and public defender.</p>	
	<p>Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department</p>		<p>Yes, the option of a diversion program in the local protocols fulfill the need of the court. However, it is believed, as indicated, a program of diversion pursuant to 654.2 WIC is not appropriate to be used ‘in lieu’ of a disposition.</p> <p>Development of a remediation plan and monitoring of this plan and the minor’s progress until such time is it determined to effect competency or terminate proceedings/dismissal of the case is best served by the probation department. However, parameters are needed to establish the extent of this supervision, as well as abilities to remove the minor from the community and detain in juvenile hall during the course of remediation, should concern for the safety of the minor or the community become evident.</p> <p>While keeping the ‘least restrictive environment’ in mind, and the committee’s notation that a ‘minor’s dangerousness is beyond the scope of this proposal’ it would be beneficial to outline the parameters for custodial action should it be warranted.</p>	<p>The advisory bodies agree.</p>
	<p>Angela Igrisan, Mental Health Administrator, on</p>		<p>Does the option of a diversion program in the local protocols fulfill the need of the court</p> <ul style="list-style-type: none"> • This is a question to the court, not mental health. 	<p>Information only. No comment needed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	behalf of the Riverside County Department of Mental Health		Our opinion is that it would be helpful to have diversion programs as an option because each child’s circumstances are different. The discussion centered around the fact that some diversion programs are voluntary. This appears less relevant to me because the court and probation could amend the voluntary aspect of the program.	
Should the statute include specific information regarding payment for initial court ordered competency evaluations or continue following current local county based practices?	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department	AM	In some counties, I would think that they would appreciate something to help make this determination. I could see fiscal restraints becoming an issue and the courts using their power to order others to pay.	Information only. No comment needed.
	Hon. Michael I. Levanas, Presiding Judge, and Commissioner Robert Leventer, Superior Court of		Services that need to be funded in a typical competency case. Different counties use different funding mechanisms for various parts of these programs. It would be difficult to quantify, but some of the common costs include a) Competency evaluators <i>[LA uses county funds. Other counties include</i>	Information only. No comment needed.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	California, Los Angeles County, Juvenile Court		<p><i>these funds in the budget of the Public Defender's office, others use DMH funding.]</i></p> <p>b) Added staff from Probation.</p> <p><i>In Los Angeles Probation has assigned special staff to monitor and service competency cases. Of course, these employees require training and supervision.</i></p> <p>c) Remediation Instructors.</p> <p><i>Probation officers and DMH staff serve as remediation instructors in Los Angeles. It is too soon to tell how many instructors will be required. These positions are funded from different sources in different counties.</i></p> <p>Each county will handle competency cases differently according to the number of cases they project, funding sources, the relative cooperation between the players in that court's culture, whether Probations is under the court administration, availability of Proposition 63 funds, the availability of experts, and the type of remediation program they select.</p> <p>It may be too soon to create a statewide law or rules in this area. It would probably be best to revisit this area after counties, and the country, have had a chance to experiment.</p>	Information only. No comment needed.
	Margaret Huscher, Supervising		<ul style="list-style-type: none"> I do not foresee any county department volunteering to fund or administer an expensive and time consuming remediation program, and I predict a 	Information only. No comment needed.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Deputy Public Defender III, Law Office of the Public Defender, Shasta County		<p>judge’s committee, as established in (j), would be incapable of agreeing on which department will provide the necessary program.</p> <ul style="list-style-type: none"> • This skepticism comes as a result of watching our probation department’s reluctance to supervise, counsel or provide case management planning for incompetent minors. Their position has been that, until the date the minor is deemed competent, the minor is not on probation. This reluctance to provide for counseling and case management is true even when the minor is held in juvenile hall pending restoration. • Likewise, I cannot imagine our mental health department willingly providing remediation services, especially if they cannot bill Medi-cal or private insurance for the treatment. 	
	Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California		Continue to follow county based practices	The advisory bodies agree.
	Adrienne Shilton, Director, Intergovernmental Affairs, County Behavioral		CBHDA recommends that payment should not be discussed in statute.	The advisory bodies agree.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Health Directors Association of California			
	Roger Chan, Executive Director on behalf of the East Bay Children’s Law Offices		Continue following current local county based practices. <ul style="list-style-type: none"> Given the wide range of resource and economical considerations between counties and geographic regions, local counties should have discretion to establish payment procedures for court-ordered competency evaluations. For example, in Alameda County, the court has a partnership with the county’s Behavioral Health Care Services for evaluations to be performed by county providers. 	The advisory bodies agree.
	Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department		It is believed the agency or entity raising the doubt should be responsible for payment of evaluations. If, following the initial evaluation, any party wishes to seek additional evaluations for the sake of a ‘second opinion’, that party should be responsible for payment.	The advisory bodies do not take a position on who should pay for the evaluations. The advisory bodies are leaving this up to local county practice.
	Angela Igrisan, Mental Health Administrator, on behalf of the Riverside County Department of Mental Health		Should the statute include specific information regarding payment for initial court ordered competency evaluations or continue following current local county based practices? <ul style="list-style-type: none"> Yes, this would be much appreciated. None of the county agencies are clear on whose mandate necessitates competency activities. 	The advisory bodies decided to not include language on funding and payment. This could be included in a future protocol.
Potential	Christine		What are the ramifications if the statute isn’t addressed?	The advisory bodies believe that all remedies

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
ramification/ Unintended consequence	Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department		<ul style="list-style-type: none"> • What happens if a county is not in compliance with this statute? • Are there any ramifications? 	that are currently available under section 709 will be available under the new section. The advisory bodies also believe that the protocols can discuss ramifications, if warranted. The option of appealing a court order is also still available to the parties.
Dangerousness	Christine Villanis, Deputy Chief Juvenile Services, San Mateo County Probation Department	AM	<p>One of the big issues for many jurisdictions is about how to deal with juveniles who are a danger to their communities but are also deemed incompetent, especially in regards to developmental immaturity. If there is no real danger, it is fine to dismiss charges as the risk to the community is minimal.</p> <p>In the adult system, offenders are held until they are competent. It would make more sense to me if, based on the seriousness of the crime, that there was some provision to keep a youth detained in some way until they can be found competent or we can show that they are no longer a danger to their community. We have had a couple of situations where, due to developmental immaturity, charges were dismissed and the youth continued to seriously victimize the community without consequence. As a law enforcement officer and protector of the community, this does not make sense to me.</p>	The advisory bodies have heard that the issue of dangerousness is a concern ad that these minors present additional challenges. However, this proposal discusses only the process and procedures to establish competency, as the issue of the minor’s dangerousness is beyond the scope of the proposal.
	Hon. John Ellis, Presiding Juvenile Judge on	AM	Although substantial changes to W&I 709 are desperately needed, I do not think the proposed amendment goes far enough regarding guidelines for	The advisory bodies believe that subdivision (1) (3) allows courts to make a referral to an assessment to determine if the youth is gravely

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Behalf of Solano County Superior Court		competency training. On occasion, minors who are found incompetent are also a public safety risk if they are released from custody. However, probation departments are not equipped to treat these minors. IN PC 1368 incompetent defendants are sent to a state hospital or a regional center for treatment. W&I 709 needs a similar provision.	incapacitated. The advisory bodies have heard that the issue of dangerousness is a concern ad that these minors present additional challenges. However, this proposal discusses only the process and procedures to establish competency, as the issue of the minor’s dangerousness is beyond the scope of the proposal.
	Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California		Omission of Violent/Dangerous Youth found to be Incompetent: We are disappointed that the joint committee declined to address the issue of incompetent youth with dangerous and violent behavior. What are the court’s options when a petition involving a violent and/or dangerous behavior is dismissed due to the court’s finding that the youth cannot be remediated?	The advisory bodies understand that the dangerous and violent youth present additional challenges.
Technical Changes	Ashleigh E. Aitken, President On behalf of Orange County Bar Association		Agrees that the proposal addressed the stated purpose. <ul style="list-style-type: none"> • Subdivision (k), end of first sentence (page5, line 6), “as described in (m)”. There appears to be no (m) in the proposed legislation. The phrase should be corrected to read, “as described in (j).” 	The advisory bodies agree.
	Mike Roddy, Executive Officer, Superior Court of California, County of San Diego		<i>There is no subdivision (m). Remediation program should not be capitalized in the subdivision.</i>	The advisory bodies agree.
	Mike Roddy, Executive Officer, Superior		Subdivision (i): The cross-reference to subdivision (d) is a mistake. We believe it would now be (g).	The advisory bodies agree.

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
	Court of California, County of San Diego		<p>I agree with subdivision (j)</p> <p>For consistency purposes, use “subdivision” (not subsection). Our court does not understand how the process laid out in (l)(3) can work. Instead of inviting all those stakeholders to a hearing, it may be better to set up a multidisciplinary team meeting prior to the hearing and allow the team to make appropriate referrals to services. The team could then make recommendations to the court for the final hearing.</p>	
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		<p>A subdivision has a reference to a subdivision (m), which does not exist.</p>	<p>The advisory bodies agree.</p>
Miscellaneous	Sue Burrell, Staff Attorney on behalf of the Youth Law Center		<p>Subdivision (a), wrongly limits incompetence to 4 causes. In fact, incompetence may stem from any cause resulting in the person’s inability to meet both prongs of the Dusky test.</p> <p>A sentence in the same section, a little bit further down states the causation correctly by adding “including but not limited to.” This is important because, while most</p>	<p>The advisory bodies agree with the re-write proposed.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>cases probably fit into the big categories of mental illness, mental disorder, developmental disability, or developmental immaturity, there may be cases involving additional causes (for example, linguistic or cultural issues).</p> <p>Remove the first statement of causation and retain the second, and get rid of the surplus language in the second statement. The section would read as follows: (a) <u>Whenever the court believes that a minor who is subject to any juvenile proceedings is mentally incompetent, the court must suspend all proceedings and proceed pursuant to this section. A minor is mentally incompetent for purposes of this section if, as a result of mental illness, mental disorder, developmental disability, or developmental immaturity, the minor-he or she is unable to understand the nature of the delinquency proceedings or to assist counsel in conducting a defense in a rational manner including a lack of a rational or factual understanding of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions that result in an inability to assist counsel or understand the nature of the proceedings, including but not limited to mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come</u></p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p><u>within the jurisdiction of the court pursuant to Section 601 or Section 602.</u></p> <p>Section 709, subdivision (i). Orders upon finding the minor incompetent. We agree with the rewording of the standard of proof for incompetence. Our additional request is that this section specifically state the minors must be held in the least restrictive appropriate environment. We have heard anecdotal evidence that children in some counties are being held for months to receive remediation services in juvenile hall for relatively minor offenses. In our view, those counties are vulnerable to liability for violating the Americans with Disabilities Act and the 14th Amendment. The respected remediation programs provide services primarily in the community or in non-secure settings, and we should be assuring that happens except in the most extreme cases.</p> <p>Recommendation: Insert the following sentence:</p> <p>(i) If the minor is found to be incompetent by a preponderance of the evidence, <u>If the court finds by a preponderance of evidence that the minor is incompetent,</u> all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the</p>	<p>The advisory bodies agree that minors should be held in the least restrictive environment. The advisory bodies address this issue in subdivision (k) and do not believe that it needs to be articulated in subdivision (i)</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			foreseeable future, or the court no longer retains jurisdiction. <i>The minor shall be held in the least restrictive appropriate environment.</i>	
	Mike Roddy, Executive Officer, Superior Court of California, County of San Diego		<p>We have some youth who have significant mental health issues and/or pose a risk of safety to themselves and others, but no one is legally responsible (other than mom/dad) in overseeing their care. Oftentimes the parents are trying to help the youth but the options are limited. These are the youth with serious charges--murder, rape, sexual assault, assaults where the parents are locking their doors, or can't have them home due to safety concerns.</p> <ul style="list-style-type: none"> The youth have high mental health needs, but may not necessarily qualify for regional center services, conservatorship or WIC 300. Based upon these facts, our court welcomes the changes to WIC 709. <p><i>Competence v. Competency</i> We would prefer the use of the term “competence” over “competency” in the statute because that is the term used in the criminal statutes.</p> <p><i>Restoration v. Remediation</i> We prefer the term “restoration” over “remediation” because it is a more understandable term by the general populous.</p>	<p>Information only. No comment needed</p> <p>The advisory bodies disagree. The advisory bodies selected the term remediation to use throughout the proposal. As noted in the recent article in the <i>Juvenile and Family Court Journal</i> (Spring 2014), some scholars prefer the term <i>remediation</i> rather than <i>restoration</i> when referring to juveniles because, in some states,</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p><i>Case Management Responsibility</i> This proposed legislation doesn't identify case management responsibility for youth who are in the competency stage of proceedings (proceedings suspended but youth in need of services)</p> <p><i>Funding</i> Who is responsible for funding these items, which is an important piece that is lacking in the current WIC 709,</p> <ul style="list-style-type: none"> • It is hoped that these areas can be addressed in future 	<p>juveniles may be found to be incompetent due to developmental immaturity as well as because of mental illness and intellectual deficits or developmental disabilities. Remediation involves utilization of developmentally and culturally appropriate interventions along with juvenile/child-specific case management to address barriers to adjudicative competency. See Shelly L. Jackson, PhD, Janet I. Warren, DSW, and Jessica Jones Coburn, “A Community-Based Model for Remediating Juveniles Adjudicated Incompetent to Stand Trial: Feedback from Youth, Attorneys, and Judges” (Spring 2014), Vol. 65, Issue 2, <i>Juvenile and Family Court Journal</i> 23–38.</p> <p>There was much discussion concerning the cost of remediation services. During this discussion, it was discovered that not all counties pay for remediation services in the same way. Some counties already have protocols in place that address remediation services and funding; others do not. The advisory bodies decided not to</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>legislation after this proposal becomes law.</p> <p>Our court recommends the language be changed to state:</p> <p>“During the pendency of any juvenile proceeding for a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or Section 602, the minor's counsel, any party, participant, or the court may express a doubt as to the minor's competency competence. Doubt expressed by a party or participant does not automatically require suspension of the proceedings, but is information that must be considered by the court. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. Doubt express by a party or participant does not automatically require suspension of the proceeding, but is information that must be considered by the court. If the court finds sufficient substantial evidence, that raises a reasonable</p>	<p>address the specific issue of funding. They thought it was better left to be discussed in the local protocols.</p> <p>The advisory bodies changed the language in subdivision (a) and believe this rewrite addresses the concern of the commentator.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>doubt as to the minor’s competency, the court shall suspend the proceedings. <u>Incompetence may be caused by any condition or combination of conditions that results in an inability to assist counsel or understand the nature of the proceedings, including but not limited to mental illness, mental disorder, developmental disability, or developmental immaturity. Expression of a doubt as to the minor’s competence does not require automatic suspension of the proceedings but must be considered by the court. If the court finds sufficient evidence that raises a reasonable doubt as to the minor’s competence, the court shall suspend the proceedings.</u></p>	
	<p>Lexi Howard, Legislative Director on behalf of the Juvenile Court Judges of California</p>		<p>Would the proposal provide cost savings? If so please quantify.</p> <ul style="list-style-type: none"> • Unknown but likely not. <p>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.</p> <ul style="list-style-type: none"> • A couple of hours training. Beyond that, unknown. <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> • Unknown. Local practice, particularly with respect to diversion, may have a greater impact than county size. 	<p>The advisory bodies do not know the specific cost savings, but believe there will be cost savings by moving the children out of the hall and keeping them in the least restrictive placements.</p> <p>The advisory bodies agree.</p> <p>The advisory bodies agree.</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>The most difficult questions are those immediately above, dealing with costs, implementation and training. There are so many factors including size of the county, what kind of competency development program is involved, whether minors are in juvenile hall during remediation, what the state of knowledge is concerning competency and competency development, etc. that it is difficult to accurately predict and assess costs and training.</p>	<p>Information only. No comment needed.</p>
	<p>Amanda K. Roze, Attorney at Law, Sebastopol, CA</p>		<p>An overall concern is that the proposal appears to blur the line between adult and juvenile competency by adding language that mirrors Penal Code section 1367. As the Invitation notes (p. 3), the standards for adult and juvenile competency determinations are different. Juvenile competency issues must be understood in the context of recent scientific advances. Within the last 15 years, developments in psychology and brain science have demonstrated fundamental differences between juvenile and adult brain functioning which require that juveniles be treated differently from adults in numerous aspects of the juvenile justice process. (See, e.g., <i>J.D.B. v. North Carolina</i> (2011) 564 U.S. __ [131 S.Ct. 2394, 2403] [“children ... lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them”].) The courts have already reached into the case law surrounding section 1367 in analyzing competency issues for minors.</p>	<p>The advisory bodies changed the language in subdivision (a) and believe this rewrite addresses the concern of the commentator</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> Mirroring the language from section 1367 in section 709 will only increase this trend and cause stagnation in the law instead of forcing the courts to recognize the differences in adults and children. In order to foster more enlightened approaches for children, section 709 and rule 5.645 should make as much of a break from section 1367 as possible. 	
	Adrienne Shilton, Director, Intergovernmental Affairs, County Behavioral Health Directors Association of California		Does the proposal appropriately address the stated purpose? <ul style="list-style-type: none"> CBHDA believes that the proposal does address the stated purpose. 	The advisory bodies agree.
	Corene Kendrick, PJDC Board Member & Amicus Committee Member on behalf of the Pacific Juvenile Defender Center		Competency may stem from any cause resulting in the person’s inability to meet both prongs of the <i>Dusky</i> standard, and the proposed language limits the Dusky standard. We are concerned that the proposed language has excessive verbiage that is confusing and may inadvertently narrow the <i>Dusky</i> standard to limit incompetence to four potential causes (mental illness, mental disorder, developmental disability, or developmental immaturity) when in fact there may be other causes of incompetency under <i>Dusky</i> . Furthermore, the <i>Matthew N.</i> and <i>Alejandro G.</i>	The advisory bodies changed the language in subdivision (a) and believe this rewrite addresses the concern of the commentator

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>decisions by the Court of Appeal included the concept that the individual must not only understand the nature of the proceedings, but appreciate them. (<i>In re Matthew N.</i> (2013) 216 Cal.App.4th 1412; <i>In re Alejandro G.</i> (2012) 205 Cal.App.4th 47). (The phrase “and appreciate” should also be added in subsection (b), between the words “understand” and “the nature of the proceedings.”)</p> <p>We therefore propose that the section should read as follows (deletions in red, additions in bold underline, including minor grammatical changes):</p> <p>(a) Whenever the court believes that a minor who is subject to any juvenile proceedings is mentally incompetent, the court must suspend all proceedings and proceed pursuant to this section. A minor is mentally incompetent for purposes of this section if, as a result of mental illness, mental disorder, developmental disability, or developmental immaturity, <u>the minor</u> <u>he or she</u> is unable to understand <u>and appreciate</u> the nature of the delinquency proceedings, or to assist counsel in conducting a defense in a rational manner, including a lack of a rational or factual understanding <u>or appreciation</u> of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions that result in an inability to assist counsel or understand the nature of the proceedings, including but not limited to</p>	

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or Section 602.	
	Roger Chan, Executive Director on behalf of the East Bay Children’s Law Offices		The proposed changes to Section 709(a) erroneously limit incompetence to four causes. In fact, incompetence may stem from <i>any</i> one cause resulting in the person’s inability to meet both prongs of the <i>Dusky</i> test. Recommendation: (a) Whenever the court believes that a minor who is subject to any juvenile proceedings is mentally incompetent, the court must suspend all proceedings and proceed pursuant to this section. A minor is mentally incompetent for purposes of this section if, <i>as a result of mental illness, mental disorder, developmental disability, or developmental immaturity, the minor he or she</i> is unable to understand the nature of the delinquency proceedings or to assist counsel in conducting a defense in a rational manner including a lack of a rational or factual understanding of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions <i>that result in an inability to assist counsel or understand the nature of the proceedings</i> , including but not limited to mental illness, mental disorder, developmental disability, or developmental immaturity. Except as	The advisory bodies changed the language in subdivision (a) and believe this rewrite addresses the concern of the commentator

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or Section 602.	
	Tari Dolstra, Division Director, Juvenile Services Riverside County Probation Department		While the cost of remediation and the burden to pay for such services was not addressed in this proposal, it would be beneficial to designate the appropriate party/agency and the ability to procure funding.	The advisory bodies believe the cost of remediation programs should be left to local county protocols.
	Angela Igrisan, Mental Health Administrator, on behalf of the Riverside County Department of Mental Health		Yes, the proposal appears thorough and appropriate	Information only. No comment needed.
	Rosemary Lamb McCool, Deputy Director, Chief Probation Officers of California		<p>In our view, WIC 709 cannot be examined in isolation. It is undoubtedly interconnected to the larger challenge to meet the needs of youth who come into the delinquency system due to a lack of resources at the community level. The changes to WIC 709 will provide more process direction to judicial officials, but the proposal does not address how to move youth through the system and get them the services they need to either be remediated and adjudicated or, in the cases of those found to be incompetent, long-term treatment services.</p> <ul style="list-style-type: none"> • Additionally, we recommend the statute be more 	<p>Information only. No comment needed.</p> <p>The advisory bodies discussed, at length, the</p>

Juvenile Competency (amend Welfare and Institutions Code section 709)

All comments are verbatim unless indicated by an asterisk (*).

Topic	Commentator	Position	Comment	Committee Response
			<p>explicit that youth whose competency is in question are better served in the community rather than in the juvenile hall unless they pose a risk to public safety. Understandably, addressing the needs of the youth in need of remediation is a challenge and the joint committees undertaking this process needed to start somewhere. We appreciate the changes to the code sections where additional clarity and direction are provided; however, we believe that more needs to be done to address the very important needs of youth found incompetent to stand trial. This issue needs more conversation and cannot be done in isolation</p> <p>or without addressing the all-important question about how to fund what these youth need and deserve.</p>	<p>purpose of the proposal. The advisory bodies wanted to a proposal that was politically viable. The intent of the proposal was never to solve all the issues with incompetent youth, but to provide some directions to the courts and juvenile stakeholders.</p>

Proposition 47: The Safe Neighborhoods and Schools Act

Francine Byrne, Manager
Criminal Justice Services
Family and Juvenile Law Advisory Committee February 2016

Proposition 47

- Prop 47, The Safe Neighborhoods and Schools Act, was passed by voters on November 4, 2014
- Reclassified certain non-serious, non-violent offenses from felonies to misdemeanors
- Created process for those convicted of these offenses as a felony to petition the court for resentencing/reclassification as a misdemeanor
 - Provides relief for individuals currently serving sentences AND for sentences served in the past
 - Allows 3 years to petition the court

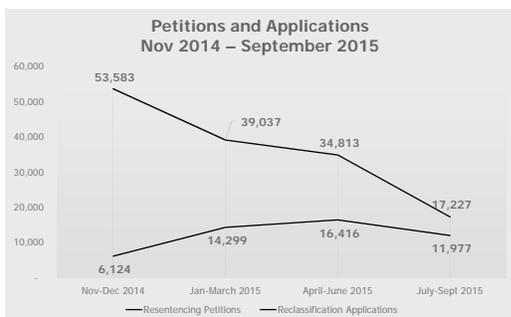
Proposition 47

- Requires the DOF to identify savings and provide to spend on school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to keep offenders out of prison and jail.

Proposition 47 and Juveniles

- Appears to be written contemplating incarcerated adults, but has larger impact
- *Alejandro N. v. Superior Court of San Diego County* (2015) 238 Cal.App.4th 1209, review denied (Oct. 14, 2015)
- Case centered around DNA expungement and found that juveniles can petition to have their records expunged.

Prop 47 by the numbers: Adult



Prop 47 by the numbers: Juvenile

- 389 petitions for juvenile relief statewide since the initiative passed
- 23 courts reported receiving 0 petitions
- 18 courts did not report
- 17 courts reported 1 or more

Proposition 47 Costs

- \$26.9 million allocated to offset FY 15-16 resentencing costs
 - July-Dec allocation based on felony filings and Prop 47 petitions
 - Jan-June allocation based only on Prop 47 includes juvenile
- \$21.4 million in Governor's budget to offset FY 16-17 resentencing costs

Proposition 47 Savings

- Governor's budget assumes \$29.3 million savings
 - 65% (\$19 mil) to Board of State and Community Corrections for mental health, SUD, and Diversion programs including juvenile
 - 25% (\$7.3 mil) Department of Education for school improvement, truancy reduction, at-risk students
 - 10% (\$2.9 mil) Victim compensation
- Anticipated that implementation costs will be added in future years

Alejandro N. v Super Ct. (7/23/15) 238 Cal.App.4th 1209

Minor admitted to a felony violation of PC §459-460(b) in April of 2013. His max time was set at 3 years; he was ordered to pay a \$50 restitution fine and submit a DNA sample for inclusion in the DOJ database. Following the passage of Proposition 47, reducing certain felonies to misdemeanors, minor filed a petition to modify. Minor asked that his offense be reclassified as and reduced to a misdo, his max time reset at 6 months, that he be released from custody having been confined beyond 6 months, that his DNA be removed from the DOJ database, and that his fine be reduced to a misdo amount. The People agreed minor's offense was now a misdo with a max time of 6 months, and he should be released. The People disagreed, however, that §1170.18 applied to juveniles and thus the minor was not entitled to have his offense reclassified as a misdo nor his DNA expunged or fine reduced. The court agreed the minor's commercial burglary offense was now a misdo with a maximum confinement time of 6 months, and it ordered him released. But, believing §1170.18 applies only to *convictions* and is not applicable to juvenile adjudications, the court denied the request for reclassification to a misdo. Further, stating that return of DNA is only required if one of the conditions for expungement listed in PC §299 is met, the court denied the request for DNA expungement. Finally, the court denied the request for reduction of the fine because \$50 was an amount normally ordered for misdemeanors. Minor appealed.

Pursuant to W&I §602, laws that define criminal behavior for adults define the criminal behavior that cause minors to become wards. However, the juvenile and adult systems are distinct, use different terminology, and have different underlying purposes and focus. That said, essential constitutional due process protections provided to adults extend to juveniles. To ensure fairness, a minor's maximum period of confinement may not exceed the maximum term that could be imposed upon an adult.

The application of other adult statutes to the juvenile system depends on the particular enactment being considered. For example, W&I §726 incorporates the "entire system or body of laws set forth in the adult determinate sentencing statute ... when calculating a juvenile's maximum time of confinement." On the other hand, the statutory provision allowing imposition of sex offender registration for statutorily-unlisted offenses, based upon the court making specific findings at conviction or sentencing, does not apply to juveniles (old PC §290(a)(2)(E) /new §290.005(b)).

Proposition 47 reduced various drug possession and theft-related offenses from felonies to misdos. It also provided the opportunity for qualifying offenders who suffered certain felony *convictions* to benefit from a later reclassification of their offense to a misdo (PC §1170.18). A felony conviction designated as a misdo shall be considered a misdo "for all purposes" (except for firearm restrictions). Because court jurisdiction over juveniles is premised on §602's incorporation of adult *criminal laws*, the court concluded reclassifying certain criminal offenses from felonies to misdos necessarily reclassified these offenses for juvenile as well. And the addition of PC §1170.18 just retroactively extends reclassification to qualified offenders and

also was intended to apply to juveniles. The use of adult criminal terminology doesn't reflect an intent to exclude juveniles—the codes that define crimes in adult court are “engrafted onto the juvenile proceedings in wholesale fashion” by W&I §602.

With regard to DNA expungement, the court pointed out that Prop 47 expressly provides that a felony reclassified to a misdo shall be “considered a misdemeanor for all purposes” except for firearm restrictions. That is the only exception for “all-encompassing misdemeanor treatment of the offense.” Given the broad mandate to treat all reclassified offenses as misdos for all purposes, as well as the expansive retroactive provision through §1170.18, the court held the voters did not intend for reclassified misdos to be felonies for purposes of retaining DNA samples—in spite of the grounds for expungement listed in PC §299. Prop 47 addresses matters not contemplated by §299.

The court directed the juvenile court to reclassify minor's felony commercial burglary offense to a misdo shoplifting and ordered removal of his DNA from the database unless there is another statutory basis for retention (e.g. he has other felonies). The court declined to reduce the fine of \$50 as that amount was within the statutory level prescribed for misdos.

Proposition 47 Data Summary Report

The data contained in these tables enumerates the self-reported petitions from each court filed for resentencing and/or reclassification under Proposition 47. The final disposition of these filings is not reported to the Judicial Council.

Quarter/Month	Counties reporting	Resentencing petitions	Reclassification Applications	Juvenile Petitions for Relief ^A	Total
Nov-Dec 2014	56	53,583	6,124		59,707
January 2015	57	18,149	4,104		22,253
February 2015	57	11,828	4,496		16,324
March 2015	57	9,060	5,699		14,759
April 2015	58	16,029	5,922		21,951
May 2015	58	10,945	4,999		15,944
June 2015	54	7,839	5,495		13,334
July-Sept 2015	51	17,227	11,977	389	29,593
Total		144,660	48,816	389	193,865

Nov 2014 - September 2015 Totals

County	Resentencing petitions	Reclassification Applications	Total Adult	Total Juvenile
Alameda ^B	1,732	0	1,732	4
Alpine	0	0	0	No Report
Amador	98	86	184	0
Butte	1,398	294	1,692	0
Calaveras	168	79	247	No Report
Colusa	39	11	50	0
Contra Costa	635	324	959	25
Del Norte	61	18	79	0
El Dorado	553	248	801	0
Fresno	5,606	1,950	7,556	No Report
Glenn	94	84	178	No Report
Humboldt	487	359	846	0
Inyo	309	130	439	0
Imperial	20	2	22	0
Kern	2,269	4,301	6,570	0
Kings	968	542	1,510	No Report
Lake	297	105	402	0
Lassen	114	27	141	No Report
Los Angeles	20,962	11,191	32,153	No Report
Madera	378	550	928	0
Marin	109	73	182	No Report
Mariposa	12	11	23	0
Mendocino	124	63	187	No Report
Merced	485	145	630	No Report
Modoc	16	7	23	No Report
Mono	52	72	124	0
Monterey	570	313	883	36
Napa	53	73	126	No Report
Nevada	76	85	161	No Report
Orange	17,973	6,527	24,500	46
Placer	828	358	1,186	7
Plumas	36	22	58	0
Riverside	7,694	2,564	10,258	4
Sacramento	7,434	2,432	9,866	1
San Benito	237	72	309	0
San Bernardino	4,052	2,719	6,771	62
San Diego ^B	47,880	0	47,880	150
San Francisco	651	273	924	1
San Joaquin	1,764	2,185	3,949	0
San Luis Obispo	839	368	1,207	0
San Mateo	1,116	1,078	2,194	No Report
Santa Barbara	1,341	290	1,631	0
Santa Clara	973	1,596	2,569	No Report
Santa Cruz	997	443	1,440	0
Shasta	1,587	706	2,293	23
Sierra	1	2	3	No Report
Siskiyou	118	17	135	10
Solano	261	907	1,168	2
Sonoma	1,105	589	1,694	14
Stanislaus ^B	3,076	0	3,076	No Report
Sutter	422	125	547	No Report
Tehama	384	260	644	1
Tulare	1,215	17	1,232	0
Trinity	441	1,809	2,250	1
Tuolumne	379	130	509	0
Ventura	2,350	2,034	4,384	2
Yolo ^B	1,613	0	1,613	0
Yuba	208	150	358	0

^AJuvenile data are the total filings from November 4, 2014 through September 30, 2015 as reported by the courts in the July-September 2015 survey.

^BThese courts do not distinguish between petitions for resentencing and applications for reclassification. Both are reported under petitions for resentencing.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14-15, 2016

Title	Agenda Item Type
Juvenile Dependency: Court-Appointed Dependency Counsel Workload and Funding Methodology	Action Required
	Effective Date
	April 15, 2016
Recommended by	Date of Report
Trial Court Budget Advisory Committee Family and Juvenile Law Advisory Committee	February 10, 2016
Joint Subcommittee on Court-Appointed Dependency Counsel Workload and Funding Methodology	Contact
Hon. Mark A. Cope, Cochair	Don Will
Hon. Jerilyn L. Borack, Cochair	415-865-7557
	don.will@jud.ca.gov
Don Will, Judicial Council Center for Families, Children & the Courts	
Steven Chang, Judicial Council Finance	

Executive Summary

On April 17, 2015, the Judicial Council approved recommendations of the Trial Court Budget Advisory Committee (TCBAC) to change the methodology used to allocate annual funding for court-appointed dependency counsel among the courts. The purpose was to provide a more equitable allocation of funding among the courts. Rather than using historical funding levels dating back to the adoption of state trial court funding, the new funding methodology is based on the caseload-based calculation of funding for each court provided by the workload model approved by the Judicial Council through the *DRAFT Pilot Program and Court-Appointed Counsel* report of October 26, 2007. One of the recommendations approved by the Judicial

Council was that a joint working group of the TCBCAC and the Family and Juvenile Law Advisory Committee be formed to review that workload model for possible updates and revisions. After extensive review and public comment, the subcommittee recommends these adjustments to the workload model for consideration by the advisory committees.

Recommendation

The subcommittee was charged with reviewing the workload model for court-appointed dependency counsel and including eight specific issues in its review. In addition the subcommittee determined that to update the workload model, one additional issue needed to be reviewed.

Issues in Judicial Council Charge

1. *Whether attorney salaries should continue to be based on an average salary by region, or whether another method should be used such as an individual county index of salaries. (7.a. in Judicial Council report of April 17, 2015).*

Recommendation:

That attorney salaries used in workload model estimates be based on two factors: (1) the median salary for the first-tier range for county counsel in all counties; and (2) the Bureau of Labor Statistics (BLS) Category 92 index that is used in the Workload Allocation Funding Model (WAFM).

2. *Whether the attorney salaries used in the model should be updated (7.b.).*

Recommendation:

That attorney salaries used in the model be updated for each county using the statewide median county counsel salary and the BLS Category 92 index.

3. *Whether the calculation for benefits costs in the model is accurate or if it should be changed (7.c.).*

Recommendation:

That benefits costs not be calculated directly by any formula, but that the costs be estimated as 15 percent of total costs or 33 percent of salary costs.

4. *Whether the calculation for overhead costs in the model is accurate or if it should be changed (7.d.).*

Recommendation:

That the calculation for overhead costs be revised as follows:

- a) Salaries for line attorneys are calculated using the sources described in recommendations 1 and 2 and comprise 45 percent of the total cost.
 - b) All nonsalary costs (benefits and overhead) comprise 55 percent of the total cost and be estimated on a statewide level as follows:
 - i. Social worker/investigator/paralegal staff 10%
 - ii. Other salaried workers 15%
 - iii. Benefits 15%
 - iv. Operating costs 15%.
5. *Whether the state child welfare data reported through the University of California, Berkeley accurately represents court-supervised juvenile dependency cases in each county, or whether court filings data or another source of data be used (7.e.).*

Recommendation:

That annual child caseload will be determined for each court using a weighted metric derived from a court's percentage of total original dependency filings and the court's percentage total of child welfare caseload; that the child caseload metric be weighted by 30% of court filings and 70% of child welfare caseload; and that the caseload metric use a rolling average composed of the previous three years.

6. *Whether the ratio used to estimate parent clients in the model is accurate or if it should be changed (7.f.).*

Recommendation:

That the ratio used to estimate parent clients continue to be estimated using the multiplier of 0.8 parent case per 1.0 child case.

7. *Whether a modified methodology be used for funding small courts (7.g.).*

Recommendation:

That a program be established for providing emergency funding to small courts experiencing unexpected short-term caseload increases.

8. *Whether dependency counsel funding should be a court or county obligation (7.h.).*

Recommendation:

That dependency counsel funding is established in statute as a court function.

Additional Workload Model Issues

9. *The subcommittee determined that to review and update the workload model, it needed to consider the caseload standard of 188 cases per attorney when the attorney is supported by a .5 full-time equivalent investigator or social worker.*

Recommendation:

That the caseload standard be set at the alternate standard that is included in the 2007 workload model: 141 cases per attorney without considering investigator or social worker support.

10. *The subcommittee determined that the current workload model is based on data on attorney workload from 2002 and that many of its assumptions are outdated and not supported by current data.*

Recommendation:

That the Family and Juvenile Law Advisory Committee consider a comprehensive update of the attorney workload data and time standards in the current workload model. Since any updates to the workload data and time standards will uniformly impact all trial courts, this pending work should not slow or delay the remaining three-year, phase-in period previously approved by the Judicial Council for implementing the new dependency counsel funding methodology. Rather this recommendation recognizes that a comprehensive update could not be completed within the time frame set by the Judicial Council for final report from the joint committees.

Previous Council Action

Court-appointed dependency counsel became a state fiscal responsibility in 1989 through the Brown-Presley Trial Court Funding Act (SB 612/AB 1197; Stats. 1988, ch. 945) which added section 77003 to the Government Code, defined “court operations” in that section as including court-appointed dependency counsel, and made an appropriation to fund trial court operations.

In 2001, the Judicial Council incorporated caseload standards, training requirements and guidelines for appointment of counsel for children into California Rules of Court 5.660; and directed Judicial Council staff to undertake a study to identify caseload standards for attorneys representing both parents and children. (April 17, 2001: Counsel for Children (amend Cal. Rules of Court, rule 1438). As a result, in 2002 the Judicial Council contracted with the American Humane Association to conduct a quantitative caseload study of court-appointed dependency counsel based on an assessment of the duties required as part of representation and the amount of time needed to perform those tasks. The study was overseen by the Judicial Council Court-Appointed Counsel Caseload Study Working Group. In 2007, based on analysis conducted through the caseload study and through the DRAFT (Dependency Representation,

Administration, Funding and Training) pilot program, implemented by the Judicial Council in 2004 (June 15, 2004: Court-Appointed Counsel: Caseload Standards, Service Delivery Models, and Contract Administration), the Judicial Council adopted a court-appointed counsel caseload standard of 188 clients per attorney with .5 investigator complement; and based on the caseload standard adopted a caseload funding model which calculates funding requirement for each trial court. The Council also requested the Trial Court Budget Working Group to develop an allocation methodology to allocate any Statewide Appropriation Limit (SAL) funding or other new funding to courts by need. (October 26, 2007: DRAFT Pilot Program and Court-Appointed Counsel). In 2008, the Judicial Council submitted a report to the California Legislature on *Dependency Counsel Caseload Standards*. The report acknowledged the need to reduce attorney caseloads to improve the quality of representation for children and parents, thereby enhancing the likelihood of improved permanency and well-being outcomes for children and families; and also highlighted the need for significant additional funding to implement the standards.

In 2010, the Council adopted the Trial Court Budget Working Group recommendation to establish a court-appointed counsel funding baseline of \$103.7 million through a two-year phased reduction. In 2015, Judicial Council approved recommendations of the Trial Court Budget Advisory Committee to reallocate funding for court-appointed counsel among the trial courts based on the caseload funding model. One of the recommendations approved by the Judicial Council at this time was that a joint working group of the TCBAC and the Family and Juvenile Law Advisory Committee be formed to review that workload model for possible updates and revisions. (April 17, 2015: Juvenile Dependency: Court-Appointed Counsel Funding Reallocation).

Rationale for Recommendations

Background

The Judicial Council adopted a caseload funding model for court-appointed dependency counsel in 2007. The model includes these components:

- A caseload standard of 188 clients per attorney with a .5 investigator/social worker/paralegal complement;
- Attorney salary ranges by economic regions; and
- A method for calculating overhead costs for attorney representation.

This model has been used since 2008 to estimate the number of full-time-equivalent (FTE) dependency attorneys required to meet the statewide needs of parents and children in dependency, and to calculate the total statewide funding need for court-appointed counsel. In fiscal year 2014-2015, the Trial Court Budget Advisory Committee appointed a working group to examine the allocation of dependency counsel funding among the courts. While the caseload funding model calculates a funding need for each court, the actual budgets for each court have been based almost entirely on historical funding levels since the implementation of trial court funding. Based on the work of the subcommittee, the Committee recommended to the Judicial Council that court budgets for dependency counsel be based on funding need as

calculated by the existing caseload funding model, and recommended a four year, phased in reallocation of funding to meet that goal. The Judicial Council approved these recommendations in April 2015.

During this process many Working Group and later Committee members pointed out in discussion that the existing caseload funding model was outdated, using data collected between 2002 and 2007, and included many assumptions about attorney workload, pay ranges, and overhead calculations that needed to be revisited. These points were echoed in considerable public comment. As a result, the Committee recommended and the Judicial Council approved that a joint subcommittee of the Trial Court Budget Advisory Committee and the Family and Juvenile Law Advisory Committee be appointed to review and recommend changes to the existing workload model by April 2016. The Judicial Council directed that the Committees include these items in their review:

- Whether attorney salaries should continue to be based on an average salary by region, or whether another method should be used such as an individual county index of salaries;
- Whether the attorney salaries used in the model should be updated;
- Whether the calculation for benefits costs in the model is accurate or if it should be changed;
- Whether the calculation for overhead costs in the model is accurate or if it should be changed;
- Whether the state child welfare data reported through U.C. Berkeley accurately represents court-supervised juvenile dependency cases in each county, or whether court filings data or another source of data be used;
- Whether the ratio used to estimate parent clients in the model is accurate or if it should be changed.
- Whether a modified methodology be used for funding small courts.
- Whether dependency counsel funding should be a court or county obligation.

The joint subcommittee held seven meetings, two of them in-person, between July 2015 and February 2016. To support the discussions of the workload model, Judicial Council staff conducted two statewide surveys of attorney providers, four focus groups of dependency line attorneys inquiring into their workload and concerns, a web-based survey of county counsel salary ranges, and a data analysis of attorney workload data derived from the case management system used by the attorneys in the Dependency Representation, Administration, Funding, and Training (DRAFT) program. Extensive public comment was provided at the subcommittee meetings and also at a stakeholders meeting held at a statewide conference and attended by attorneys and subcommittee members.

The subcommittee noted at the outset that the existing caseload funding model was based on very extensive original research, much of it conducted by research contractors, and it had neither time nor resources to conduct similar studies. The subcommittee also noted that this being the case, much of the data it had access to was administrative data on attorney practice. This data will reflect current practice in the state, but not necessarily best or efficient practice. The

subcommittee made an effort to remedy this by reviewing best practice standards from the American Bar Association, and conducting the qualitative research described above. The subcommittee also recommends that the research and analysis required to create a workload model that is rooted in good practice continue as a part of the work of the Family and Juvenile Law Advisory Committee.

Attorney Salaries (Recommendations 1—2)

In the existing workload model, attorney salaries are the key cost variable. The caseload estimate for a court (recommendations 5—6) in conjunction with the caseload standard (recommendation 9) yields the number of full time equivalent attorneys required to represent the parents and children in that court. The attorney salary for the court is then used to calculate the total cost of the representation, and additional costs (other staff, benefits, operating costs) are calculated as a percentage of the total attorney cost.

The subcommittee reviewed the Judicial Council and legislative reports establishing the workload model, and attorney salaries and allocation of other costs. The original survey of entry-to-midlevel county counsel salaries in all counties was updated using county salary listings and job announcements posted on the internet (Appendix 1). Staff also conducted a survey of court-appointed dependency provider organizations and solo practitioners to obtain current information on salaries and overhead costs. The subcommittee also reviewed the Bureau of Labor Statistics governmental salary index for California that is used in the WAFM process.

The subcommittee reviewed salary averages from the county counsel and current provider surveys and compared them to the regional salaries now used in the workload model. The committee also reviewed the impact of indexing salaries to the BLS index or to a consolidated form of the economic regions used by the Employment Development Department.

The subcommittee compared information reported on salary, benefits and operating costs to the original caseload funding model; and also reviewed how those allocations differ by organizational model and size.

Recommendation 1 addresses the sources of data used to calculate attorney salaries. The existing workload model used several sources to estimate the cost of attorney compensation. These included a survey of county counsel salaries, a survey of DRAFT provider salaries and costs, and a consultant study that grouped courts by cost of living factors into economic regions. Courts were grouped into four economic regions, and salary ranges were set in lower, mid-range, and upper level tiers. These economic regions are not used in any other Judicial Council budget or workload process. The salaries set through this process have not changed since 2007.

Since the workload model was finalized in 2007, the Judicial Council adopted the Workload-based Allocation and Funding Model (WAFM) that established a standardized methodology for

indexing cost-of-living throughout the state.¹ Courts use the Bureau of Labor Statistics current index for local and state government personnel costs for California counties.

The subcommittee determined that two data sources should be used: current county counsel salaries at the median of the entry-level or first range reported by counties, and the Bureau of Labor Statistics current index. County counsel represent the child welfare department in dependency proceedings and are roughly parallel in skills and experience to court-appointed dependency counsel. County counsel salary information is publically available, so that the workload model can be updated regularly.

Using the BLS index used in the WAFM model provides a way to adjust the median salary to each county's governmental salary market that is consistent with full-time equivalent court personnel adjustments in WAFM. The BLS index is also updated each year and publically available, so that the workload model can be updated regularly.

Benefits and Overhead Calculations (Recommendations 3--4)

There are numerous models of dependency counsel provision among attorneys and organizations around the state. They range from solo practitioners who charge hourly fees to complex non-profit, for-profit, and governmental organizations. The current workload model sets a total funding need for each court by using a standard cost model based on mid-sized to large attorney firms². This cost model has these assumptions:

- a. The number of attorneys required is derived from a caseload of 188 cases per 1.0 attorney FTE with social worker/investigator staff support;
- b. Attorney salaries are set at the middle level of the regional salary tiers;
- c. Supervising attorneys are included at .15 per 1.0 attorney FTE;
- d. Supervisor salaries are set at the upper level of the regional salary tiers;
- e. Social worker/investigators are included at .5 per 1.0 attorney FTE;
- f. Investigator salaries are set at \$55,000 annually, regardless of economic region;
- g. Support staff is included at .33 per each 1.0 attorney FTE;
- h. Support staff salaries are set at \$30,000 annually, regardless of economic region;
- i. Benefits are estimated at 25% of all salaries;
- j. Other operating costs are estimated at an additional 7% of total personnel.

The subcommittee's finding from the survey of attorney firm managers on their budget and organization was that court-appointed dependency counsel use very different organizational models. There is no single method of calculating financial need for court-appointed counsel that accounts for all the variance in organizational models and local costs. Nor is the workload model

¹ Report to the Judicial Council, April 26, 2013 - <http://www.courts.ca.gov/documents/jc-20130426-itemO.pdf>

² Dependency Counsel Caseload Standards, A Report to the California Legislature, 2008 (page 19). In materials to Subcommittee June 19, 2015 meeting: <http://www.courts.ca.gov/documents/famjuv-tcbac-20150716-materials.pdf>.

meant to be prescriptive for attorney firms. Rather, the model should provide a means for calculating a total financial need that courts and attorney firms can then implement through a variety of service models.

For that reason the subcommittee does not recommend methods of calculating benefits, rent, supervisory costs, or other factors that are highly specific or dependent on local factors and organizational models. Instead, line attorney salaries calculated using the method described in Recommendations 1—2 above provide a base funding that accounts, through application of the BLS index, for local costs. Setting a proportion for all other costs at 55% of the total means that benefits, rent, and all other costs are also driven by the BLS index and thus adjusted for local costs.

The subcommittee arrived at the percentages for estimated benefits and overhead costs by reviewing the attorney organization survey and comparing reported allocations of direct costs and overhead to the assumptions implicit in the workload model. The following table compares the data reviewed to the final recommendation.

Table x. Allocation of Direct and Indirect Costs: Attorney Organization Survey, Existing Caseload Funding Model and Recommendation

	Staffed attorney firm: Large (n=5)	Staffed attorney firm: Med-sized (n=5)	Governmental Agency (n=4)	Existing Caseload Model (2007)	Recommendation (2016)
Line attorneys	39%	41%	42%	47%	45%
Social workers/ Investigators	5%	5%	5%	13%	10%
Other salaried	25%	18%	15%	5%	15%
Benefits	13%	7%	20%	15%	15%
Contract attorneys	1%	7%	4%	0%	0%
Operating costs	17%	18%	12%	20%	15%
	100%	100%	100%	100%	100%

Caseload (Recommendations 5—6)

For the purposes of the workload model, juvenile dependency caseload should estimate the number of cases that require the appointment of a court-appointed attorney in each court. This number should include both children and parents who require representation. The two statewide

data collection systems that report dependency case numbers at least annually are the California Department of Social Services Child Welfare Services Case Management System (CWS/CMS) and the Judicial Branch Statistical Information System (JBSIS).

Both systems define a case as an individual child or youth. A child in foster care is counted as a single case, a group of three siblings in foster care is counted as three cases. All courts report original and subsequent dependency filings to JBSIS. Through CWS/CMS, each county child welfare agency records each case under the supervision of the child welfare agency. This includes cases on voluntary supervision, and supervision after dismissal of dependency. Five years ago, at the request of the Judicial Council, CWS/CMS reports began including a filter so that only cases under court supervision would be counted. (This filter is discussed below.) CWS/CMS reports total cases annually, and provides a point-in-time snapshot of cases quarterly. CWS/CMS contracts with the University of California, Berkeley Center for Social Services Research to analyze the statewide data, prepare longitudinal files, and post state and county level reports on the UC Berkeley website.

The current workload model used to determine the total funding need that court-appointed dependency counsel uses the CWS/CMS point-in-time reports.

There is no statewide source of data for the number of parents represented in each court. The current workload model uses a multiplier of .82 parents represented per child case. This ratio was calculated using data from a 2002 time study of attorneys.³

The subcommittee reviewed a comparative analysis of court filings from JBSIS and child welfare data from CWS/CMS (Appendix 2). The analysis reviewed by the subcommittee included information about the stability of each data source from year to year, how the two data sources are correlated, and differences in how courts rank by total proportion of original dependency filings reported versus child welfare cases reported⁴.

The subcommittee also heard a presentation from the managers of the California Department of Social Services CWS/CMS system and the UC Berkeley Center for Social Services Research on the state child welfare case management system and reports. Much of the discussion centered on the fact that the court-supervision data field was not one of the required fields in the CWS/CMS system and in the managers' opinion, was likely to be used inconsistently across counties. The original research from 2002-2003 on whether caseloads should be weighted by sibling groups and current data on non-minor dependents was also reviewed. Finally, data available

³ In 2002, the Judicial Council contracted with the American Humane Association to conduct a quantitative caseload study of trial-level court-appointed dependency counsel based on an assessment of the duties required as part of representation and the amount of time needed to perform those duties.

⁴ Full materials available in Subcommittee materials for July 16, 2015 meeting at <http://www.courts.ca.gov/documents/famjuv-tcbac-20150716-materials.pdf>.

from DRAFT program⁵ counties was presented to show both the variance in the proportion of child and parent cases in each county.

Advantages of using the counts from the child welfare system include using data from a statewide uniform case management system with a common set of data entry standards and using data that can be reported longitudinally (thus providing a snapshot of cases under supervision at a given time). Disadvantages include the fact that local courts have no control over ensuring the accuracy of the data being reported.

Advantages of using the counts from the JBSIS filings include the control and accountability that derive from using court data to determine court dependency counsel budgets. Disadvantages include the fact that filing counts do not provide a snapshot caseload measure but only a count of case entries.

The subcommittee recommends that the workload model continue to use the child welfare caseload numbers, but that these be combined with JBSIS dependency filings to gain the advantages from both data sources. The subcommittee reviewed a range of models combining child welfare and JBSIS counts, and recommends a combination of 70% child welfare filings and 30% JBSIS filings.

The subcommittee also reviewed data on the number of parent cases in the system and found that, consistent with public comment, there is wide variance among courts in the ratio of parent to child clients. However, the overall ratio in courts able to provide complete caseload data remained approximately .8 parent to 1.0 child client, the ratio set in the 2007 report.

Small courts (Recommendation 7)

The subcommittee reviewed data that confirmed that caseload fluctuations of greater than 10 percent, which can be absorbed within the budgets of larger courts, can represent a large proportion of a small court's entire dependency budget⁶.

The subcommittee discussed whether a minimum level of funding should be provided for small courts. Most small courts are currently able to establish contracts or hourly pay agreements for dependency counsel so the necessity of minimum funding did not seem established. Caseload fluctuations could be addressed by an application process for additional funds. The subcommittee reviewed data on caseload fluctuations in courts divided into two ranges: those with a census of 0-99 children in dependency, and those with 100-199 children. The data showed that about one-half of courts in both groups experience an increase of more than 10 percent in

⁵ The Dependency Representation, Administration, Funding and Training (DRAFT) Program is a program in which the Judicial Council is responsible for direct attorney contracting and service administration for dependency counsel services in select counties.

⁶ Of the five smallest courts experiencing increases, the estimate of the increase as a proportion of their budget as calculated by the workload model (not actual budget) was Sierra 82%, Inyo 30%, Amador 20%, Plumas 19% and Trinity 2%.

child caseload annually⁷. These increases are frequently balanced by subsequent decreases in the following year (Appendix 3)⁸. Assuming that courts can absorb up to a 10 percent caseload increase, these increases yielded, in FY 2014-2015, approximately 91 child cases over and above a 10 percent increase. Applying the multiplier for parents of 1.8, this totals 164 cases that would be eligible for special funding. Applying a statewide average cost per case of \$875 per year yields a total of \$143,500 to be reserved in the court-appointed counsel statewide budget for this purpose.

The subcommittee discussed making the application process as simple as possible for courts, with minimal requirements for staff to evaluate. These criteria are proposed to make the staff review of proposals straightforward:

- That small courts be defined as those courts with 200 or fewer children in dependency. Twenty-two courts met this definition in FY 2014-2015.
- That short term caseload increase be defined as an increase of greater than 10 percent in current child caseload as measured against the child caseload average of the preceding two years.
- That funding be defined as the average funding per case in the court, calculated by this workload model and available funding, applied to the number of cases that have increased over 10 percent of the court's average.
- That "program" in the recommendation be defined as a program administered by Judicial Council staff that consists of a process for a court to demonstrate its increased caseload, the staff to verify that the increase meets the 10 percent guideline above, and provision to the court of the annual average cost per case for the cases meeting the guidelines.

The subcommittee notes that the approximately \$150,000 it estimates is required for this recommendation is more than the \$100,000 that the Judicial Council approved for small court cost overruns in its April, 2015 reallocation model. The subcommittee also recommends that the Trial Court Budget Advisory Committee consider a process as part of the court-appointed dependency counsel budget to replenish the \$150,000 if it is expended before the end of the fiscal year.

Court or county obligation (Recommendation 8)

The subcommittee reviewed the legislative history of court-appointed dependency counsel funding in the trial courts. As a result of the enactment of Senate Bill 1195 (Stats. 1986, ch. 1122), the California Senate Select Committee on Children & Youth convened a task force (the

⁷ Child caseloads are the only figure available on a statewide basis in a timely enough way to both verify a court's request and provide assistance within the fiscal year.

⁸ Long term increases in caseload will be accounted for each year when the workload model is run on data from the prior year, and new budget figures generated.

SB 1195 Task Force) to make recommendations to the Legislature to improve coordination among child abuse reporting statutes, child welfare services, and juvenile court proceedings. At the same time, the Legislature was engaged in the Trial Court Funding Program, a multiyear process to promote a more uniform level of judicial services throughout California and to relieve some of the fiscal pressures on county governments. (See Trial Court Funding Act of 1985; Stats. 1985, ch. 1607.)

Among its proposals to amend juvenile court law, the Task Force recommended that both children and parents should receive legal representation once court intervention was determined necessary to protect a child.⁹ The Legislature took the first step toward providing legal representation in dependency proceedings in Senate Bill 243 (Stats. 1987, ch. 1485), which added section 317 to the Welfare & Institutions Code to require appointment of counsel both for an indigent parent whose child had been placed in out-of-home care and for a child who, in the opinion of the court, would benefit from that appointment.¹⁰ (*Id.*, § 21.) The operation of this dual mandate was deferred to January 1, 1989, and conditioned on the enactment of legislation providing funding for trial court operations and defining “court operations” to include the services of court-appointed dependency counsel. (*Id.*, § 53.)

That same year, the Legislature enacted Senate Bill 709 (Stats. 1987, ch. 1211), which made operative the Trial Court Funding Act. Section 41 of SB 709 defined “court operations” eligible for state block grants contingent on the availability of funding to include “court-appointed counsel in juvenile court dependency proceedings.” In 1988, the Brown-Presley Trial Court Funding Act (Assem. Bill 1197 [Stats. 1988, ch. 944]; Sen. Bill 612 [Stats. 1988, ch. 945]) amended the trial court funding structure and secured state appropriations to reimburse the costs of trial court operations, including dependency counsel, at the option of each county.

In the years leading up to the Lockyer-Isenberg Trial Court Funding Act (Assem. Bill 233; Stats. 1997, ch. 850), the Legislature steadily increased funding for court operations. It also took steps to strengthen the voice of children in dependency proceedings. Perhaps most significant was the recognition of children as full parties to dependency proceedings and the entitlement of all represented parties to competent counsel in 1995. (Sen. Bill 783; Stats. 1994, ch. 1073.) The Lockyer-Isenberg Act, which established mandatory, direct state trial court funding, retained court-appointed dependency counsel in the definition of “court operations” in section 77003 of the Government Code. It remains there today.

In 2013 the joint judicial branch-executive branch Trial Court Funding Workgroup recommended that the branch continue its work to ensure that litigants across the state have equal access to justice and that funding is allocated in a fair and equitable manner that promotes

⁹ SB 1195 Task Force, Child Abuse Reporting Laws, Juvenile Court Dependency Statutes, and Child Welfare Services (Jan. 1988) at pp. 2, 8–9.

¹⁰ In 2000, Senate Bill 2160 amended section 317(c) to require appointment of counsel for a child unless the court finds on the record that the child will not benefit from the appointment. Sen. Bill 2160; Stats. 2000, ch. 450, § 1.

greater access consistent with workload.¹¹ The Workgroup's final report highlighted, as an example of structural improvement, the progress made by the judicial branch's court-appointed dependency counsel programs in reducing disparate caseloads and providing education to attorneys across the state.¹²

Caseload per Attorney (Recommendation 9)

The 2007 workload model set a basic caseload standard of 141 cases per dependency attorney. This standard was qualified by noting that many attorneys have access to paralegal, investigator, or social worker staff for appropriate case work. The 2007 workload model estimates that a one-half time social worker/investigator should enable an attorney to carry a caseload of 188 clients. The subcommittee reviewed the original analysis that supports the 141/188 caseload and an analysis of current workload data (Appendix 4). The subcommittee's conclusion is that attorney workload has changed substantially since the original workload study was conducted in 2002, and that more research needs to be done on attorney workload before a new caseload standard can be set. However, it also appeared to the subcommittee that applying the 188-caseload standard statewide, as the current model does, unfairly disadvantaged the many attorneys who are solo practitioners or who do not have access to investigators and social workers. Therefore, the subcommittee recommends that the basic caseload standard of 141 set in the original report be used for statewide workload calculations. This approach is consistent with the subcommittee's approach to overhead costs in recommendations 3 and 4, which makes line attorney cost the basis for total costs.

Comprehensive Update of Workload Data and Time Standards (Recommendation 10)

This report notes, at the beginning of this section, the subcommittee's recognition that time and resources were not available to repeat the research conducted in 2002 and subsequent years, and produce a comprehensive update of the workload model. However, through both its review of available administrative data and the focus groups and surveys of attorneys, the subcommittee found that the current workload model does not adequately capture the work of dependency attorneys.

The quantitative data which the subcommittee reviewed shows serious shortcomings in the existing caseload funding model when compared to a large group of attorneys practicing in 2014 and 2015. In particular, the model appears to greatly underestimate the amount of attorney time that is required for cases that are in the post-permanency phase (most children in these cases will not be reunified with their parents). While the existing model estimates that 5 percent of an attorney's time will be spent on these cases, children's attorneys in the DRAFT program report spending almost 30 percent of their time on those cases. The existing model also significantly underestimates the proportion of time that attorneys are required to spend to in court. Analysis of

¹¹ Trial Court Funding Workgroup, Report to the Judicial Council of California and Governor Edmund G. Brown, Jr. (Apr. 2013) at pp. 8–9, 38–43.

¹² *Id.*, at p. 16.

attorney's time logs shows them consistently spending two to four times as long in court as the model estimates is required. (Appendix 4).

The subcommittee also reviewed the many changes that have taken place in dependency law and practice since the initial research for the existing model was conducted in 2002-2004. Changes that have increased attorney workload but that are not reflected in the existing model include the eligibility of non-minors for dependency and representation, the expansion of dependency drug courts, cases involving dual status proceedings, cases involving special immigrant juvenile status proceedings, and the greatly increased focus on family finding.

The subcommittee noted that it was able, through surveys, focus groups, data review, and public comment, to review a wealth of information on dependency practice as it exists today. However, this practice represents what is possible given current attorney resources, rather than what would represent effective practice. For this reason the subcommittee recommends that updated research on attorney time allocation be linked to a process of expert review to develop a new attorney workload model that reflects statewide standards of practice.

Comments, Alternatives Considered, and Policy Implications

Alternatives Considered

Attorney Salaries (Recommendations 1—2)

The subcommittee considered a number of alternatives to its recommendations.

Update the salaries in the existing workload model.

The existing workload model sets salary ranges in four economic regions. The salary ranges were derived from two data sources. The economic regions were derived from a consultant study conducted for a different purpose for the Judicial Council, and categorizes the courts into regions that are no longer used for Judicial Council planning and budgeting. The subcommittee determined that metrics ought to be whenever possible consistent with those used in WAFM.

Setting salaries within county counsel salaries above the midpoint of the first two ranges.

Each county's salary, for the purposes of calculating a statewide median, was set at the midpoint between the entry level range and the top of the second level range. Some subcommittee members and public commentators strongly recommended setting the salary at the upper level of the second range or within the third range. Discussion centered around two points: that court-appointed dependency counsel should have experience and qualifications equal to county counsel in the third salary range, and that court-appointed dependency counsel salaries must remain competitive with county counsel salaries.

Conduct a more thorough survey of county counsel salaries and benefits.

Posted salary ranges are broad and may not be indicative of the actual salaries and experience levels of county counsel in dependency court. At its November meeting the subcommittee asked

staff to conduct a survey of actual salaries and benefits of county counsel in dependency court. After some outreach to counties, staff concluded that the information the subcommittee wanted could not be gathered in time to review and use in developing recommendations. The subcommittee notes that this survey should be carried out by Judicial Council staff when possible and the results used by the Family and Juvenile Law Advisory Committee to examine recommendations 1 and 2 in the course of further study of the workload model.

Benefits and Overhead Calculations (Recommendations 3—4)

The subcommittee considered two alternatives to its recommendations.

Conduct a more thorough survey of county counsel.

Please see recommendations 1—2 above. The subcommittee agreed that it did not have accurate information on the full compensation package, including benefits, that county counsel receive; and that this information was needed to evaluate whether recommendations on salaries and benefits would create a pay structure that was competitive with the counties. As above, the subcommittee notes that this survey should be carried out by Judicial Council staff when possible and the results used by the Family and Juvenile Law Advisory Committee to examine recommendations 1 and 2 in the course of further study of the workload model.

Set overhead calculation rates to closely reflect local rates.

This alternative was raised by subcommittee members and public commentators. Discussion acknowledged that certain cities in California have market rates for rent and other costs that are not affordable by court-appointed counsel, while at the same time the location of the court constrains where attorneys can locate their offices. Members ultimately decided that a statewide data source on overhead rates would be still be required to ensure that consistency of reporting across counties, and that the Bureau of Labor Statistics governmental salary index would serve this purpose.

Caseload (Recommendations 5—6)

These recommendations generated the most discussion and proposed alternatives. Subcommittee members and public commentators made the point that available statewide data to count dependency cases is limited to the California Department of Social Services child welfare case counts and the Judicial Branch Statistical Information System (JBSIS) filings counts, and that both of these sources are open to question. The child welfare data does not count parents who require dependency representation, and the indicator in the case management system to identify court-ordered dependents from the full census of children under supervision is not consistently applied by the counties. JBSIS data does not count parents. It counts children who enter the system as dependents, but does not count them longitudinally so a total census of dependents in the county is not available.

In addition, neither data source makes allowances from differences in practice among courts and counties. Many differences were pointed out. Some counties have the resources to conduct lengthy investigations before deciding to file a dependency petition and others do not, so that in

some counties there are fewer cases filed but the cases have more issues, are likely to stay longer in care and are more time-consuming. Some counties have a much higher proportion of non-minor dependents than others, and some counties have very high levels of out-of-county placement. Some counties have a much higher proportion of parents represented. These and factors make it difficult to know if the amount of work is represented by a child in dependency is the same from court to court.

Create a new system of case counting in which dependency attorneys or courts would report their exact child and parent caseloads.

It is possible that the current system that attorneys use to report their clients in the DRAFT program could be expanded to provide a full coverage of cases in California. At this time, given the staffing available to the trial courts and the Judicial Council, managing such a system is not feasible. Asking trial courts to confirm the attorney case counts would add an additional layer of reporting and require additional resources.

Create a means of making the current statewide data sources more specific to the workload represented by dependency cases in the court.

Alternatives proposed included weighting non-minor dependent cases or the ratio of parents to children represented on a county-by-county basis. The subcommittee discussed these issues at length and decided that there was no clear justification for attempting to account for individual child welfare department practice.

Use a higher or lower proportion of JBSIS filings in the recommended model.

The subcommittee reviewed relative proportions of cases in courts, ranging from the existing model's use of child welfare case counts exclusively, to a model that used only JBSIS filings. It also reviewed analysis showing the change in relative proportions of case counts at 10 percent, 30 percent, and 50 percent JBSIS filings. It discussed and heard comment that recommended the lower proportion of filings, because the child welfare census numbers give a better approximation of workload. Members also noted that the greatest proportion of workload in a dependency case is in the first year, so that a higher proportion of filings is also justified.

Small Courts (Recommendation 7)

The subcommittee discussed, but did not recommend for the reasons given above, setting a minimum budget amount for small courts.

Through public comment a proposal was recommended that the Judicial Council establish a contract for regional attorney services, so that the many small courts in the northern region of the state would have access to trained dependency attorneys when they did experience the need for additional counsel. The subcommittee notes that this proposal could be reviewed by the Family and Juvenile Law Advisory Committee as part of its further work on dependency counsel, should the Judicial Council approve recommendation 10 of this report.

Court or County Obligation (Recommendation 8)

The subcommittee considered the alternative of recommending legislative changes to transfer funding responsibility for dependency counsel services to the counties. In 2015 the Legislature affirmed its commitment to state funding of court-appointed dependency counsel by devoting a separate item to it in the Budget Act of 2015 and increasing the statewide appropriation by \$11 million to its highest level in history. Given the emphasis placed by both the executive and legislative branches of California government on promoting equal access to justice, allocating trial court funding equitably, and adopting uniform standards and procedures, it seems unlikely that responsibility for dependency counsel services will be returned to the counties.¹³

Caseload per Attorney (Recommendation 9)

The subcommittee discussed setting the recommended attorney caseload at a level other than that recommended in the original caseload study. For the reasons given in the rationales for recommendations 9 and 10, the subcommittee noted that it is not possible to develop a new caseload standard from the data currently available.

Attachments and Links

Appendix 1. County Counsel Salary Median

Appendix 2. Comparison of Court Filings and Child Welfare Caseload

Appendix 3. Caseload Changes in Courts

Appendix 4. Workload Study Data Analysis (not completed)

¹³ In 40 states and the District of Columbia, children’s dependency counsel costs (fees and expenses) are paid by the state or the court. In only 12 states is the county responsible for at least some of these costs. Child Welfare Information Gateway, Representation of Children in Child Abuse and Neglect Proceedings (2014) at pp. 4–5.

Associate, Assistant or Deputy County Counsel Salary Information

BLS index applied to median salary

County website searches October 2015

COUNTY	Class I or II	Class I or II	Midrange	BLS Index 2011-2013	Index applied to	Workload
	Min	Max			median salary	Model Estimate
Alameda	73,611	175,115	124,363	1.42	111,072	95,892
Alpine				0.82	64,406	79,539
Amador	72,838	104,878	88,858	0.99	77,602	79,539
Butte	50,714	78,815	64,764	0.92	71,895	67,143
Calaveras	60,307	73,286	66,797	0.86	66,976	79,539
Colusa				0.70	55,066	67,143
Contra Costa	87,010	126,079	106,545	1.25	97,693	114,800
Del Norte	56,117	72,888	64,503	0.79	61,849	67,143
El Dorado	90,210	129,480	109,845	0.99	77,581	79,539
Fresno	49,608	81,146	65,377	1.00	77,958	67,143
Glenn				0.68	53,149	79,539
Humboldt	51,246	77,525	64,386	0.76	59,361	67,143
Imperial	59,400	88,236	73,818	0.77	60,208	67,143
Inyo	68,304	87,240	77,772	0.83	65,027	79,539
Kern	57,830	81,179	69,505	1.05	82,229	79,539
Kings	60,050	85,114	72,582	0.89	69,296	67,143
Lake	47,838	67,314	57,576	0.76	59,366	79,539
Lassen	59,376	71,688	65,532	0.80	62,573	67,143
Los Angeles	65,591	80,084	72,838	1.34	104,396	95,892
Madera	63,646	89,401	76,524	0.94	73,078	79,539
Marin	83,044	119,392	101,218	1.30	101,386	114,800
Mariposa	59,785	79,936	69,861	0.74	57,845	67,143
Mendocino	57,075	72,842	64,958	0.86	67,141	79,539
Merced	58,282	87,526	72,904	0.91	70,923	67,143
Modoc				0.61	47,477	67,143
Mono	108,684	108,684	108,684	1.20	93,721	79,539
Monterey	61,560	100,920	81,240	1.19	93,005	95,892
Napa	80,101	116,917	98,509	1.21	94,625	95,892
Nevada	78,254	105,553	91,904	0.97	75,516	79,539
Orange	70,404	85,116	77,760	1.30	101,519	95,892
Placer	85,051	114,192	99,622	1.14	89,376	95,892
Plumas	52,140	91,788	71,964	0.70	55,081	67,143
Riverside	68,936	121,620	95,278	1.07	83,700	95,892
Sacramento	92,498	106,363	99,430	1.28	99,947	79,539
San Benito	56,856	84,036	70,446	0.97	76,096	79,539
San Bernardino	59,717	100,110	79,914	1.05	82,067	79,539
San Diego	62,754	96,075	79,414	1.17	91,590	95,892
San Francisco	107,952	148,200	128,076	1.61	126,133	114,800

Associate, Assistant or Deputy County Counsel Salary Information

BLS index applied to median salary

County website searches October 2015

COUNTY	Class I or II	Class I or II	Midrange	BLS Index 2011-2013	Index applied to	Workload
	Min	Max			median salary	Model Estimate
San Joaquin	63,379	93,677	78,528	1.11	86,861	79,539
San Luis Obispo	67,870	95,514	81,692	1.07	83,780	79,539
San Mateo	86,194	148,468	117,331	1.45	113,129	114,800
Santa Barbara	107,742	145,422	126,582	1.16	90,285	95,892
Santa Clara	101,419	129,164	115,291	1.47	114,839	114,800
Santa Cruz	65,064	109,968	87,516	1.17	91,510	95,892
Shasta	64,524	89,040	76,782	0.85	66,352	67,143
Sierra				0.71	55,856	67,143
Siskiyou	44,244	63,812	54,028	0.71	55,531	67,143
Solano	68,866	113,279	91,072	1.22	95,677	95,892
Sonoma	83,986	112,162	98,074	1.17	91,243	95,892
Stanislaus	57,658	97,802	77,730	1.02	79,977	79,539
Sutter	73,961	99,654	86,808	0.95	74,181	79,539
Tehama	62,172	83,580	72,876	0.80	62,593	67,143
Trinity				0.65	51,119	67,143
Tulare	57,632	79,913	68,773	0.82	64,264	67,143
Tuolumne	57,969	81,370	69,669	0.91	71,035	79,539
Ventura	65,307	116,912	91,109	1.23	95,917	95,892
Yolo	66,965	100,074	83,520	1.01	79,009	79,539
Yuba	61,638	71,148	66,393	0.94	73,509	79,539
Median salary	64,085	94,595	78,150			

Model Combining Filings and Child Welfare Case Numbers

COUNTY	Average Filings	Average CW	Filings %	Cases %
	12-14	Cases 12-14		
Alameda	628	1,769	1.63%	2.44%
Alpine	0	0	0.00%	0.00%
Amador	37	55	0.10%	0.08%
Butte	268	561	0.70%	0.77%
Calaveras	105	135	0.27%	0.19%
Colusa	28	35	0.07%	0.05%
Contra Costa	728	1,214	1.89%	1.67%
Del Norte	50	111	0.13%	0.15%
El Dorado	197	353	0.51%	0.49%
Fresno	874	1,950	2.27%	2.69%
Glenn	53	100	0.14%	0.14%
Humboldt	146	302	0.38%	0.42%
Imperial	211	372	0.55%	0.51%
Inyo	9	19	0.02%	0.03%
Kern	844	1,805	2.19%	2.49%
Kings	196	478	0.51%	0.66%
Lake	53	133	0.14%	0.18%
Lassen	53	71	0.14%	0.10%
Los Angeles	16,700	29,089	43.38%	40.08%
Madera	227	373	0.59%	0.51%
Marin	63	106	0.16%	0.15%
Mariposa	25	30	0.07%	0.04%
Mendocino	158	298	0.41%	0.41%
Merced	406	688	1.05%	0.95%
Modoc	14	15	0.04%	0.02%
Mono	4	10	0.01%	0.01%
Monterey	160	367	0.41%	0.51%
Napa	87	151	0.23%	0.21%
Nevada	66	117	0.17%	0.16%
Orange	1,389	3,051	3.61%	4.20%
Placer	515	392	1.34%	0.54%
Plumas	33	55	0.08%	0.08%
Riverside	3,035	5,254	7.88%	7.24%
Sacramento	1,121	2,637	2.91%	3.63%
San Benito	58	110	0.15%	0.15%
San Bernardino	2,544	4,700	6.61%	6.48%
San Diego	1,609	3,862	4.18%	5.32%
San Francisco	570	1,296	1.48%	1.79%
San Joaquin	599	1,486	1.56%	2.05%
San Luis Obispo	269	443	0.70%	0.61%
San Mateo	204	485	0.53%	0.67%

Santa Barbara	263	630	0.68%	0.87%
Santa Clara	545	1,495	1.42%	2.06%
Santa Cruz	203	357	0.53%	0.49%
Shasta	256	611	0.66%	0.84%
Sierra	3	3	0.01%	0.00%
Siskiyou	76	118	0.20%	0.16%
Solano	246	440	0.64%	0.61%
Sonoma	259	628	0.67%	0.87%
Stanislaus	390	630	1.01%	0.87%
Sutter	82	155	0.21%	0.21%
Tehama	143	207	0.37%	0.29%
Trinity	47	77	0.12%	0.11%
Tulare	605	1,088	1.57%	1.50%
Tuolumne	73	126	0.19%	0.17%
Ventura	598	1,040	1.55%	1.43%
Yolo	204	336	0.53%	0.46%
Yuba	169	159	0.44%	0.22%
<hr/> Total	38,497	72,577	100.00%	100.00%

Model Combining

COUNTY	10%		30%		50% Filings	Change from 100% CW
	Filings Propor. of state	Change from 100% CW	Filings Propor. of state	Change from 100% CW		
Alameda	2.36%	-3.3%	2.19%	-9.9%	2.03%	-16.5%
Alpine	0.00%	-10.0%	0.00%	-30.0%	0.00%	-50.0%
Amador	0.08%	2.6%	0.08%	7.7%	0.09%	12.8%
Butte	0.76%	-1.0%	0.75%	-2.9%	0.73%	-4.9%
Calaveras	0.19%	4.6%	0.21%	13.8%	0.23%	23.1%
Colusa	0.05%	5.0%	0.05%	15.1%	0.06%	25.2%
Contra Costa	1.69%	1.3%	1.74%	3.9%	1.78%	6.6%
Del Norte	0.15%	-1.5%	0.15%	-4.4%	0.14%	-7.3%
El Dorado	0.49%	0.5%	0.49%	1.5%	0.50%	2.6%
Fresno	2.65%	-1.5%	2.56%	-4.6%	2.48%	-7.7%
Glenn	0.14%	0.0%	0.14%	0.1%	0.14%	0.1%
Humboldt	0.41%	-0.9%	0.41%	-2.7%	0.40%	-4.6%
Imperial	0.52%	0.7%	0.52%	2.1%	0.53%	3.5%
Inyo	0.03%	-1.5%	0.03%	-4.6%	0.02%	-7.7%
Kern	2.46%	-1.2%	2.40%	-3.6%	2.34%	-5.9%
Kings	0.64%	-2.3%	0.61%	-6.8%	0.58%	-11.3%
Lake	0.18%	-2.5%	0.17%	-7.5%	0.16%	-12.4%
Lassen	0.10%	4.0%	0.11%	12.0%	0.12%	19.9%
Los Angeles	40.41%	0.8%	41.07%	2.5%	41.73%	4.1%
Madera	0.52%	1.5%	0.54%	4.4%	0.55%	7.3%
Marin	0.15%	1.1%	0.15%	3.4%	0.15%	5.7%
Mariposa	0.04%	6.1%	0.05%	18.3%	0.05%	30.5%
Mendocino	0.41%	0.0%	0.41%	-0.1%	0.41%	-0.2%
Merced	0.96%	1.1%	0.98%	3.3%	1.00%	5.6%
Modoc	0.02%	8.0%	0.03%	24.0%	0.03%	40.1%
Mono	0.01%	-2.8%	0.01%	-8.5%	0.01%	-14.2%
Monterey	0.50%	-1.8%	0.48%	-5.4%	0.46%	-9.0%
Napa	0.21%	0.8%	0.21%	2.5%	0.22%	4.1%
Nevada	0.16%	0.6%	0.16%	1.8%	0.17%	3.1%
Orange	4.14%	-1.4%	4.03%	-4.3%	3.91%	-7.1%
Placer	0.62%	14.8%	0.78%	44.4%	0.94%	73.9%
Plumas	0.08%	1.1%	0.08%	3.4%	0.08%	5.6%
Riverside	7.30%	0.9%	7.43%	2.7%	7.56%	4.4%
Sacramento	3.56%	-2.0%	3.42%	-6.0%	3.27%	-9.9%
San Benito	0.15%	0.0%	0.15%	0.1%	0.15%	0.1%
San Bernardino	6.49%	0.2%	6.52%	0.6%	6.54%	1.0%
San Diego	5.21%	-2.1%	4.98%	-6.4%	4.75%	-10.7%
San Francisco	1.76%	-1.7%	1.69%	-5.1%	1.63%	-8.5%
San Joaquin	2.00%	-2.4%	1.90%	-7.2%	1.80%	-12.0%
San Luis Obispo	0.62%	1.4%	0.64%	4.3%	0.65%	7.2%
San Mateo	0.65%	-2.1%	0.63%	-6.2%	0.60%	-10.3%

Santa Barbara	0.85%	-2.1%	0.81%	-6.3%	0.78%	-10.6%
Santa Clara	2.00%	-3.1%	1.87%	-9.4%	1.74%	-15.6%
Santa Cruz	0.50%	0.7%	0.50%	2.1%	0.51%	3.5%
Shasta	0.82%	-2.1%	0.79%	-6.3%	0.75%	-10.5%
Sierra	0.00%	15.1%	0.01%	45.4%	0.01%	75.7%
Siskiyou	0.17%	2.2%	0.17%	6.5%	0.18%	10.8%
Solano	0.61%	0.5%	0.62%	1.6%	0.62%	2.7%
Sonoma	0.85%	-2.2%	0.81%	-6.7%	0.77%	-11.1%
Stanislaus	0.88%	1.7%	0.91%	5.1%	0.94%	8.4%
Sutter	0.21%	0.0%	0.21%	-0.1%	0.21%	-0.2%
Tehama	0.29%	3.1%	0.31%	9.2%	0.33%	15.3%
Trinity	0.11%	1.6%	0.11%	4.9%	0.11%	8.2%
Tulare	1.51%	0.5%	1.52%	1.5%	1.54%	2.4%
Tuolumne	0.18%	0.9%	0.18%	2.8%	0.18%	4.7%
Ventura	1.45%	0.8%	1.47%	2.5%	1.49%	4.2%
Yolo	0.47%	1.4%	0.48%	4.3%	0.50%	7.2%
Yuba	0.24%	10.1%	0.28%	30.2%	0.33%	50.4%
<hr/> Total						

Year-to-year changes in court caseload

	Child Welfare Caseload			Change 2013 -- 2015			
	2013	2014	2015	2013-2014	2014-2015	2013-2014	2014-2015
	n	n	n	n	n	%	%
Sierra	1	1	4	0	3	0%	300%
Modoc	11	20	15	9	-5	82%	-25%
Mono	11	9	10	-2	1	-18%	11%
Inyo	23	14	26	-9	12	-39%	86%
Colusa	32	44	31	12	-13	38%	-30%
Mariposa	37	20	17	-17	-3	-46%	-15%
Amador	42	62	85	20	23	48%	37%
Plumas	45	45	65	0	20	0%	44%
Trinity	75	79	89	4	10	5%	13%
Lassen	78	75	61	-3	-14	-4%	-19%
Glenn	86	106	103	20	-3	23%	-3%
Calaveras	105	183	176	78	-7	74%	-4%
Marin	108	116	129	8	13	7%	11%
Siskiyou	109	125	130	16	5	15%	4%
Tuolumne	113	111	132	-2	21	-2%	19%
Nevada	119	112	99	-7	-13	-6%	-12%
Del Norte	122	100	117	-22	17	-18%	17%
San Benito	126	105	99	-21	-6	-17%	-6%
Lake	128	145	142	17	-3	13%	-2%
Napa	140	168	185	28	17	20%	10%
Sutter	152	138	154	-14	16	-9%	12%
Yuba	153	188	234	35	46	23%	24%
Tehama	205	213	251	8	38	4%	18%
Humboldt	280	348	412	68	64	24%	18%
Mendocino	293	337	313	44	-24	15%	-7%
Yolo	310	358	360	48	2	15%	1%
Madera	336	427	359	91	-68	27%	-16%
Monterey	349	407	433	58	26	17%	6%
Santa Cruz	358	303	341	-55	38	-15%	13%
Imperial	360	412	515	52	103	14%	25%
El Dorado	382	366	352	-16	-14	-4%	-4%
Placer	382	429	421	47	-8	12%	-2%
Solano	411	444	532	33	88	8%	20%
San Mateo	469	515	541	46	26	10%	5%
Kings	483	500	653	17	153	4%	31%
San Luis Obispo	486	451	421	-35	-30	-7%	-7%
Butte	498	525	656	27	131	5%	25%
Shasta	614	636	576	22	-60	4%	-9%
Sonoma	617	607	599	-10	-8	-2%	-1%

Stanislaus	634	728	621	94	-107	15%	-15%
Santa Barbara	666	599	577	-67	-22	-10%	-4%
Merced	725	743	660	18	-83	2%	-11%
Ventura	957	1149	1060	192	-89	20%	-8%
Tulare	1020	1121	1257	101	136	10%	12%
Contra Costa	1223	1200	1221	-23	21	-2%	2%
San Francisco	1280	1315	1263	35	-52	3%	-4%
San Joaquin	1437	1627	1643	190	16	13%	1%
Santa Clara	1461	1598	1669	137	71	9%	4%
Alameda	1702	1860	1817	158	-43	9%	-2%
Kern	1789	1647	1800	-142	153	-8%	9%
Fresno	1823	2027	2200	204	173	11%	9%
Sacramento	2346	2879	3091	533	212	23%	7%
Orange	3090	2959	2906	-131	-53	-4%	-2%
San Diego	3832	3726	3653	-106	-73	-3%	-2%
San Bernardino	4618	5040	5687	422	647	9%	13%
Riverside	4931	5536	5669	605	133	12%	2%
Los Angeles	28556	30776	30631	2220	-145	8%	0%
Total	70923	75965	77453	5042	1488	7%	2%



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14, 2016

Title	Agenda Item Type
Juvenile Law: Sealing of Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; approve forms JV-591, JV-595, and JV-596; adopt forms JV-595-INFO and JV-596-INFO; revise forms JV-590 and JV-600	July 1, 2016
	Date of Report
	February 17, 2016
	Contact
Recommended by	Tracy Kenny, 916-263-2838
Family and Juvenile Law Advisory Committee	tracy.kenny@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt new and amended rules and forms to implement the provisions of five recently enacted statutes concerning juvenile record sealing. Assembly Bill 1006 (Yamada; Stats. 2013, ch. 269) directed the Judicial Council to develop informational materials and a form to enable a person with a juvenile record to seal those records. After the council circulated a proposal for comment to implement these requirements, new legislation (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249) was enacted that requires the court to automatically dismiss and seal the records for many juvenile wards. While a proposal was being developed and circulated to incorporate that legislation, three additional sealing bills were introduced and enacted to clarify the provisions of SB 1038, including a requirement that the council adopt rules and forms to implement its requirement, and to eliminate fees for sealing for petitioners under 26 years of age (Sen. Bill 504 [Lara], Stats. 2015, ch. 388; Asm. Bill 666 [Stone] Stats. 2015, ch. 368; and Asm. Bill. 989 [Cooper], Stats.

2015, ch. 375). The recommended new and amended rules and forms would fulfill the council's statutory obligations.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2016:

1. Amend rule 5.830 on sealing of juvenile court records under section 781 to incorporate the requirements to provide information to minors on the process for sealing their records and clarify the process for petitioning the court;
2. Adopt rule 5.840 to set forth the procedures to be followed by the court when sealing records under section 786 when the court determines that probation has been satisfactorily completed;
3. Revise *Order to Seal Juvenile Records* (form JV-590) to make it an optional form so that courts are free to create their own order forms, and to add a statutory reference to section 781 to the title, and add space for the court to specify the timeframe for sealed records to be destroyed ;
4. Approve *Acknowledgment of Juvenile Record Sealed* (form JV-591) to provide a mechanism for agencies ordered to seal juvenile records to notify the court that they have complied with its order;
5. Approve *Request to Seal Juvenile Records* (form JV-595) as an optional form to be used to petition the court to seal juvenile records under section 781;
6. Adopt *How to Ask the Court to Seal Your Records* (form JV-595-INFO) and *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) as mandatory information forms to be provided to wards at the end of a case in compliance with the requirements of section 781(h);
7. Approve *Dismissal and Sealing of Records – Welfare and Institutions Code section 786* (form JV-596) for courts to use to order records sealed for satisfactory completion of probation under section 781; and
8. Revise *Juvenile Wardship Petition* (form JV-600) to add language alerting all those subject to a petition that they may have their records sealed in the future.

The proposed text of the new and amended rules is attached at pages 13-16. The proposed new and revised forms are attached at pages 17-27.

Previous Council Action

Rule 5.830 was originally adopted by the council effective January 1, 1991 as rule 1497. It was renumbered as rule 5.830 effective January 1, 2007.

The council adopted form JV-590 effective January 1, 1991, and revised the form effective January 1, 2007 to reflect the renumbered rules of court.

The council adopted form JV-600 effective January 1, 1993 and it has been revised numerous times, most recently effective January 1, 2012 to clarify issues pertaining to the Indian Child Welfare Act.

Rationale for Recommendation

Background

The Legislature has been taking repeated action to ensure that all people with juvenile records who are eligible to have them sealed can have the opportunity to do so with as few barriers as possible. Prior to the enactment of this legislation, most sealing was ordered under Welfare and Institutions Codes section 781, which enables eligible individuals to petition the juvenile court to have juvenile records sealed under certain circumstances specified within the code. The records eligible for sealing include contacts with the juvenile justice system, law enforcement, the Department of Motor Vehicles, and other agencies. These contacts include juvenile court records resulting from formal adjudications under section 602 of the code and informal contacts with probation and law enforcement under sections 601 and 626 of the code. To qualify for sealing, among other requirements, the records must not fall within section 707(b) of the code if committed by an individual 14 years of age or older, the offense must not have led to a conviction in adult court under section 707.1, and the petitioner must not have been convicted of a felony or misdemeanor involving moral turpitude as an adult. In addition, the court must find that the petitioner has been satisfactorily rehabilitated.

In 2013, the Legislature took action to ensure that all juveniles who come before the court or a probation officer receive information about the process required to request sealing of records, as well as requiring the adoption of a Judicial Council form that can be used to petition the court for sealing under section 781 (Assembly Bill 1006 [Yamada]; Stats. 2013, ch. 269). In 2014, the Legislature went a step further, by enacting section 786, requiring courts to seal records without requiring a petition for any child 14 or older who was not a serious or violent (707(b)) offender and who satisfactorily completed probation (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249). That legislation, however, spurred many questions and concerns within the juvenile justice system, and as a result, legislation was enacted in 2015 to clarify the scope and impacts of section 786. Assembly Bill 666 (Stone); Stats. 2015, ch. 368; and Assembly Bill. 989 (Cooper); Stats. 2015,

ch. 375; both sought to clarify section 786 and remedy the ambiguities and concerns raised by stakeholders about the original legislation.

Section 786 now requires that when a child satisfactorily completes a term of informal or formal probation for any offense that is not a 707(b) offense committed when the child was 14 or over, the court must dismiss that petition and seal the records pertaining to that arrest and offense. The statute now provides that the records to be sealed must include records in the custody of the court, law enforcement agencies, the probation department, and the Department of Justice. It also allows the child to request that additional records be sealed and allows the court to grant that sealing request if it finds that sealing the additional record will “promote the successful reentry and rehabilitation of the child (Welf. & Inst. Code, § 786(e)(2)).” The court is also authorized to seal records pertaining to prior petitions if the court finds that the sealing criteria in section 786 have been met.

To address the many concerns that were raised by stakeholders as the prior version of section 786 was being implemented; the new statute gives many provisions allowing access to a previously sealed record to ensure that the courts and their juvenile justice system partners can carry out their other statutory obligations.

In addition to the changes to section 786, the Legislature also enacted Senate Bill 504 (Lara; Stats. 2015, ch. 388), amending section 781, which authorizes sealing of a delinquency record by petition to the court, as well as section 903.3, which provides for the imposition of a \$150 fee to recover the costs for probation or the court to research and prepare a sealing order. The amendments to section 781 provide that an unfulfilled order of restitution is not a bar to sealing under section 781 and that outstanding restitution fines and court-ordered fees are not to be considered when the court assesses the satisfactory rehabilitation of the petitioner. They also clarify the court’s authority to continue enforcing restitution, fees, and fines after a record has been sealed. The amendments to section 903.3 limit the cases in which a fee for sealing can be charged to those in which the sealing petitioner is 26 years of age or older.

New and revised forms needed to ensure compliance with the court’s duty to inform regarding sealing of records

Previously, no statutory directives mandated that the court and probation “shall ensure” that eligible individuals are informed of available record-sealing options. The newly revised section 781 directs that the council must develop informational materials and a form petition for sealing of records, and that these must be provided by the court or probation to eligible individuals when jurisdiction is terminated or the case is dismissed. Proposed new mandatory *How to Ask the Court to Seal Your Records* (form JV-595-INFO) includes information on the benefits and limitations of record sealing and includes the new provisions of SB 504 relating to restitution, fines and fees, and the fees for record sealing.

Because many minors with juvenile records will now have their cases dismissed and records sealed by the court as a matter of law if they satisfactorily complete their probation, the form also

provides brief information this type of sealing and refers them to proposed form *Sealing of Records for Satisfactory Completion of Probation* (form JV-596-INFO) for more information so that those who do not need to petition the court for sealing of records will be informed.

Proposed new optional *Request to Seal Juvenile Records* (form JV-595) is intended to provide the petitioner with a simple but optional method to request sealing. The form has been drafted in plain language to make it accessible to all petitioners and is needed to comply with the council's statutory duty under subdivision (h) of section 781 to create a form petition for sealing.

In addition, the committee proposes amending the *Juvenile Wardship Petition* (form JV-600) to alert any person subject to a delinquency petition that they may be able to have their records sealed at a later date. This change would provide some information on sealing to a broader audience of youth than are covered by the amended rule of court 5.830 discussed below.

New forms needed to implement recently enacted section 786

To provide the courts with a means to accomplish its new responsibility to seal records after dismissing a petition, as required by section 786, this proposal recommends approval of a new optional order form for this purpose. This form is very similar to the order form used to seal the records of minors who successfully complete a section 790 deferred entry of judgment program. It provides for the court to seal records in the custody of law enforcement, probation, and the Department of Justice in every case dismissed under section 786, and provides courts with the option to seal additional agency records as provided in subdivision (e). It further specifies the date by which the records must be destroyed as required by section 786. Because section 786 does not specify a time frame for destruction of these records, the committee opted to adopt the timelines for record destruction stated in section 781(d): five years from the date of the order for non-court records, and when the subject of the order attains age 38 for court records. However, because this time frame might result in records being destroyed before the subject of the order is 18, and access to the sealed records is allowed if a subsequent juvenile petition is filed, the committee has revised this time frame to provide that no record may be destroyed before the subject of the order has attained 18 years of age.

Because the enactment of section 786 has significantly changed the procedural landscape on sealing of juvenile records, the committee determined that it was necessary to create an additional mandatory informational form to explain the new sealing process and requirements and to alert those with juvenile delinquency records to the probability that their records will be sealed by the court without the filing of a petition. New form *Sealing at Termination and Dismissal* (Form JV-596-INFO), explains how the new sealing provisions will work, which records will be sealed, and who will have access to those records and refers those whose records are not sealed to form JV-595-INFO for information on petitioning the court. Form JV-596-INFO also satisfies the requirement in section 786 that the court provide notice to those whose records are sealed that they need not disclose those offenses or records with a section explaining what it means that the arrests are deemed not to have occurred. This form would be provided to

all youth whose records are sealed under section 786 in lieu of the JV-595-INFO to avoid confusion and the filing of unnecessary sealing petitions.

Finally, the committee proposes that the council adopt a new optional form *Acknowledgment of Juvenile Record Sealed* (form JV-591) to allow public agencies whose records are ordered sealed by the court under section 781 or 786 to inform the court that this sealing has occurred. This form will provide a means for agencies ordered to seal records to comply with the requirement in section 786 that they advise the court that they are sealing the record.

Form JV-590 revised to make it an optional form

Order to Seal Juvenile Records (form JV-590) is currently a mandatory form. To provide courts with maximum flexibility to issue record-sealing orders that reflect the individual court's needs, practices, and local agencies, the committee proposes that form JV-590 be revised from mandatory to optional. This change would provide flexibility from county to county, with the optional form available if needed. In addition, the committee proposes adding room on the form for the court to specify the date that these records should be destroyed and to allow those whose records are sealed to advise the court that sealing has been accomplished. In addition, the committee proposes changing the title of the form to include a reference to section 781 to distinguish it from the other sealing order forms.

Rule 5.830 amended to clarify the process for sealing of records under section 781

The proposed changes to rule 5.830 involve incorporating references to forms JV-595-INFO, JV 595, and JV-590 and defining the roles of the court and probation department in ensuring that the forms are provided as required. The rule would also direct probation to assemble a list of contact and agency addresses to be attached to the petition so that all records will be sealed.

When this revised rule was circulated for comment, the committee proposed revising it to limit the authority of a juvenile court to seal the records of a juvenile court in another county to those cases in which the underlying petition was transferred from the other court. The result of this change was to require petitioners with non-transfer records in more than one court to seek sealing of their records via two or more petitions. As discussed in the comments section below, there was much concern that this approach would be overly burdensome on petitioners and cause delays in accomplishing record sealing. In response to those comments the committee has restored the authority of the court to seal records in other courts, but has clarified that the court is not required to determine if the records should be sealed unless the case was transferred. In addition the rule requires the court to inform the petitioner if the court declines to seal the records of another court and to direct them to file a petition in that county.

The committee is also amending this rule to clarify that probation must forward any petition to the court when the petitioner has met the statutory rules for when a petition can be considered. Currently the rule directs probation to prepare the petition and a recommendation to the court when it determines that the petitioner is eligible under section 781. Due to concerns that this provision might inappropriately deny petitioners the opportunity for judicial review the

committee proposes to change the rule to make the filing of the petition contingent only on meeting the requirement that the petitioner be at least age 18 or that five years have elapsed since his or her last contact with the juvenile justice system.

The committee also proposes adding an advisory comment that provides general context on the purpose of record sealing and addresses the scope and overall specifications of the act of record sealing to clarify that record sealing can be accomplished in a variety of manners as long as they accomplish the intent of the statute.

New rule 5.840 would establish procedures for sealing under section 786

The proposal recommends adoption of a new rule of court to implement the sealing requirements of section 786 as required by the recently amended statute. The rule would result in the sealing of all records in the custody of law enforcement, probation, and the Department of Justice in every case dismissed under section 786, and presents the standard for sealing the records of additional agencies upon request as authorized in section 786(e). It further directs the clerk of the court to distribute the order to all named agencies, the subject of order, and his or her attorney. It requires the court to include the record destruction date as described in section 781(d), provided that no record is destroyed before the subject of the order reaches age 18. It also includes the access exceptions allowed by sections 786 and 787. This rule must be adopted to comply with the requirement in section 786 that the council adopt rules and forms for the standardized implementation of that statute.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the winter 2016 invitation to comment cycle, from December 11, 2015 to January 22, 2016, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals. Thirteen organizations and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees provided comment: four agreed with the proposal, four agreed with the proposal if modified, and six did not indicate a position but provided comments. A chart with the full text of the comments received and the committee's responses is attached at pages 28-75.

Sealing of records in other county jurisdictions

The committee's proposal as circulated for public comment would have amended rule 5.830 to require petitioners to seek record sealing in each county in which jurisdiction was terminated, rather than asking the last court of jurisdiction to seal all records from all counties unless the out of county records were for a case that was transferred. The committee proposed this revision in light of concerns that courts and probation agencies were not able to identify the full range of out of county records, and thus the rule was providing false assurance to petitioners that all of their

records were being sealed. Moreover, the committee noted that section 781 does not require nor suggest sealing of multiple county records. In addition, the committee was concerned that some judges might not be willing to seal the records of a sister court in a case in which they had never had any jurisdiction. Because this change would impose a greater burden on petitioners, the committee sought specific comment on whether this change would improve or hinder the current record-sealing process. While one commentator expressly indicated that it would improve the process and one suggested only a minor change, seven other commentators raised concerns about this change and worried that it would place undue burdens and delays on young people seeking to seal their records in order to move on in their careers and education.

While the committee remains concerned that probation departments and courts will not be able to identify all out of county records, the committee's proposal restores the authority of the court to seal the records of other courts in rule 5.830 in all cases, and requires the court to determine if sealing is appropriate in transfer cases. It also requires a court that declines to seal the record of another court to advise the petitioner of this determination and direct the petitioner to file a sealing petition in the other court. To ensure that the court and probation have as much information as possible about the petitioner's cases and contacts, the record sealing application and information form have been revised to alert the petitioner that the court can only seal those records identified on the petition.

Timeframe for record destruction

Section 786 required the court to set a date for when sealed records would be destroyed under that provision but offered no guidance as to what that timeframe should be. It also directed the Judicial Council to adopt rules of court and make forms available for the "standardized implementation of this section by the juvenile courts." Reading those two directives together, this committee proposed a standard timeframe for destruction of records, rather than simply leaving it to the discretion of the judge in each case. That timeframe was adopted from section 781 with the caveat that no records be destroyed before the subject of the order was 18 to ensure access for the allowable purposes under section 786. The committee sought specific comment on this issue, and one commentator disagreed with this approach and suggested that the courts should have full discretion to set this timeframe individually in each case and that the timeframe in section 781 was irrelevant because it applies only to orders under that section.

The committee considered this comment but concluded that while section 786 does not specify a timeframe for the destruction of records, it does require the Judicial Council to adopt rules of court and forms for the standardized implementation of the section by the juvenile court and it requires the courts in their orders to specify the destruction date. Given this directive the committee concluded that it was appropriate to set a timeframe for destruction in the rule of court and that the timeframe in section 781 was the clearest statement of what the legislature deems an appropriate timeframe for destruction of juvenile records.

Information forms

The committee proposed two information forms on record sealing in light of the fact that the adoption of section 786 will result in many records being sealed as a matter of law by the court making information on that process more relevant to those whose records are sealed than information on petitioning the court for sealing at a later date. The committee sought specific comment on whether it was preferable to have one information form or two and the commentators were split. Some preferred the simplicity of one form, while others proposed that two forms would be preferable, but that they should be revised to make them more tailored to their specific audience. The committee adopted the latter approach and has retained two forms – one for those whose records are sealed under section 786 and one for those whose records are not sealed. The forms are specifically addressed to their target audiences and refer those who want more information to the other form.

Optional form to advise the court that records have been sealed

The committee proposed a new optional form to allow agencies to advise the court that its order was being followed and sought specific comment on whether this form would be of value to the courts. A number of courts agreed that it would be helpful and specific suggestions to make the form more useful (including adding instructions) were adopted by the committee.

Clarifying the role of probation in the sealing process

A number of commentators raised concerns about the fact that rule 5.830 requires that applicants seeking record sealing under section 781 must initiate their applications with the probation department who then investigates and prepares the petition for the court if the applicant is eligible under section 781. This provision was not proposed to be amended by the committee in the proposal that circulated for comment, but a number of commentators were concerned that this provision makes probation a gatekeeper for sealing petitions and that some petitions might be being inappropriately denied. These commentators suggested that the rule allow filing directly with the court and/or that probation be required to forward all applications to the court even if they deem them ineligible.

The committee declined to change the rule to allow direct filing with the court because the court would be turning the application over to probation for investigation and a report anyway, but the committee did clarify the rule to require that probation prepare petitions and reports for any case that meets the objective statutory timing criteria that the petitioner be at least 18 or that at least five years have passed since probation was terminated.

Providing information on federal recognition of sealing orders

While California statute is clear that any arrest for which a record has been sealed shall be deemed never to have occurred and need not be reported on employment applications, the federal government does not afford this same status to state sealing orders, such that an applicant who has sealed records and applies to enlist in the military or obtain federal employment may be in a difficult situation when asked about his or her juvenile justice history. The committee sought to provide some warning on the information forms about this dilemma so that the information would not be misleading, but a number of commentators opined that the committee had made

assertions that were overstated and might also be harmful to those seeking to enlist or obtain federal employment. In response, the committee has revised this language on the information forms to simply alert petitioners to the fact that the federal government may not recognize the state sealing order and to seek legal advice on how to proceed.

Sealing of child's attorney records

A number of commentators were concerned that the proposed order form to seal records under section 786 which circulated for comment included a check box for the court to seal the child's attorney's records if the child requested it. The commentators suggested that there was no reason to seal defense counsel records because of attorney client confidentiality rules, and that it would be inappropriate to do so because it would interfere with the ability of counsel to advise the client in the future. In light of these concerns the committee removed this check box and line from the form.

Advisory Committee Comment on Procedures to Manage Sealed Records

As circulated for public comment, this proposal includes a new Advisory Committee Comment for rule 5.830 that the committee proposed to clarify the means a court can use to seal a record. The comment discusses means of accomplishing the sealing of records and suggests some permissible means to accomplish the objectives of the sealing rule and statute and includes a discussion of sealing electronic records. Two commentators raised concerns about the language, with one suggesting that it be strengthened and the other suggesting that it inappropriately proposed sealing methods other than physical sealing. The committee reviewed the language and concluded that it was clear and consistent with the intent of the rule and the statute.

Delaying implementation by four months from council approval

The Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees submitted a comment agreeing with the proposal, but suggesting that additional time would be needed for courts to implement the proposed changes. The committee appreciates these concerns, but determined that because the proposal is needed to implement statutory changes that became effective on January 1, 2015, further delay would not be of benefit to the juvenile courts which need the forms to comply with the statutory mandate.

The committee also received a number of suggestions to clarify and correct provisions in the proposed rules and forms many of which were adopted in this revised proposal.

Alternatives

With the passage of Assembly Bill 1006, the Legislature directed the Judicial Council to develop informational materials and a form petition to ensure that eligible individuals are adequately informed about the option of sealing their records and provided with a form to assist them in petitioning the court. Consideration was given to how the informational materials could be most effectively presented and in what format. The committee determined that an information form, available on the court website, would be more likely to reach the target audience and remain more relevant than a less formal handout, which might, over time, be

forgotten. In addition, making the information form mandatory would raise its relevance by increasing awareness and encouraging compliance. The committee, to further increase the likelihood for the form to reach its target audience and to provide information at an earlier phase of the proceedings, determined that adding a notice about record sealing to the *Juvenile Wardship Petition* (form JV-600) would be beneficial.

Consideration was also given to whether rule 5.830 needed to be revised. Ensuring consistency and clarifying the new requirements are the clear benefits of revising the rule as proposed. Although a prior version required probation to develop a list of cases and contacts to be handed out at the termination of each case, with the enactment of section 786 and the increasing frequency of sealing as a matter of law, it seemed less burdensome on probation to have the contact list created at the time the petition is filed so that this work only occurs when needed.

Request to Seal Juvenile Records, form JV-595, was created as required by the Legislature but is proposed as an optional form to allow petitioners to submit a request to seal in whatever manner they prefer. Although the form provides a convenient method of petitioning the court, mandating its use may delay applications and run contrary to the intent of Assembly Bill 1006. Similarly, revising form JV-590, *Order to Seal Juvenile Records—Welfare and Institutions Code Section 781*, from a mandatory form to an optional form will lead to more flexibility in implementation for the courts.

When considering how to implement the provisions of section 786, the committee considered modifying existing rules and forms, but given that this method of sealing will likely become the most common sealing procedure and given its sufficient distinctions from existing sealing by petition processes, the committee concluded that new forms would ultimately be more useful to the courts.

As discussed above, the committee considered proposing only one informational form on sealing, but determined that two forms would cause less confusion in the long run given the different situations of those whose records are sealed as a matter of law by the court under section 786 and those whose records are not.

Implementation Requirements, Costs, and Operational Impacts

Courts will be required to produce paper copies of the information form and petition as required by AB 1006. Some courts may incur programming charges if electronic systems are used for the court order. Implementation of section 786 will require courts to generate and disseminate many new sealing orders as required by the legislation. The optional order form will assist courts in carrying out this function, and the rule will clarify the basic procedures required to accomplish the new requirements. In addition, the optional acknowledgment form will provide a means for courts to obtain the required advisement that records have been sealed. The proposed modifications to rule 5.830 may result in more sealing petitions being prepared by probation, but

those increases will be more than offset by the reduction in petitions overall as many records will be sealed by the court at the end of the probation term under section 786.

Relevant Strategic Plan Goals and Operational Plan Objectives

Because this proposal will amend, revise, and create rules and forms to allow courts to implement statutory requirements, it supports Goal III, Modernization of Management and Administration (Goal III.A).

Attachments and Links

1. Cal. Rules of Court, rules 5.530 and 5.40 at pages 13-17
2. Judicial Council forms JV-590, JV-591, JV-595, JV-595-INFO, JV-596, JV-596-INFO, and JV-600, at pages 18-28
3. Chart of comments, at pages 29-76
4. Assembly Bill 1006
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1006
5. Senate Bill 1038
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1038
7. Senate Bill 504
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB504
6. Assembly Bill 666
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB666
6. Assembly Bill 989
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB989

Rule 5.830 of the California Rules of Court would be amended and rule 5.840 adopted, effective January 1, 2016, to read:

1 **Rule 5.830. Sealing records (§ 781)**

2
3 **(a) Sealing records—former wards (§ 781)**

4
5 (1) A former ward of the court may apply to petition the court to order juvenile
6 records sealed. Determinations under section 781 ~~must~~ may be made by the
7 court in any ~~the~~ county in which wardship was ~~last~~ terminated. A court may
8 seal the records of another court when it determines that it is appropriate to
9 do so, and must make a determination on sealing those records if the case has
10 been transferred to its jurisdiction under rules 5.610 and 5.612.

11
12 (2) At the time jurisdiction is terminated or the case is dismissed, the court must
13 provide or instruct the probation department to provide form JV-595-INFO,
14 How to Make Ask the Court to Seal Your Records, and form JV-595, Request
15 to Seal Juvenile Records, to the ward if the court does not seal the ward’s
16 records under section 786. If the court does seal the ward’s records under
17 section 786, the court must provide or instruct the probation department to
18 provide form JV-596-INFO, Sealing of Records at Termination and
19 Dismissal, and a copy of the sealing order as provided in rule 5.840.

20
21 ~~(1)~~(3) Application—submission

22
23 (A) The application for a petition to seal records must be submitted to the
24 probation department in the county in which wardship was ~~last~~
25 terminated.

26
27 (B) The application for a petition to seal juvenile records may be submitted
28 on form JV-595, Request to Seal Juvenile Records, or on another form
29 that includes all required information.

30
31 ~~(2)~~(4) Investigation

32
33 If the applicant is at least eighteen years of age, or if it has been at least five
34 years since the applicant’s probation was last terminated or the applicant was
35 cited to appear before a probation officer or was taken before a probation
36 officer under section 626 or was taken before any officer of a law
37 enforcement agency, ~~the probation officer determines that under section 781~~
38 the former ward is eligible to petition for sealing, the probation officer must
39 do all of the following:

40
41 (A) Prepare the petition;

1 (B) Conduct an investigation under section 781 and compile a list of cases
2 and contact addresses of every agency or person that the probation
3 department knows has a record of the ward’s case—including the date
4 of each offense, case number(s), and date when the case was closed—
5 to be attached to the sealing petition.

6
7 (C) Prepare a report to the court with a recommendation supporting or
8 opposing the requested sealing; and

9
10 (D) Within 90 days from receipt of the application if only the records of
11 the investigating county are to be reviewed, or within 180 days from
12 receipt of the application if records of other counties are to be
13 reviewed:

14
15 (i) File the petition;

16
17 (ii) Set the matter for a hearing, which may be nonappearance; and

18
19 (iii) Notify the prosecuting attorney of the hearing.

20
21 ~~(3)~~(5) * * *

22
23 ~~(4)~~(6) If the petition is granted, the court must order the sealing of all records
24 described in section 781 using form JV-590, *Order to Seal Juvenile*
25 *Records—Welfare and Institutions Code Section 781*, or a similar form. The
26 order must apply in the county of the court hearing the petition and in all
27 other counties in which there are juvenile records concerning the petitioner. If
28 the court determines that it is not appropriate to seal the records of another
29 court for a petition that has not been transferred, it must inform the petitioner
30 that a petition to seal those records can be filed in the county where the other
31 court is located.

32
33 **(b) Sealing—nonwards**

34
35 (1) For all other persons described in section 781, application may be submitted
36 to the probation department in any county in which there is a juvenile record
37 concerning the petitioner, and the procedures of (a) must be followed.

38
39 (2) When jurisdiction is terminated or the case is closed, the probation
40 department must provide the following forms to individuals described under
41 section 781(h)(1)(A) and (B):
42

- 1 (A) If the individual’s records have not been sealed under section 786, form
2 JV-595-INFO, *How to Make Your Juvenile Records Private*, and form
3 JV-595, *Request to Seal Juvenile Records*; or
4 (B) If the individual’s records have been sealed under section 786, form
5 JV-596-INFO, *Sealing of Records at Termination and Dismissal*, and a
6 copy of the sealing order.

7
8 (c) * * *

9
10 (d) **Distribution of order**

11 The clerk of the issuing court must:

- 12
13
14 (1) Send a copy of the order to each agency and official listed in the order; ~~and~~
15
16 (2) Send a certified copy of the order to the clerk in each county in which a
17 record is ordered sealed.

18
19 (e) * * *

20
21 **Advisory Committee Comment**

22
23 This rule is intended to describe the legal process by which a person may apply to petition the
24 juvenile court to order the sealing—that is, the prohibition of access and inspection—of the
25 records related to specified cases in the custody of the juvenile court, the probation department,
26 and other agencies and public officials. This rule establishes minimum legal standards, but does
27 not prescribe procedures for the management of physical or electronic records or methods for
28 preventing public inspection of the records at issue. These procedures remain subject to local
29 discretion. Procedures may, but are not required to, include the actual sealing of physical records
30 or files. Other permissible methods of sealing physical records pending their destruction under
31 section 781(d) include, but are not limited to, storing sealed records separately from publicly
32 accessible records, placing sealed records in a folder or sleeve of a color different from that in
33 which publicly accessible records are kept, assigning a distinctive file number extension to sealed
34 records, or designating them with a special stamp. Procedures for sealing of electronic records
35 must accomplish the same objectives as the procedures used to seal a physical record.

36
37 **Rule 5.840. Dismissal of petition and sealing of records (§ 786)**

38
39 (a) **Applicability**

40
41 This rule states the procedures to dismiss and seal the records of minors who are
42 subject to section 786.

1 **(b) Dismissal of petition**
2

3 If the court finds that a minor subject to this rule has satisfactorily completed his or
4 her informal or formal probation supervision the court must order the petition
5 dismissed. The court must not dismiss a petition if it was sustained based on the
6 commission of an offense listed in subdivision (b) of section 707 committed when
7 the minor was 14 or older unless the finding on that offense has been dismissed or
8 was reduced to an offense not listed in subdivision (b) of section 707. The court
9 may also dismiss prior petitions filed or sustained against the minor if they appear
10 to the satisfaction of the court to meet the sealing and dismissal criteria in section
11 786. An unfulfilled order or condition or restitution or an unpaid restitution fee
12 must not be deemed to constitute unsatisfactory completion of probation
13 supervision. The court may not extend the period of supervision or probation
14 solely for the purpose of deferring or delaying eligibility for dismissal and sealing
15 under section 786.

16
17 **(c) Sealing of records**
18

19 For any petition dismissed by the court pursuant to section 786, the court must also
20 order sealed all records in the custody of the court, law enforcement agencies, the
21 probation department, and the Department of Justice pertaining to those dismissed
22 petition(s) using form JV-596, *Dismissal and Sealing of Records—Welfare and*
23 *Institutions Code Section 786*, or a similar form. The court may also seal records
24 pertaining to these cases in the custody of other public agencies upon a request by
25 an individual who is eligible to have records sealed under section 786, if the court
26 determines that sealing the additional record(s) will promote the successful reentry
27 and rehabilitation of the individual. The prosecuting attorney, probation officer,
28 and court must have access to these records as specifically provided in section 786.
29 Access to the records for research purposes must be provided as required in section
30 787.

31
32 **(d) Destruction of records**
33

34 All sealed records must be destroyed according to section 781(d), except that no
35 record shall be destroyed before the subject of the order has attained 18 years of
36 age. The court must specify the destruction date for all records in its order.

37
38 **(e) Distribution of order**
39

40 The clerk of the issuing court must send a copy of the order to each agency and
41 official listed in the order and provide a copy of the order to the individual whose
42 records have been sealed and his or her attorney. The court shall also provide or

1 instruct the probation department to provide the individual with form JV-596-
2 INFO, *Sealing of Records at Termination and Dismissal*.

3

4 **(f) Deadline for sealing**

5

6 Each agency, individual, and official notified must immediately seal all records as
7 ordered and advise the court that its sealing order has been completed using form
8 JV-591, *Acknowledgment of Record Sealed*, or another means.

9

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ 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: _____	
CASE NAME: _____	
ORDER TO SEAL JUVENILE RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 781	CASE NUMBER: _____

1. Name of petitioner (*specify aliases*): _____ Date of birth: _____
2. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (*name*): _____
3. The court has read and considered the petition and the report of the probation officer.
4. The petition is
 a. Granted. b. Denied.

THE COURT ORDERS

5. a. The sealing of petitioner's juvenile records in the custody of this court and the courts, agencies, and officials named below (*designate county*):

 See attachment (5) for additional names.
 b. The destruction of all sealed records according to Welfare and Institutions Code section 781(d).
 c. Date court records must be destroyed: _____
 d. Date all other records must be destroyed: _____
6. Petitioner is relieved from the registration requirements under Penal Code section 290, and the registration information in the custody of the Department of Justice and other agencies and officials listed above shall be destroyed.
7. The clerk shall send a certified copy of this order to the clerk in each county in which a record is ordered sealed, and a copy to each agency and official listed above.

Date: _____ _____
JUDICIAL OFFICER OF THE SUPERIOR COURT

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: _____ Clerk, by _____, Deputy

AGENCY: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	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:	CLERK'S USE ONLY
CASE NAME:	CASE NUMBER:
ACKNOWLEDGMENT OF JUVENILE RECORD SEALED	

INSTRUCTIONS: Pursuant to Welfare and Institutions Code sections 781 and 786, agencies must advise the court of their compliance with the court's sealing order. Please return the completed Acknowledgment of Juvenile Record Sealed form to the court upon sealing of the records.

1. TO THE CLERK OF THE COURT: I certify that the records ordered to be sealed by the court have been sealed, and a copy of this acknowledgment of record sealed has been sent to the court advising the court of compliance with its order.

2. Date of Court Order:

3. Child's Name:

4. Agency Name:

Date:

By: _____
Type or print your name

▶

Signature

*Probation stamps date here when form is received.***DRAFT
NOT APPROVED
BY THE JUDICIAL
COUNCIL**

This form can be used to petition the juvenile court to seal your juvenile records. More information about sealing is available on form JV-595-INFO, *How to Make Your Juvenile Records Private*.

Submit this form to the probation department in the last county where you were on juvenile probation or, if you were not on probation, in any county where you had contact with law enforcement or probation that did not result in a court case. Once the probation department receives the completed form, it will have 90 days to file a record-sealing petition with the court for you, or 180 days if you include agencies outside of this county.

- ① My information:
- a. Name: _____
- b. AKA (*nickname, or other family name*): _____
- c. Address: _____
- d. City, state, zip code: _____
- e. Area code and telephone number: _____
- f. Date of birth: _____
- g. E-mail address: _____

- ② I had a case(s) that went to court.
Case file number(s) (*if known*): _____
The date probation was terminated (*if known*): _____
- I don't remember my case number and/or date.
- See attached. (*If you need more space, you may attach a separate page.*)

- ③ I had contact with law enforcement but did not go to court.
- Date(s) I had contact with law enforcement: _____
- Name(s) of law enforcement or other agency(ies): _____
- See attached. (*If you need more space, you may attach a separate page.*)

- ④ I understand that the probation department is responsible for requesting the juvenile court to seal the records of only those agencies in its records and those listed on page 2 of this form. I understand that after I file this document and pay any fees that are required (note: fees are required only for petitioners 26 years of age and older and may be waived), the probation department will have 90 days to conduct an investigation and file a record-sealing petition for me with the juvenile court. I also understand that some records may not be eligible for sealing. I am aware that form JV-595-INFO, *How to Ask the Court to Seal Your Records*, provides more information on this process.

*Fill in court name and street address:***Superior Court of California, County of***Fill in your name:***Name:***Fill in case number, if known:***Case Number:**

Case Number:

Your name: _____

Note: When you file this form with the probation department, it will research your case history and attach a list of contacts and addresses of all agencies that it knows have records of the case(s) and contacts(s) you listed on page 1. If you have had contacts with law enforcement or another agency with a record of your offense that may not have been reported to the probation department, please list them below, or those records may not be sealed. If your case was transferred from one county to another, your records in both counties will be sealed. If you have a probation record in more than one county that was not transferred, you may ask the court to seal those records as well. If the court does not seal those records it will inform you that you need to file this form in that county. Contacts not included on this form may not be sealed. The court can only seal those records listed on the petition.

5 Include all contacts (with addresses) you had, before your 18th birthday, with the agencies below that might not be part of your probation records:

- Court: _____
- Probation Department: _____
- Sheriff's Department: _____
- Police Department: _____
- California Highway Patrol: _____
- Department of Motor Vehicles: _____
- Law Enforcement: _____
- School(s): _____
- Homeland Security: _____
- Other: _____
- See attached. *(If you need more space, you may attach a separate page or pages listing the contacts.)*

I declare that the information on this form is true and correct to the best of my knowledge.

Date: _____

Type or print your name



Sign your name

JV-595-INFO How to Ask the Court to Seal Your Records

If you were arrested or subject to a court proceeding or had contact with the juvenile justice system when you were under 18, there may be records kept by courts, police, schools or other public agencies about what you did. If you make those records **private** (sealed), it could be easier for you to:

- Find a job.
- Get a driver's license.
- Get a loan.
- Rent an apartment.
- Go to college.

If the court sealed your records when probation was terminated you do not need to ask for them to be sealed.

There are now two ways that records may be sealed in California. As of January 1, 2015, courts are required to seal records in certain cases when the court finds that probation (formal or informal) is satisfactorily completed. If the court sealed all of your records at the end of your case you should have received a copy of the sealing order, and you do not need to ask the court to seal the records in that order.

For more information on when the court seals your records at termination of probation see Form **JV-596-INFO**.

If you have more than one juvenile case or contact and/or are unsure if your records were sealed by the court, ask your attorney or probation officer.

Who qualifies to ask the court to seal their juvenile records?

If the court has not already sealed your records, you can ask the court to make that order. You qualify if:

- You are at least **18**; or it has been at least five years since your case was closed; and
- You have been rehabilitated to the satisfaction of the court.

What if you owe restitution or fines?

The court may seal your records even if you have not paid your full restitution order to the victim.

The court will not consider outstanding fines and court ordered fees when deciding whether to seal your records, but you are still required to pay the restitution, fines, and fees, and your records can be looked at to enforce those orders.

When do you *not* qualify to seal your records?

- If you were convicted as an adult of an offense involving moral turpitude, such as:
 - A sex or serious drug crime,
 - Murder or other violent crime, or
 - Forgery, welfare fraud, or other crime of dishonesty.
 or
- If, when you were 14 or older and the court found that you committed a serious offense listed in Welfare and Institutions Code section 707(b), such as murder, arson, rape, or other violent crime, as well as some offenses involving drugs or weapons, unless the court has dismissed that petition.
- If you are unsure if you are eligible ask your attorney.

Who can see your sealed records?

- DMV can see your vehicle and traffic records and share them with insurance companies.
- The court may see your records if you are a witness or involved in a defamation case.
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If your records were sealed automatically, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment program (diversion).
- You can request the court to unseal your records if you want to have access to them or allow someone else to inspect them.

How do you ask to have your records sealed?

- ① You must fill out a court form. Form JV-595, *Request to Seal Juvenile Records*, at www.courts.ca.gov/forms.htm, can be used, or your court may have a local form.



- ② When you file your petition, the probation department will compile a list of every law enforcement agency, entity, or person the probation department knows has a record of your case, as well as a list of any prior contacts with law enforcement or probation and attach it to your petition.
- ③ If you think there are agencies that might have records on you that were never sent to probation, you need to include them, or the court will not know to seal them.
If you are not sure what contacts you might have had with law enforcement, you can get your criminal history record from the Department of Justice. See <http://oag.ca.gov/fingerprints/security> for more information.
- ④ Take your completed form to the probation department where you were on probation. (If you were not on probation, take your form to any county probation office where you have a juvenile record.)
Note: A small number of counties require you to take your form to the court. More information on each county's specific requirements can be found at www.courts.ca.gov/28120.htm.
- ⑤ If you are currently 26 years of age or older, you may have to pay a fee. If you cannot afford the fee, ask the probation department or the court about a fee waiver.
- ⑥ Probation will review your form and submit it to the court within 90 days or 180 days if you have records in two or more counties.
- ⑦ The court will review your application. The court may decide right away to seal your juvenile records. Or the court may order a hearing. If there is a hearing, you will receive a notice in the mail with the date and time of the hearing. If the notice says your hearing is "unopposed" (meaning there is no disagreement with your request), you may choose not to go.

- ⑧ If you qualify to have your juvenile records sealed, the court will make an order to seal the eligible records listed on your application.
Important! The court can seal only records it knows about. Make sure you list *all* records from *all* counties where you have any records. The court will tell you if it does not seal records from another court that were listed on your petition and you will need to file a petition in that county to seal those records.
- ⑨ If the court grants your request, it will order each agency, entity, or person on your list to seal your records. The court will also order the records destroyed by a certain date.
- ⑩ The court will provide you with a copy of its order. Be sure to keep it in a safe place.

What about sex offender registration? (Penal Code, § 290)

If the court seals a record that required you to register as a sex offender, the order will say you do **not** have to continue to register.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you are seeking to enlist or apply for a job requiring you to provide information about your juvenile records seek legal advice about this issue.

Questions?

If you are not sure if you qualify to seal your records or if you have other questions, talk to a lawyer. The court is not allowed to give you legal advice. More information on sealing your records can be found at www.courts.ca.gov/28120.htm.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 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:	
CASE NAME:	
DISMISSAL AND SEALING OF RECORDS— WELFARE AND INSTITUTIONS CODE SECTION 786	CASE NUMBER:

1. Name of subject child: _____ Date of birth: _____
2. a. Date of hearing: _____ Dept.: _____ Room: _____
 b. Judicial officer (name): _____
3. The court has read and considered the report of the probation officer and any other evidence presented or information provided.

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

4. The child has satisfactorily completed probation or a term of informal supervision.
5. The petition(s) filed on (date(s)): _____ is/are dismissed.
6. The child's juvenile records related to the arrest(s) on (date(s)): _____ regarding an alleged violation of (specify offense(s)): _____ in the custody of this court and of the courts, agencies, and officials listed below are ordered sealed:

- Probation Dept. (specify county): _____
- California Dept. of Justice
- Law enforcement agency (specify all): _____
 Law enforcement case number(s): _____

7. The court finds that sealing the following additional public agency records will promote the successful reentry and rehabilitation of the subject child and orders the records in their custody relating to petitions and arrests listed in 5. and 6 sealed:
 - District Attorney (specify county): _____
 - School: _____
 - Department of Motor Vehicles: _____
 - Other (specify): _____
 - Attachment

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

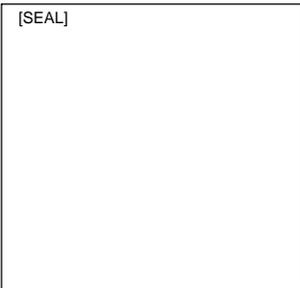
8. All records pertaining to the dismissed petition are to be destroyed according to Welfare and Institutions Code section 781(d), and the arrest is deemed never to have occurred except that the prosecuting attorney, the probation officer, and the court may access these records for the specific purposes stated in Welfare and Institutions Code section 786 and no records shall be destroyed before the subject child has attained 18 years of age.

- a. Date court records must be destroyed:
- b. Date all other records must be destroyed:

9. The clerk shall send a certified copy to the clerk in each county in which a record is ordered sealed and a copy to the child, the child's attorney, and each agency and official listed above.

Date:


 JUDICIAL OFFICER OF THE SUPERIOR COURT



CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: _____ Clerk, by _____, Deputy

JV-596-INFO Sealing of Records for Satisfactory Completion of Probation

In many cases, the court will seal your records if you satisfactorily complete probation (formal or informal supervision).

If your case is dismissed by the juvenile court after January 1, 2015, because you satisfactorily completed your probation (formal or informal) in many cases the court will have sealed your records. If the court sealed your records for this reason, you should have received a copy of the sealing order with this form.

If the court finds that you have not satisfactorily completed your probation, it will not dismiss your case and will not seal your records at termination. If you want to have your records sealed in this situation, you will need to ask the court to seal your records at a later date (see **Form JV-595-INFO** for more information about asking the court to seal your records).

The court will not seal your records if you were found to have committed an offense listed in Welfare and Institutions Code section 707 (b) (these are violent offenses such as killing, raping, or kidnapping, and also some offenses involving drugs or weapons) when you were 14 or older and it was not dismissed or reduced to a lesser offense not listed in 707 (b).

How will the court determine if probation is satisfactorily completed?

If you have done what you were ordered to do while on probation, and have not been found to have committed any further crimes (felonies or any misdemeanors for crimes involving moral turpitude, such as a sex crime or a crime involving dishonesty), the court will find that your probation was satisfactorily completed even if you still owe restitution, court ordered fees, and fines, **BUT...**

Restitution and court fines and fees must still be paid.

Even if your records are sealed, you are still required to pay your restitution and court-ordered fees and fines. Your sealed records can be looked at to enforce those orders.

Which records will be sealed?

The court will order your court, probation, Department of Justice, and law enforcement agency records sealed for the case the court is closing and prior cases if the court determines you are eligible. If you or your attorney ask the court, it can also seal records of other agencies (such as the District Attorney) if it finds that doing so would help you to be rehabilitated.

If you have more than one juvenile case and are unsure which records were sealed, ask your attorney or probation officer.

Who can see your sealed records?

- If your records were sealed by the court at dismissal, the prosecutor and others can look at your record to determine if you are eligible to participate in a deferred entry of judgment or informal probation program (diversion).
- If you apply for benefits as a nonminor dependent, the court may see your records.
- If a new petition is filed against you for a felony offense, probation can look at what programs you have participated in, but cannot use that information to keep you in juvenile hall or to punish you.
- If you have been found to have committed a felony by the juvenile court, your sealed records can be viewed to determine what disposition (sentence) the court should order.
- If you are arrested for a new offense and the prosecuting attorney asks the court to transfer you to adult court, your record can be reviewed to determine if transfer is appropriate.
- You can request the court to unseal your records if you want to have access to them or allow someone else to inspect them.

NOTE: Even if someone looks at your records in one of these situations, your records will stay sealed in the future and you do not need to ask the court to seal them.

If your records are sealed, do you have to report the offenses in the sealed records on job, school, or other applications?

No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not need to report them. **However**, the military and some federal agencies may not recognize sealing of records and may be aware of your juvenile justice history, even if your records are sealed. If you are seeking to enlist or apply for a job requiring you to provide information about your juvenile records see legal advice about this issue.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ 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: _____	
CASE NAME: _____	
JUVENILE WARDSHIP PETITION <input type="checkbox"/> § 601(a) <input type="checkbox"/> § 601(b) <input type="checkbox"/> § 602(a)	CASE NUMBER: _____

1. Petitioner on information and belief alleges the following:

a. <input type="checkbox"/> The child named below comes within the jurisdiction of the juvenile court under the following sections of the Welfare and Institutions Code (<i>check applicable boxes; see attachments for concise statements of facts</i>): <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a) Violation (<i>specify code section</i>): _____			
b. <input type="checkbox"/> Under a previous order of this court, dated _____, the child was declared a ward under Welfare and Institutions Code section <input type="checkbox"/> 601(a) <input type="checkbox"/> 601(b) <input type="checkbox"/> 602(a).			
c. Child's name and address: _____	d. Age: _____	e. Date of birth: _____	f. Sex: _____
g. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	h. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged		
i. Name: _____ Address: _____ <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> guardian <input type="checkbox"/> unknown If mother or father (<i>check all that apply</i>): <input type="checkbox"/> legal <input type="checkbox"/> biological <input type="checkbox"/> presumed <input type="checkbox"/> alleged	j. Other (<i>state name, address, and relationship to child</i>): <input type="checkbox"/> No known parent or guardian resides within this state. This adult relative lives in this county or is closest to this court.		
k. Attorney for child (<i>if known</i>): Address: _____ Phone number: _____	l. Child is <input type="checkbox"/> not detained <input type="checkbox"/> detained. Date and time of detention (<i>custody</i>): _____ Current place of detention (<i>address</i>): _____		

(See important notices on page 2.)

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

- 2. Petitioner requests that the court find these allegations to be true.
- 3. Petitioner requests a hearing to determine whether the child is a fit and proper subject under juvenile court law under Welfare and Institutions Code section 707(a)(1) 707(a)(2) 707(c).

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

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Indian Child Inquiry Attachment (form ICWA-010(A)) is completed and attached.

Number of pages attached: _____

TO PARENTS OR OTHERS LEGALLY RESPONSIBLE FOR THE SUPPORT OF THE CHILD

You and the estate of your child may be jointly and severally liable for the cost of the care, support, and maintenance of your child in any placement or detention facility, the cost of legal services for your child or you by a public defender or other attorney, the cost of supervision of your child by order of the juvenile court, and the cost of any restitution owed to the victim.

RECORD SEALING

The court may seal your records at the conclusion of your case or you may request sealing at a later date. Please see form JV-595-INFO, *How to Ask the Court to Seal Your Records*, and form JV-596-INFO, *Sealing of Records for Satisfactory Completion of Probation*, available through your attorney or www.courts.ca.gov/forms.htm, for more information about record sealing.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Alternate Public Defender’s Office of Los Angeles Maureen Pacheco	NI	<p>First, we would like to thank the Family and Juvenile Law Advisory committee members for the extensive work in proposing these informational forms, new and amended rules, and optional judicial forms. Given the rapid and significant changes we have seen in sealing provisions in recent legislative sessions, the proposals are thorough and make great progress in simplifying and clarifying the new laws. Globally, the</p> <p>1. Proposed amended Rule 5.830 Although it is intended to ensure that all juvenile records are sealed, we are troubled that the default position in the new rule will now place the burden on the youth to file in each of the juvenile courts unless the case has been formally transferred. It is not only a burden on the youth; it also seems a costly duplication of efforts to have each probation department and court involved in handling separate petitions when one global sealing could achieve the same results. From the comments attached to the rule, it appears the only barrier to this process is the lack of information about those records. Because we will be seeing less of the petitions under 781 going forward, it seems that the burden of gathering the information would be more easily borne by the probation department in the last court of jurisdiction. It appears that this is the duty of the probation investigation anyway under (a)(4)(B).</p>	<p>No response required.</p> <p>In response to a number of comments raising concerns about the burden on the petitioners, the committee has revised the rule to allow courts to seal out of county records and to require them to consider doing so when the records are for a case that has been transferred. Because some courts may not be comfortable sealing the records of other courts in cases that have never been under their jurisdiction, the rule has been clarified to require the court to inform the petitioner if it declines to seal the records of another court or county and to direct them to file a petition in that county. Because there is no statewide database with information on all juvenile contacts with law enforcement or the courts, the JV-595 and JV-595-INFO forms have been revised to make it clear that the court can only seal those records that it can identify.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>With respect to the application and investigation, we believe the rule should clarify that the petition may be filed in the court or with probation, and more importantly, that probation must submit the applications/petitions to the court rather than having probation unilaterally determine whether a petitioner is eligible or not. While (a)(4)(D) provides that probation must file the petition, we are aware anecdotally of cases in which probation is tasked as a gatekeeper and given authority to deny petitions.</p> <p>Rule 5.830 allows the order to seal records under 781 to be an optional order (Form JV 590). WE believe this is good policy, allowing flexibility among counties that may, e.g., want to add additional provisions such as preemptively listing the courts/agencies etc. whose records shall be sealed.</p> <p>.</p> <p>Last, the commentary of the Advisory Committee should be strengthened in terms of its language re the storage of sealed records. The goal and purpose of record sealing is to ensure that only the very limited access allowed by the law is countenanced. For that reason, the language should be strengthened to reflect that it is not acceptable to maintain sealed records in a manner that allows for any undermining of the laws intent to foreclose access to these records.</p>	<p>The committee can see no benefit in allowing the petition to be filed in the court because the court will simply refer it to the probation department to investigate and prepare the petition. However, the committee has clarified the rule to require probation to submit the petition in any case in which the timing requirements in section 781 have been met (i.e. the petitioner is at least 18 or it has been at least 5 years since probation was terminated or there was a contact with law enforcement) so that there can be no concern that probation is making judicial determinations on sealing matters.</p> <p>No response required.</p> <p>The committee has reviewed the proposed comment to the rule and concluded that it is clear that any method used to seal records must ensure that they are protected from unauthorized access or disclosure.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>2. Proposed new rule 5.840</p> <ul style="list-style-type: none"> • Deadline for sealing: should the court be setting a follow-up date to ensure compliance? • Subsection (b) should contain the explicit requirement of the statute that unpaid fees or unfulfilled restitution conditions shall not be a bar, nor shall the court extend probation on that basis if the youth otherwise qualifies. <p>3. JV 595-INFO and JV 596-INFO</p> <ul style="list-style-type: none"> • These forms are confusing, and we wonder if perhaps they can be reworked to more clearly accomplish their purpose in providing user friendly information. It might be that three separate info forms would be better; as written they overlap in ways confusing to the person who will not really understand what the two different ways of sealing involve. However, we will attempt to give comments on the forms as they are proposed • From the comments, JV 595 is the form that the courts and probation are to provide at the conclusion of a case. Why not provide separate forms—one for those whose probation was terminated and the records were sealed, and one for those who will need to proceed under 781? 	<p>Because this issue was not raised in the original invitation to comment and would impose a significant workload burden on the courts the committee cannot make this change without recirculating the proposal, but will consider it if future modifications are required and there is evidence that there is a problem with compliance.</p> <p>The committee has adopted this recommendation and amended the proposed rule to include this requirement.</p> <p>The committee has determined that two forms are preferable so that they can be tailored based on whether files were sealed under section 786 and has revised the forms to more specifically address the two situations.</p> <p>The committee has proposed two forms and the rules of court do specifically require the provision of different forms depending on whether records were sealed under section 786.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Why confuse the matter by saying “how to make your juvenile records private?” • Language is oversimplistic: Eliminate/rewrite the first paragraph. • In response to the legislative gap identified last year in <i>In re. G.Y.</i> (234 Cal.App.4th 1196), the legislation also specifies that the courts now have the ability to seal the records of youth whose 707(b) offenses were subsequently reduced to misdemeanors. The paragraph that indicates there is no sealing unless the court has dismissed the 707(b) offense is inaccurate. • Under who qualifies to ask the court, “Your last contact with probation” is not clear. • Under who can see your sealed records: the military does not have automatic access to sealed records. A more accurate statement would be that if the youth wishes to obtain a waiver for enlistment, he or she may have to move to unseal the records and provide access to the military. • Under if your records are sealed, do you have to report the offenses: this is a very nuanced area, as the <i>Collateral Consequences for Juvenile Offenders</i> makes clear. The form 	<p>The committee has struggled with reconciling its desire to be legally accurate with the hope of making the form accessible to young people. Based on this comment and others below the committee has revised the information forms to make them more precise.</p> <p>The committee has clarified this language to also include when a 707(b) offense is reduced to a lesser offense on the JV-596-INFO</p> <p>The committee included this language to try and cover a non-wardship case in plain language. Rather than trying to clarify the specific requirements from section 781 the committee has opted to delete this clause.</p> <p>The committee has deleted the reference to the federal government and tried to clarify this issue later in the information form.</p> <p>The committee has rewritten this language with regard to federal access, but has left it clear that under California law sealing results in the underlying arrest being deemed never to have</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>should avoid giving any hard and fast advice in terms of revealing information about sealed records. This section should be rewritten in light of those concerns.</p> <ul style="list-style-type: none"> • From 596-info: eliminate the provision under which records will be sealed for the court to order the defense attorney’s records to be sealed. We do not believe such an order would be appropriate. <p>4. JV 596</p> <ul style="list-style-type: none"> • Eliminate the provision in paragraph 7 allowing for the sealing of child’s attorney’s records. Because of the duty of attorney client confidentiality, we believe no purpose is served in ordering the child’s attorney to seal his or her records. <p>5. JV 600: we approve of the added paragraph advising the youth and parent/guardian of the right to seal records.</p>	<p>happened. The information form also directs those with questions or concerns to seek legal advice.</p> <p>The committee has deleted this language from the form as it seems that such sealing would be unusual.</p> <p>The committee has deleted the line specifically designating the child’s attorney’s records as those that the court should consider sealing at its discretion.</p> <p>No response required.</p>
2.	California Public Defenders Association Michael Ogul Deputy Public Defender	NI	<p>The California Public Defender's Association (CPDA) submits the following comments to the Judicial Council of California regarding the proposed changes to the Rules of Court and court forms regarding the record sealing process (W16-07).</p> <p>Statement of Interest of CPDA</p> <p>CPDA is the largest organization of criminal defense attorneys in the State of California. Our membership includes almost 4,000 attorneys</p>	No response required.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>who are employed as public defenders or are in private practice. CPDA has been a leader in continuing legal education for defense attorneys for over 30 years and is recognized by the California State Bar as an approved provider of Mandatory Continuing Legal Education. We regularly provide continuing legal education in all areas of criminal practice, including the representation of juveniles in dependency and delinquency matters.</p> <p>CPDA has been granted leave to appear in over 50 California cases that have resulted in published opinions. (See e.g., <i>People v. Mosley</i> (2015) 60 Cal.4th 1044; <i>People v. Beltran</i> (2013) 56 Cal.4th 935; <i>Maldonado v. Superior Court</i> (2012) 53 Cal.4th 1112; <i>Galindo v. Superior Court</i> (2010) 50 Cal.4th 1; <i>People v. Nguyen</i> (2009) 46 Cal.4th 1007; <i>Chambers v. Superior Court</i> (2007) 42 Cal.4th 673; <i>People v. Warner</i> (2006) 39 Cal.4th 548; <i>San Francisco v. Cobra Solutions Inc.</i>, (2006) 38 Cal.4th 839.) CPDA has also served as amicus curiae in the United States Supreme Court and other federal courts. (See, e.g., <i>Monge v. California</i> (1998) 524 U.S. 721; <i>Vasquez v. Rackauckas</i> (9111 Cir. 2013) 734 F.3d 1035.)</p> <p>Members of the CPDA Legislative Committee and CPDA's legislative advocate attend Senate and Assembly committee meetings on a weekly</p>	

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>basis, and take positions on hundreds of bills in a constant effort to ensure that our criminal and juvenile justice procedures, and rules of evidence, remain fair and balanced. In sum, CPDA and its legal representatives have the necessary experience, collective wisdom, and interest in matters of justice and procedure to serve the Judicial Council. Of particular note is the fact that CPDA was the source of SB 1038 in 2013 and a supporter of AB 666 in 2015, both of which created the changes to the sealing process the Judicial Council is addressing at this time.</p> <p>Rule 5.83</p> <p>The primary concern regarding the amendments to rule 5.830 are the statements in the Advisory Comment leaving the method of sealing to discretion of those entities being ordered to seal the records. The Advisory Comment proposes a number of permissible methods of sealing that do not require the actual physical sealing of the record: "Other permissible methods of sealing physical records pending their destruction under section 781 (d) include, but are not limited to, storing sealed records separately from publically accessible records, placing sealed records in a folder or sleeve of a color different from that in which publically accessible records are kept, assigning a distinctive file number extension to sealed records, or designating them with a special stamp." The problem is that none of the</p>	<p>The committee has reviewed the proposed comment to the rule and concluded that it is clear that any method used to seal records must ensure that they are protected from unauthorized access or disclosure.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>alternatives to physical sealing actually seal the records and leave the records vulnerable to inspection by ineligible individuals. An order to seal should be treated as an order to physically seal the records, as it is in other legal contexts. (See, for example, Cal. Rule of Court, rule 2.551(d).) Case law also suggests that the records should be "physically sealed." (Loder v. Municipal Court (1976) 17 Cal.3d 859, 871.)</p> <p>Rule 5.840</p> <p>Subdivision (c), concerning the sealing of records, states in part that "The prosecuting attorney, probation officer and court must have access to these records as specifically provided in section 786." While this is a correct statement of law, the language of section 786, subdivision (f), and to a lesser extent subdivision (g), clearly delineate the limited circumstances under which access is permitted. Rule 5.840 should similarly indicate that access is limited to the situations described in subdivisions (f) and (g). A reference to these subdivisions would be sufficient.</p> <p>Subdivision (d) addresses the destruction of records and indicates, "All records must be destroyed according to section 781(d), except that no records shall be destroyed before the subject has attained 18 years of age." Section 781, subdivision (d), in turn, requires destruction of records five years from the</p>	<p>The committee prefers using the broader statutory reference in this situation as it is possible that section 786 may be amended in the future and include access under yet to be drafted subdivisions and the committee would then have to amend the rule. The committee finds nothing inaccurate or misleading in citing the entire statute.</p> <p>While it is accurate that section 786 does not specify a timeframe for the destruction of records, it does require the Judicial Council to adopt rules of court and forms for the standardized implementation of the section by the juvenile courts. Given this directive the committee is retaining the standard rule set for destruction of</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>sealing date if the person was "alleged to be a person described in section 601", or 38 years of age if the person was "alleged or adjudged to be a person described in section 602." By its terms, subdivision (d) of section 781 applies only to "records that are ordered sealed pursuant to this section." Conversely, this rule, 5.840, addresses the destruction of records pursuant to section 786, which states regarding destruction: "The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed." The statute does not specify a wait period before destruction may be ordered, and had the Legislature intended to limit the court's authority regarding destruction to those periods outlined in subdivision of section 781 or section 826, the Legislature would have done so. Accordingly, the trial court should be able to order destruction at any time, limited only by the outermost limits described by sections 826 and 389.</p> <p>JV-595-INFO</p> <p>The form contains a section on the first page indicating that sealing is automatic for those individuals who satisfactorily completed probation for a non-Welfare and Institutions Code section 707(b) offense and for those who were granted deferred entry of judgment under "Welfare and Institutions Code section 790 to</p>	<p>records sealed under section 786 and has adopted the timeframe in section 781 as the clearest statement of what the legislature deems an appropriate timeframe for destruction of records. Moreover, because section 786 provides for access to sealed records in a number of circumstances it seems clear that immediate destruction was not intended by the legislature.</p> <p>The committee has sought to clarify this provision by adding a parenthetical modifier that explains that it is informal or formal probation. The committee has not added statutory references for fear that doing so would not make the form more accessible to its intended audience.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>795" While a true statement of law, it fails to inform the reader that sealing is also automatic if the case was dismissed because the minor completed an informal program of supervision under Welfare and Institutions Code section 654.2 or non-wardship probation under section 725, as outlined in subdivision (a) of Welfare and Institutions Code section 786.</p> <p>The form also indicates that individuals who committed an offense listed or in section 707, subdivision (b) when they were 14 years or older or were convicted as an adult of an offense involving moral turpitude do not qualify to have their records sealed. This is a correct statement of law and is reflected in section 781, subdivision (a). However, the form gives examples of moral turpitude and includes "serious drug crime" as a disqualifier. The concern is that individuals will interpret that language as including possession of "hard" street drugs such as cocaine, cocaine base, heroin or methamphetamine, although simple possession of any controlled substance is not a crime of moral turpitude. (See People v. Castro (1985) 38 Cal.3d 301.)</p> <p>JV-596-INFO</p> <p>As with JV-595-INFO, this form outlines situations in which the court will automatically seal your juvenile record. However, the same problem outlined above exists in that the form</p>	<p>To address any ambiguity in a somewhat complex area of law, the committee has added a bullet to this section to advise consultation with an attorney if the petitioner is unsure regarding eligibility.</p> <p>As noted above, the committee has clarified this provision to specify formal or informal probation.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>fails to inform the reader that sealing is automatic in cases involving successful completion of an informal program of supervision under Welfare and Institutions Code section 654.2 or non-wardship probation under section 725, as outlined in subdivision (a) of Welfare and Institutions Code section 786.</p> <p>Request for Specific Comments</p> <p>Is the timeframe for destruction of records sealed under section 786 proposed by the committee an appropriate standard given the statute is silent?</p> <p>No. Rule 5.840(d) addresses the destruction of records and indicates, "All records must be destroyed according to section 781(d), except that no records shall be destroyed before the subject has attained 18 years of age." Section 781, subdivision (d), in turn, requires destruction of records five years from the sealing date if the person was "alleged to be a person described in section 601" or 38 years of age if the person was "alleged or adjudged to be a person described in section 602." By its terms, subdivision (d) of section 781 applies only to "records that are ordered sealed pursuant to this section." Conversely, rule 5.840 addresses the destruction of records pursuant to section 786, which states regarding destruction: "The court shall send a copy of the order to each agency and official named in the order, direct</p>	<p>See committee response on this issue to this commentator on pp. 8-9 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed." The statute does not specify a wait period before destruction may be ordered and had the Legislature intended to limit the court's authority regarding destruction to those periods outlined in subdivision of section 781 or section 826, the Legislature would have done so. Accordingly, the trial court should be able to order destruction at any time, limited only by the outermost limits described by sections 826 and 389.</p> <p>Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process?</p> <p>The proposed amendment to rule 5.83 which deletes the provision in the existing rule specifying the sealing order "must apply in the count of the court hearing the petition and in all other counties in which there are juvenile records concerning the petitioner" will require individuals seeking to seal their juvenile records to file petitions to seal in different counties if their records are held in more than one county. Unquestionably, this will create a burden on individuals seeking to seal their records. The court should strive to make it easier for individuals to seal their records and move away from the stigma of being involved with the criminal justice system. This makes it more</p>	<p>See response on this issue to commentator one on page 1 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>difficult and is a step in the wrong direction.</p> <p>Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable?</p> <p>It is CPDA's opinion that a single form is preferable.</p> <p>Will the optional Acknowledgement of Juvenile Record Sealed assist court in ensuring compliance with their orders?</p> <p>Yes. The adoption of this form will help confirm compliance with the court orders.</p>	<p>As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786.</p> <p>No response required.</p>
3.	Commonweal Juvenile Justice Program David Steinhart, Director		<p>We submit these comments to the Committee and to the Judicial Council on behalf of the Commonweal Juvenile Justice Program. Commonweal was the primary sponsor of Assembly Bill 666 (Stone, Stats. of 2015, Chapter 368), which includes a provision requiring the Judicial Council to adopt these forms and rules. Commonweal also served as a key advisor to the legislative author of the 2014 bill that created the juvenile records auto-sealing process in California, adding Section 786 to the Welfare and Institutions Code (SB 1038, Leno, Stats. of 2014, Chapter 249).</p> <p>Overall, we applaud the effort made by the Committee to assemble these proposed rules</p>	No response required.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>and forms into a coherent package that incorporates complex changes in sealing laws added by no less than five legislative bills over the last two years. The comments below identify some areas where we believe the rules and forms as proposed could be even further improved to guide successful implementation by the Courts and to advise affected children and youth.</p> <p>Rule 5.830 (amended)— Sealing records (Section 781)</p> <ul style="list-style-type: none">• Probation as “gatekeeper” of the petition to seal under Section 781. Rule 5.830 requires a petitioner to initiate a request to seal the record through the probation department in each county in which probation has been terminated. Under Section (a) (4) of the rule, the probation department is then required to determine whether the individual is eligible for sealing under Section 781. Applications that pass this probation test are forwarded to the court for hearing and review. However, applications that do not pass this test do not proceed. In our reading of the law, Section 781 provides that an individual may “petition the court” for the relief provided. It does not establish a “stop” or gateway at probation before the petition can get to the Court. We would encourage an amendment to this rule that would require the probation department to forward all applications to the court and to	<p>See response on this issue to commentator one on page 2.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>ensure that it is the Court— not the probation department— that finally determines whether the individual is eligible for the sealing under Section 781. Alternatively the rule could or should provide that an individual whose petition is rejected by probation can refile it directly with the Court. These changes, while affecting the current status of Rule 5.830, are necessary to ensure the petitioner’s access to the Court as intended and provided in Section 781.</p> <ul style="list-style-type: none"> • Inter-county sealing petitions and orders. Rule 5.830 is changed to require that the petition process be initiated by the petitioner in each county where probation has terminated. This can be construed to impose an undue burden on youthful petitioners to be able to navigate jurisdictional labyrinths that even lawyers may find troubling. Juveniles with inter-county records or histories of residence in different counties will no doubt be confused by this requirement. One untoward result may be that a sealing and dismissal achieved in one county will fail to provide the individual with protection from a parallel case record that remains unsealed in another county. Such a result could expose the minor to tangible risks when completing job, education and military service applications—i.e., to the appearance of lying on an application where he or she answers no to questions about criminal history based on his or her understanding of the sealing and dismissal process. 	<p>See response on this issue to commentator one on page 1 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>We understand the rationale for this requirement (petitioning in multiple counties), including the Committee’s statement that:</p> <p>...it has become clear that unless a case has been formally transferred from one court to another, many courts do not have information about these records, and as a result many courts do not seal the non-transfer records of other courts in practice. Given this context, the committee proposes deleting the requirement that courts seal the records of other juvenile courts unless the case has been transferred. While this practice may be somewhat more burdensome for those seeking to seal their records, it is also designed to ensure that all eligible records are in fact sealed and the full benefits of sealing are achieved by the petitioners</p> <p>Still, we suggest that the rule be amended to require the probation department, in the course of its court-delegated investigation, to make some specified effort to determine whether parallel (same or similar case) delinquency records remain unsealed in another county and to notify the petitioner accordingly. For example, when a petition is filed under Section 781, the probation department might be required to query the state juvenile justice data bases for information that would be useful to the court in determining the inter-county status of the</p>	

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>petitioner’s request.</p> <ul style="list-style-type: none"> • Reach of sealing orders. The rule could more clearly state the obligation of the Court approving a petition to seal the record under Section 781 to order covered agencies in other counties, as known or revealed in the probation investigation or court file, to seal their records pertaining to the individual and the case. <p>Rule 5.840 (new)- Dismissal of petition and sealing of records (Sec. 786).</p> <ul style="list-style-type: none"> • Deferred or delayed sealing. We suggest that the rule include reference to the requirement of WIC 786, as recently amended, to the effect that “The period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section” (WIC 786 (c) (1)). This has come up as an issue of some concern in discussion with judges and other stakeholders, particularly as to its application in cases where restitution orders remain unfulfilled. • Notices to agencies or courts in other counties. As with the comments above on inter-county issues related to Rule 5.830, we think Rule 5.840 should be explicit in stating that the order and distribution of the order for records sealed under Section 786 should include orders 	<p>The committee has added this language to subdivision (b) of the rule.</p> <p>See response on this issue to commentator one on page 1 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>to agencies or courts in other counties that have known records that are required to be auto-sealed under Section 786. The new rule should not be open to the interpretation that only records held by agencies located in the county of the Court making the order would be subject to the sealing order and distribution practice of that Court.</p> <ul style="list-style-type: none"> Conforming form JV596INFO. If the title and contents of Form JV596INFO are changed as suggested the reference here to that form will also need to change. <p>Form JV 590. No comment.</p> <p>Form JV 591. No comment.</p> <p>Form JV 595- REQUEST TO SEAL JUVENLE RECORDS</p> <ul style="list-style-type: none"> Language in the opening line. The opening line should be modified to eliminate the implication that the request can be filed only “if you meet the requirements of (WIC) Section 781”. It is up to the Court to make the determination about meeting the requirements of Section 781—not up to the individual seeking relief. Suggest simply delete this “if” clause and open the form with the statement that this form may be used to petition the court to seal your records under the applicable law. 	<p>The committee has changed titles of the forms and revised the rules accordingly</p> <p>No response required.</p> <p>No response required.</p> <p>The committee has deleted the reference to statutory eligibility so that the form simply informs petitioners that it can be used to seal juvenile records and then directs them to the information form.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Section 4. Federal agencies. The reference to federal agency acceptance of sealing orders made by California courts, appearing as the last sentence in this section, deserves further review. Based on our investigation, in practice military recruiters and federal agencies handle state-sealed juvenile records in different ways. While it is true that federal regulations do not recognize state-sealed juvenile records, military services can waive offense-record barriers to enlistment in individual cases. Defense counsel have reported cases in which a military service has requested that the court seal the record in order to gain entry to the military branch in question. A warning about the possible federal non-recognition of state sealing orders is certainly appropriate for inclusion on Form JF595. Still, the Committee may wish to give this issue a more thorough review. At a minimum, we would suggest changing the last sentence of Section 4 to state that "...the federal government may not recognize sealing of records", rather than "will not". • Section 5- requirement to list all contacts that might not be a part of your probation record. This requirement, while certainly intended to help locate all relevant records, is stated in a way that may discourage eligible individuals from petitioning the court. It should be softened to ask applicants to state the contacts if known and perhaps to state that 	<p>The committee has deleted the language about federal recognition from this form and opted to address it on the JV-595-INFO.</p> <p>The language has been revised to be clear that the court cannot seal records that are not identified on the petition.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>this information will help ensure that the sealing investigation and resulting court order are as complete as possible.</p> <p>Form JV 595 INFO – HOW TO MAKE YOUR JUVENILE RECORDS PRIVATE</p> <ul style="list-style-type: none"> Combine with JV596INFO? In answer to your general query on this point, we suggest that you continue to provide two different information forms. As we see it, the information forms serve overlapping but essentially different purposes. In short, we see Form JV595INFO as mainly supplying instructions for compliance with the elective process for petition sealing under Section 781, with relevant reference to post-sealing matters including agency access to sealed records, restitution and disclosures to employers and others. Alternatively, since the WIC 786 process is self-initiating or automatic, form JV 596INFO should mainly address what auto-sealing means for the juvenile whose record has in fact been sealed under Section 786; accordingly, some changes in the title and contents of that form are suggested later below. <p>Specific Form JV595INFO suggestions.</p> <ul style="list-style-type: none"> Opening line... “If you did something wrong”. This “talking down” opener on the form may be designed to make the form more familiar in some way or to avoid “legalese”, but it is too vague, broad and misleading in our 	<p>The committee is maintaining the two forms and has revised them to make them more tailored to whether the recipient had his or her records sealed under section 786 while making them relevant to the public overall who might use the forms for information about the sealing process.</p> <p>As noted above, the Committee is trying to balance its desire to make this information as accessible as possible to the public with the need to be accurate. The committee has revised this section to make it less broad and more precise.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>view. Probably most people “did something wrong” when they were under 18. This line could even cause concern for minors who never had sealable records generated. A more appropriate approach would be to say something like, “If you were ever arrested or subject to a court proceeding or had other contact with the justice system, there may be records of your involvement kept by courts, police, schools or other public agencies.</p> <ul style="list-style-type: none"> • Second paragraph. We recognize that it is difficult to describe both auto-sealing and petition-sealing to juveniles in a lay context that is swiftly and easily understood. Even so, we believe you could do a better job in this form of explaining how the two sealing methods work under California law. As suggestion, you might start the second paragraph by highlighting the fact that “There are two ways to have your juvenile records sealed under California law. The first way happens automatically by order of the court when your probation term or diversion period ends, and it does not require you to take any action. However, if your record is not automatically sealed by the court, you will need to ask the court to seal your record by submitting a request or petition for sealing. This information sheet explains how both record sealing procedures work and whether you must petition the court in order to have your record sealed. It also explains what sealing and dismissal of the charges can mean for your 	<p>The committee has tried to make this less confusing by revising this form so that it is focused more on sealing pursuant to 781 with references to the JV-596-INFO for information on sealing pursuant to section 786. Since the rule of court directs that different forms are provided depending upon whether the court did or did not seal the records, this should ensure that information is appropriately targeted.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>future.”</p> <ul style="list-style-type: none"> o Suggest then explain auto sealing in one paragraph. o Suggest then a separate paragraph entitled “When do you have to ask the court to seal your juvenile record and what do you have to do?” <ul style="list-style-type: none"> • Page two, section 8. Other county records. Consistent with the suggestion made earlier, if Rule 5.830 is amended to require the probation department to assist with locating other-county records, this form should tell the individual that they can seek assistance from the probation department in that regard. • Page two, “If your records are sealed, do you have to report...” and federal law reference. We suggest adding a bit more clarity here regarding disclosure protection for those whose records are sealed. For example: “No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not have to report those offenses on job, school or other applications.” Additionally, we reiterate the request for further review of how the federal non-recognition of state sealing orders is characterized (see final comment above under Form JV595). <p>Form JV 596 – DISMISSAL AND SEALING NOTICE UNDER SECTION 786</p>	<p>The form is clear that probation will identify the records that it can find, but that the petitioner needs to provide information on records that might not be known to probation.</p> <p>The committee has revised this language to make it clearer as suggested and has directed those confronting the issue to seek legal advice.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> Implied court option to seal the records of minor’s counsel. Also in Section 7 of this form, there is a checkbox for the court to indicate that its order applies to the “Child’s Attorney” and to require the minor’s attorney to seal his or her case records. This simply goes too far. First of all, it is the minor’s counsel who serves as the primary source of advice to the minor on compliance with the sealing laws and procedures, so that shutting down counsel’s own record could effectively block key information the minor needs for a range of purposes including future attempts to access or open the record under one of the exceptions in subdivision (f). Secondly, an order to seal the minor’s counsel records may well encroach upon an area of attorney-client privilege and confidentiality. Third, the check box as labeled is over-broad as it would appear to cover private as well as public agency counsel. Fourth, it is dysfunctional in the sense that the request to seal an additional public agency record is initiated by the minor, and the court’s power is limited to granting the request—so when will minor’s and their counsel ever ask the Court to seal their own records? <p>Form JV 596 INFO – SEALING OF RECORDS AT TERMINATION AND DISMISSAL</p> <ul style="list-style-type: none"> Title and purpose of the form. As noted above, in our view the main purpose and 	<p>As noted above, the committee has deleted the checkbox for the child’s attorney on this form.</p> <p>The committee has revised the title to read “Court Sealing of Records for Satisfactory Completion of Probation.” The committee has not used the term</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>function served by JV596INFO should be to inform the juvenile regarding the consequences of auto-sealing action taken by the Court under Section 786. The presently proposed version of this form goes in that direction, but it could be laid out and stated more clearly. For starters we would recommend that the title be changed to “Automatic Court Sealing of Juvenile Records: How does it happen and how does it affect you?” or something along those lines. The present tile is perhaps more attuned to lawyers than to clients, and a change like this will help make the form more relevant and useful for juveniles whose records are auto-sealed under Section 786.</p> <ul style="list-style-type: none">• Opening paragraph. Heading clarification. Suggest: When will the Court automatically seal your record? The first sentence should be simplified (it is too long and complex). It should start with a more simplified statement such as “Your records may be sealed automatically by the Court, without your having to take further action, if you meet certain conditions for automatic sealing.” Then, list the conditions that are now packed into the wordy first sentence, perhaps using bullets. The second half of this paragraph, beginning with if the court seals your record “you should have received a notice he rest of the paragraph, beginning with “You should have received a copy of the order”, is good.	<p>“automatic” because the sealing is not automatic, but rather requires a determination by the court that probation was satisfactorily completed.</p> <p>The committee has revised this paragraph to make it clearer, but as described above has refrained from using the term “automatic” in this context of section 786.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Which records will be sealed? Here, we reinforce our concerns about stating that the court can order the minor’s own counsel records to be sealed under Section 786. See the final bullet (comment) under “Form JV596” immediately above. • Consequences of sealing: “If your records are sealed do you have to report the offenses in the sealed records on job, school or other applications?” For this INFO form as well, we restate the request to further amplify the minor’s right of nondisclosure of the offense once the record is sealed under Section 786, as follows: <ul style="list-style-type: none"> o We suggest adding a bit more clarity here regarding disclosure protection for those whose records are sealed. For example: “No. Once your records are sealed, the law treats those offenses as if they did not occur and you do not have to report those offenses on job, school or other applications.” • Federal law impact. Additionally, we reiterate the request for further review of how the federal non-recognition of state sealing orders is characterized here (see final comment above under Form JV595). <p>Form JV 600 - JUVENILE WARDSHIP PETITION</p> <ul style="list-style-type: none"> • Recommended additional sentence. In 	<p>The committee has deleted the reference to the child’s attorney’s records on this form.</p> <p>The committee has revised this section to try and clarify the consequences of sealing.</p> <p>See response to commentator one on pp. 4-5.</p> <p>Because the two information forms that are referenced here provide significant information</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>order to have the reference to record sealing be more meaningful to juveniles who take the trouble and have the comprehension to digest all of JV 600, we would request that a second sentence be added to the final text box on sealing, to follow the sentence stating that “The Court may seal your records at the conclusion of your case or you may request sealing at a later date.”. The added sentence would say in essence: Sealing of the record may help you when it comes to applying for a job or school or for some other opportunity.</p>	<p>about the benefits of sealing, the committee prefers not to add additional language on the JV-600 which comes much earlier in the process.</p>
4.	East Bay Children’s Law Offices Roger Chan, Executive Director	NI	<p>These comments are submitted on behalf of East Bay Children’s Law Offices with respect to W16-07 (Sealing of Records). East Bay Children’s Law Offices (EBCLO), a nonprofit law firm in Oakland, California, is court-appointed to represent children and youth in their delinquency, dependency, or probate guardianship proceedings in Alameda County. Our office represents more than 2,000 youth every year.</p> <ul style="list-style-type: none"> • Does the proposal appropriate address the stated purpose? <p>One of the stated purposes is to give eligible people with juvenile records the opportunity to seal those records with as few barriers as possible.</p> <p>Rule 5.830(a)(3) creates a barrier by only allowing an application to be submitted to the</p>	<p>As noted above the rule directs filing of the application with the probation department because they need to investigate the application and prepare the petition for the court. The committee has revised the rule to be clear that probation must prepare a petition for any case in which the age or 5 year limit in section 781 have been met.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>probation department. Applicants should also be allowed to apply for record sealing directly to the court, which can then direct the probation department to conduct the required investigation.</p> <p>Recommendation: Amend 5.830(a)(3)(A) to state: “The application for a petition to seal records must be submitted to the probation department or the court in each county in which wardship was terminated.”</p> <p>In addition, requiring an applicant to file a 781 petition in each county in which wardship was terminated can create barriers because the person may not know which counties are involved and whether the case was transferred. Instead, the person should only be required to make one application. If the probation investigation reveals that some petitions have not been transferred from other counties, then the probation department should be required to submit a record sealing petition to that county. Alternatively, please consider whether the court where the application was made should have authority to seal all eligible records, even if the records are of another court and were not transferred.</p> <p>The 90 day time frame for the probation department to file a petition in 5.830(a)(4)(D) is too long. Many applicants for record sealing do so for the purpose of obtaining employment or</p>	<p>See response on this issue to commentator one on page 1 above.</p> <p>The committee notes that the 90-day timeframe has always been the standard in the rule and is necessary to give probation the time to research and prepare the petition and thus has declined to</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>joining the military and they need an urgent response. The time frame should be reduced to 30 days. The Rule should also provide guidance for when the hearing should occur following the filing of the petition.</p>	<p>shorten this timeframe. Similarly, given limited judicial resources, the committee declines to set a timeframe for the petition hearing as local courts need the flexibility to determine when these matters can be calendared in the context of other pressing statutory deadlines for hearings. In addition the committee has restored the 180 day time period for petitions that include more than one county consistent with the changes made to allow courts to seal records in multiple counties.</p>
5.	<p>East Bay Community Law Center Youth Defender Clinic Kate Weisburd, Supervising Attorney</p>	AM	<p>The proposed rules, info forms and orders are a great first step. It is obvious that the Judicial Council is trying to make the juvenile record sealing process as straight forward and streamlined as possible, which is admirable.</p> <p>With that said, I have some suggestions based on my experience representing numerous youth in record sealing procedures. If any of my comments are not clear, or if you have questions, please feel free to contact me:</p> <p>My comments are as follows:</p> <p>1. Rule 5.830 re Sect. 781 (pg. 10 of PDF):</p> <p>-Confusing process when applicant has been on probation and/or had separate cases in several different counties as a minor. (see proposed rule 5.830 (a)(1)). Many adults won't know if their juvenile case was officially transferred or if they picked up a new case in another county. Nothing in the law says that an applicant must</p>	<p>No response required.</p> <p>See response on this issue to commentator one on page 1 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>petition in every county where they had a case. A more streamlined approach would be to require the applicant to apply for sealing in the last county where they had a juvenile case and where probation was terminated. Seems overly burdensome to require applicants to apply in each county, especially because most applicants won't know if they had separate cases or if the case was transferred.</p> <p>-Probation should not be gatekeeper of all record sealing. (see proposed rule 5.830 (a)(3)-(4). There is nothing in the law that requires sealing applications go through probation. There are two problems with mandating that applications should go through probation: (1) what if the county is small and/or doesn't want probation to do this? Why not give counties option of having the application processed through probation OR filed with court clerk? And (2) In some counties, probation incorrectly determines that someone is not eligible and then the petition never makes it onto the sealing calendar and before a judge. A better policy is that probation does an evaluation; but that all record sealing applications get calendared and only judge decide eligibility. Under no circumstance should probation make determinations that result in applicants being turned away before they are able to appear before the judge.</p> <p>-90 days seems like a long time to give</p>	<p>See response on this issue to commentator one on page 2.</p> <p>See response on this issue to commentator 4 on</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>probation to review record sealing apps. See rule 5.830(a)(4)(C). Why not 30 days? Or 40?</p> <p>-The rules regarding 781 should make clear that there is no fee. The rule should state that anyone under 26 can't be charged. And over 26 they can be charged, but must also be provided with info about fee waivers.</p> <p>2. JV-595 – Request to Seal Juvenile Records under 781 (pg. 16 of PDF)</p> <p>-The text at the top of the form should be more encouraging. It currently says that the form should be used “if you meet the requirements of 781...” But many applicants won't be able to determine if they meet those requirements. Given that there is no fee for anyone under 26 there is really no downside in filing an application. Young people should be encouraged to file. There shouldn't be a preamble that could inadvertently result in applicants thinking they are not eligible when they may be. How about a preamble that says: “This form should be used if you want to seal your juvenile record. Please complete the form and turn it into X. The court will then determine whether you are eligible for record</p>	<p>pp. 27-28</p> <p>The rule of court has never contained information about fees for sealing, and because those fees are collected administratively by probation and not by the court, the committee has elected not to add them to the rule, although the information forms clearly explain to petitioners that there is no fee and that a waiver can be requested.</p> <p>As described above this sentence has been revised to eliminate the conditional clause and to be more neutral.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>sealing.”</p> <p>-Many applicants won't know details or dates about contact with law enforcement. (See questions #3 & #5). Many applicants won't know the dates of law enforcement contact or even the names of all the agencies they had contact with. Can probation/courts look this info up through a state-wide database? If applicants don't know this info they may think they can't apply for sealing. These two questions should either be eliminated or made optional (assuming that probation/courts have ways of checking this info on their own).</p> <p>3. JV-595-INFO re Sealing under 781 (pg. 18)</p> <p>-Title is confusing because it's so similar to title of the JV-596-INFO (which is about 786). The audience for this form is applicants who either were not eligible for sealing under 786 or whose cases were dismissed before the passage of 786. Presumably, everyone who is eligible for sealing under 786 will have their record sealed at dismissal, so they won't need an info sheet on how to seal their record. (see comments below about the 786 info sheet)</p> <p>-First paragraph reads “if you did something wrong.” This seems unnecessarily judgmental. 781 also covers arrest records in cases where no petition was ever filed. How about just “If you have a juvenile court record or arrest record</p>	<p>The committee notes that in these cases in which there is no court record the petitioner is the person best situated to provide the information on what records are being requested to be sealed. This information may not be in state criminal history databases and thus the applicant is the key source of the information.</p> <p>The committee has revised the title of this form to “How to Ask the Court to Seal Your Records” and tried to clarify the two types of record sealing currently available.</p> <p>The committee has revised this sentence to be more legally precise.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>from when you were under 18...”</p> <p>-Topics are confusing. Per my first comment about this form, I think this form should be geared to people 18 years and older who either (a) didn’t get record sealed under 786 b/c they didn’t complete probation satisfactorily; or (b) they got off probation before 786 passed, so pre-2015.</p> <p>-Applicants should be encouraged to check with public defender office to see if their record has been sealed and/or if they have a 707(b) offense.</p> <p>-The section entitled “when do you not qualify to seal” is a little confusing. Not clear what ‘moral turpitude’ means and it often is interpreted to mean a wide range of things. Applicants may count themselves out and not apply. Could a third bullet point be added that says: “If you are not sure you qualify, either speak with your local public defender’s office or apply and wait for the judge to decide your eligibility.” Or something like that?</p> <p>-What about adding a section with a general description of what “rehabilitated to the satisfaction of the court” means and how to prove it? Ie: letters of support, letter to court explaining accomplishments, life plans, etc?</p>	<p>As noted above the committee has tried to refine the focus of this form for those whose records were not sealed pursuant to section 786.</p> <p>This advice is contained on the form as circulated for comment.</p> <p>The committee has added a bullet point directing applicants to contact their attorney for more information.</p> <p>Because each court has different conventions for how this issue is handled the committee has declined to be more specific for fear of deterring applicants from seeking record sealing. Probation agencies can provide county specific information on what the court may be considering.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>-Applicants won't know history of contact with police. On the second page, step 2 asks for a list of all agencies that the applicant had contact with. Per my earlier comment, I don't think applicants often know this info.</p> <p>-Step 8 also seems unrealistic. Per my earlier comment, applying in everyone county seems unnecessary and not required by law.</p> <p>4. JV 596-INFO re sealing under 786 (pg. 22)</p> <p>-Title confusing. Per earlier comment, the title of this info sheet is confusing because it sounds so much like the title of the JV 595. It's also not clear when in the process the info on this info sheet would be helpful. It would be great to have an info sheet for youth who've just gotten their record sealed under 786 and what that means. Maybe the info sheet could be called: "What it Means Once the Court Has Sealed Your Record." And topics could be: (1) Unpaid fees, fines and restitution; (2) Which records were sealed; (3) Who can still see sealed records? (4) How to see your sealed record.</p> <p>-Prior petitions also included. Under the current section entitled "which records will be sealed" it only talking about current case. It should clarify</p>	<p>The form instructs applicants that probation will compile the information it has and only directs the applicant to add information if he or she believes it is not available to probation and only to ensure full sealing, thus the form is clear that this section is not required to be filled out. In addition, the information form directs applicants how to seek their criminal history information if they are uncertain as to what records may be out there.</p> <p>See response on this issue to commentator one on page 1 above.</p> <p>The committee has revised the title of the form and tried to tailor it to those whose records are sealed pursuant to section 786, however, the court is required by statute to provide information to all minors about how to seal your records at case termination and thus must include some information on that topic on this form.</p> <p>That section of the form as circulated specifically states that prior cases may be sealed if the court finds them eligible thus the committee finds that</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			that 786 covers prior petitions as well.	no change is required.
6.	Orange County Bar Association Todd G. Friedland, President	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • Is the time frame for destruction of records sealed under section 786 proposed by the committee an appropriate standard given that the statute is silent? Yes. • Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process? Improve. • Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable? One form.\ • Will the optional Acknowledgment of Juvenile Record Sealed assist courts in ensuring compliance with their orders? No comment. 	<p>No response required.</p> <p>No response required.</p> <p>See response on this issue to commentator one on page 1 above.</p> <p>As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786.</p> <p>No response required.</p>
7.	Orange County Probation Christina Ronald, Assistant Division Director	NI	<p>Below are the questions the Orange County Probation Department has in reference to the Invitation to Comment on Juvenile Law: Sealing of Records:</p> <p>1. Proposed Rule 5.830 Sealing records (a) (4) Investigation (B) requires that probation compile a list of cases and contact addresses of every agency or person that the probation department knows has a record of the ward’s case-including the date of each offense, case number (s), and date when the case was closed-to be attached to the sealing petition. Will a</p>	<p>This requirement while new to the rule is consistent with the current practice that probation will research and prepare sealing petitions. A form for this purpose has not been developed and would need to be considered in a future cycle based upon requests from probation agencies or the courts for such a form.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>standard form be created for this information?</p> <p>2. Specific to outstanding financial obligation (WIC 786 (g)(1) and (2) indicates that sealing does not prohibit court from enforcing a civil judgment for outstanding restitution. Nor does a sealing relieve a minor from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees. Further, it notes that victims or local collection programs may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. With that in mind, if a minor is not relieved of the responsibility to pay outstanding financial obligations, does this also carry over to the minor’s parent(s)/guardian(s) parental obligations, which are not courts ordered (institutional and legal fees)?</p> <p>3. Section 831 of the Welfare and Institutions Code prohibits release of any juvenile case information to any federal official absent a court order of the judge of the juvenile court upon filing a petition pursuant to 827(a)(1)(p). We understand that this pertains to releasing information to Immigration and Customs Enforcement (ICE); however, does it also apply when making Consulate notifications.</p> <p>Additionally, in the juvenile arena, we have often utilized Juvenile Court Administrative</p>	<p>This is a legal question outside the scope of this proposal.</p> <p>The committee has tried to clarify issues on federal treatment of sealed records in this proposal. The new requirements of section 831 are outside the scope of this proposal, but it does appear that under that section court records may not be provided to a federal entity without a court order issued under section 827</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Order No. 12/003-903 which allows for information to be furnished to military recruiters upon presentation of the minor’s written consent. Based upon WIC 831, is it correct to assume that this aspect of the Court Order is no longer valid and that we would now also require military recruiters to file an WIC 827 petition with the court to have access to any juvenile case information? There seems to be confusion on how best to handle this as in addition to above, Section 4 of JV-595 indicates, “I also understand that the federal government will not recognize sealing of records and that juvenile records must be reported, even though sealed, if I apply for enlistment in the armed services or other federal employment requiring disclosure of juvenile records.”</p> <p>4. What is considered a “reasonable time” in which to seal a record once it has been ordered by the court?</p>	<p>The committee expects that any agency receiving a court order to seal its records will comply without delay and the rule provides that records are to be sealed immediately.</p>
8.	<p>State Bar of California, Standing Committee on the Delivery of Legal Services Phong S. Wong, Chair</p>	AM	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes. The mandatory information form provides helpful instructional information about the sealing of juvenile records and will be beneficial to low-income and moderate-income self-represented litigants. However, please see below for comments regarding the optional petition form.</p>	<p>No response required.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Is the time frame for destruction of records sealed under section 786 proposed by the committee an appropriate standard given that the statute is silent?</p> <p>Yes.</p> <p>Will the proposed change in the rule to require petitions to be filed in each county in which a petitioner has non-transfer records improve or hinder the current record-sealing process?</p> <p>It will hinder the process. The petitioner should be able to file one petition which lists all of the courts in which he or she is requesting a sealing of records. The petition should allow for information such as case number, arresting agency, and date of arrest. Requiring a petition to be filed in each county is cumbersome and could act as a barrier for low and moderate-income petitioners who are eligible to have their juvenile records sealed but who lack transportation and/or financial resources.</p> <p>Is it preferable to provide information on sealing to youth on two information forms to distinguish between sealing under section 786 and section 781 or would one form be preferable?</p> <p>One form is preferable. Two forms might confuse the issue for a juvenile. Less is best.</p>	<p>No response required.</p> <p>See response on this issue to commentator one on page 1 above.</p> <p>As noted above the committee has determined that two forms are preferable to provide information as required under section 781(h) that is tailored to whether records were sealed under section 786.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Will the optional Acknowledgment of Juvenile Record Sealed assist courts in ensuring compliance with their orders?</p> <p>Yes. The optional form will help ensure that agencies ordered to seal records will advise the court that the sealing order has been followed and remove potential confusion for the petitioner as to whether or not the records have been sealed.</p>	No response required.
9.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
10.	<p>Superior Court of Orange County, Family Law and Juvenile Court Operations Blanca Escobedo, Principal Administrative Analyst</p>	AM	<ul style="list-style-type: none"> The proposal appropriately addresses the stated purpose. However, clarification is requested on the treatment of transferred cases. The proposed CRC 5.830 language states, “A court may seal the records of another court when a case has been transferred...” This could be interpreted as though the consideration of transferred cases is optional. I believe the intention is to require the courts to consider the sealing of other jurisdiction’s records. In this same sentence, we recommend substituting the word court with jurisdiction since the court may also seal other agencies records (e.g., probation, law enforcement, etc.). JV-590, we recommend revising item 5(a) to list agencies, similar to the JV-596. This helps ensure all agencies are included in the order. Also, expand the case number field for minors who have multiple cases. JV-591, we recommend changing the 	<p>The rule has been clarified to require that the court determine if the other county records should be sealed in a transfer case and to allow such sealing in non-transfer cases.</p> <p>Because JV-590 is a sealing order under section 781 which provides for much broader sealing than section 786, the committee prefers to keep this section open and allow for attachments.</p> <p>The committee has adopted these suggested</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>header because agencies will be filing this form (not attorneys). We recommend expanding the case number field for minors who have multiple cases.</p> <ul style="list-style-type: none"> • JV-595, we recommend the following changes. <ul style="list-style-type: none"> ○ Clarify the completion of items 2 and/or 3 (it will not always be both). ○ The information sheet provides information regarding fee waivers, yet it's not mentioned under item #4 (we recommend adding this information). Lastly, expand the case number field for minors who have multiple cases. ○ Item #5, under the court selection we recommend adding a district option for cases filed in larger courts (e.g., Los Angeles, Riverside, San Bernardino, etc.). • The JV-595-INFO and JV-506-INFO forms address scenarios where the dismissal occurred after 1/1/15. However, it provides little to no direction for cases prior to that date. We recommend expanding on the introduction to provide guidance on this scenario. • What vehicle will the courts use to terminate PC 290 registration requirements? I don't believe there is a DOJ form to be used for this purpose. 	<p>revisions to the form.</p> <p>A check box has been added to 3 to make clear it only applies when checked.</p> <p>The committee has added waiver information to this section.</p> <p>The field has been expanded as suggested.</p> <p>The committee has not added this option for fear of adding to the confusion of applicants who are not likely to have this information.</p> <p>The committee has revised both forms to be more tailored to their intended audiences.</p> <p>The JV-590 order form (item 6) terminates PC 290 registration requirements and directs DOJ to destroy its registration information. If courts are using other forms they should also contain this</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
				provision.
11.	Superior Court of Riverside County Marita Ford, Senior Management Analyst	A	<p>Recommend on the JV-590 that the check box next to Number 7 be removed as it appears that the clerk is required to send the order; it is not an option.</p> <p>On the JV-591, would recommend in the caption that ‘Attorney’ be removed and substitute ‘Agency’. We would recommend that instructions to the agencies be added to the JV-591 form; suggested language:</p> <p>INSTRUCTIONS: Pursuant to WIC §§ 781 & 786, agencies shall advise the court of its compliance with the sealing order. Please return the completed Acknowledgement of Juvenile Record Sealed form to the court.</p> <p>Recommend that one of the judicial signatures lines be removed on the second page of the JV-596.</p>	<p>The committee has removed the check box as suggested.</p> <p>The committee has revised the caption and added the suggested instructions.</p> <p>The committee has revised the form to remove the unnecessary signature line.</p>
12.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	<p>General comments: Overall, this is a much better proposal than SPR15-20 was, partly because the law on sealing has been clarified by new legislation. It is a good idea to separate out the orders and info sheets for the two types of sealing.</p> <p>Rule 5.840(a) or (b): The rule should specify that a petition that includes a WIC 707(b) offense is not to be dismissed or sealed.</p> <p>Rule 5.840(e): the probation department (not just probation)</p>	<p>No response required.</p> <p>The committee has added the statutory language to the rule in subdivision (b).</p> <p>The committee has revised this rule as suggested.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>JV-590: the reference to WIC 389(c) is not necessary</p> <p>JV-591: Be consistent with spelling: either acknowledgement or acknowledgment</p> <p>JV-595: Be consistent with punctuation: comma after “if you need more space” or no comma; agencies that it knows <u>have</u> records (top of page 2)</p> <p>JV-595-INFO: you will need to ask the court to seal your records; In the second bullet of the when you do not qualify section, maybe the form should read: “If, when you were 14 or older, the court found . . .”</p> <p>JV-596-INFO: A letter is missing in the sentence after the heading: Restitution and court fines and fees must still be paid. The next sentence should read in pertinent part: “...you are still required to pay your restitution and court-ordered fees and fines.”</p>	<p>The committee has removed this statutory reference from the form</p> <p>The committee has revised the form to ensure consistent spelling.</p> <p>The committee has added a comma to item 3 for consistency and corrected the error at the top of page 2.</p> <p>The committee has revised this form as suggested.</p> <p>The committee has corrected this typographical error.</p>
13.	<p>Trial Court Presiding Judges and Court Executives Advisory Committees Joint Rules Subcommittee Claudia Ortega</p>	A	<p>Regarding the Acknowledgment of Juvenile Record Sealed form: The JRS supports this form being made optional.</p> <p>Regarding additional training and increases to court staff’s workload: The trial courts will need some time to train staff and ensure that case management systems allow a case to be deemed sealed. Also, it will take court and</p>	<p>While the committee appreciates the concerns about the short time for implementation, only two of the proposed new forms are mandatory and need to be provided beginning July 1, 2016. Those are the information forms to implement the requirements of section 781(h) which were supposed to be in place by January 1, 2015. The committee delayed taking action on these forms because of the major changes in the law that</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>justice partner staff time to actually do the sealing, but it is necessary.</p> <p>The proposed date for implementation is not feasible or is problematic: The JRS concluded that the courts will need more than two months to implement this proposal. Accordingly, the JRS requests that the effective date of this proposal be extended to four months (120 days) from Judicial Council approval.</p>	<p>became effective on January 1, 2015 and the further modifications effective on January 1, 2016, but further delay beyond July 1 is problematic for courts seeking to comply with the statutory mandate.</p>
14.	Youth Law Center Cat McCulloch, Legal Fellow	NI	<p>These comments are submitted on behalf of the Youth Law Center pursuant to Invitation to Comment W16-07. The proposed rules and forms submitted for comment will implement the provisions of AB 1006 (Yamada), SB 1083 (Leno), AB 666 (Stone), and AB 989 (Cooper) that deal with the process and requirements for sealing juvenile records.</p> <p>The Youth Law Center is a non-profit public interest law firm that works on behalf of children and youth in the child welfare and juvenile justice systems. We became acutely aware of the need to make record sealing more accessible in the course of producing Collateral Consequences of Juvenile Delinquency Proceedings in California: A Handbook for Juvenile Law Professionals (2011). In the course of researching that book, we learned that an unsealed juvenile record can create very real barriers for young people seeking to turn their lives around, and that streamlining the process for sealing a juvenile record helps to remove</p>	No response required.

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>barriers to young peoples' reintegration into society and reduce the likelihood of reoffending.</p> <p>The Youth Law Center appreciates the work and thought that have gone into the Council's proposed rules and forms. We offer several recommendations to refine the proposed rules and forms.</p> <p>Recommendation 1: Remove Change Requiring Petitions to Be Filed in Each County</p> <p>The committee has requested comments as to whether the proposed change in the rule to require young people to file petitions in every county in which they have non-transfer records will improve or hinder the current record-sealing process. The Youth Law Center strongly urges the committee not to require young people to file multiple petitions to seal their juvenile records. This proposed new requirement is not mandated by any change in the law, will not result in significant time or cost savings, and, most importantly, will create an unnecessary new barrier for young people working for a clean slate.</p> <p>As the committee notes in its background materials, the existing rule that sealing orders apply in all counties in which there are juvenile records concerning the petition has been in place for a number of years. Nothing in the recent legislative changes regarding sealing has mandated a change to this rule. Indeed, such a</p>	<p>See response on this issue to commentator one on page 1 above.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>change is directly contrary to the spirit of this recent legislation, which has sought to make the record sealing process easier for young people to navigate.</p> <p>The change is likewise not necessary to ensure that courts are making correct decisions on record sealing petitions. Courts are able to access sufficient information to determine whether out-of-county adjudications meet the statutory requirements for sealing through by reviewing RAP sheets. A court reviewing a petition will also, necessarily, have the facts available to it to determine whether a petitioner has demonstrated rehabilitation to the satisfaction of the court. Situations in which a court lacks the information necessary to decide an out-of-county petition should be quite rare; these isolated instances do not provide sufficient justification for the significantly increased hardship to petitioners that the proposed new rule creates.</p> <p>Nor will the proposed change in the rules increase efficiency for courts or probation departments. Indeed, the proposed rule may well increase the burden on courts and probation departments, as the proposed rule will require individuals to file petitions in multiple counties -petitions that those counties' probation departments will be required to investigate and courts will be required to adjudicate.</p>	

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Moreover, requiring young people to file petitions in multiple counties will increase the burden on young people seeking a clean slate. The process to seal a record is time-consuming one. The sealing process can take many months to complete, during which time the unsealed record continues to create difficulties in the young person's search for a job and housing. Increasing the number of petitions that must be filed stretches this process out even longer and places an unnecessary barrier in front of young people.</p> <p>For these reasons, the Youth Law Center strongly recommends that the proposed rule changes limiting courts' ability to seal non-transfer records be deleted, and that proposed forms JV-595, JV-595-INFO be revised to reflect the fact that courts may seal out-of-county records.</p> <p>The committee notes that many courts do not, in practice, seal the records of non-transfer courts because they lack the necessary information to do so. The Youth Law Center does not believe that this fact requires that the rule be revised to strip courts' power to seal the records of other counties in all cases. However, we appreciate the committee's concern that as the rule currently stands, some petitioners may not be receiving the full benefits of record sealing. Although we do not believe that the benefits of changing the rule outweighs the harm to young</p>	

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>people, if the council believes it necessary to revise the rule, the Youth Law Center proposes that the rule be revised to permit courts to seal out-of-county records and to require courts that do not seal non-transfer records due to a lack of information regarding eligibility to seal such records to state their reasons for the failure to seal on the record and on the order.</p> <p>Recommendation 2: Require Courts to Seal Records of Transferring Courts</p> <p>In the event that the proposed change requiring young people to file petitions in every county in which they have non-transfer records is approved, the Youth Law Center proposes that Rule 5.830(a)(6) be revised to require that a court, when a sealing petition is granted, seal the records of the court from which jurisdiction has been transferred pursuant to rules 5.610 or 5.612. As the proposed rule is presently written, a court may, but is not required to seal such records. The Youth Law Center anticipates that the present language may result in some courts failing or refusing to seal the records of a transferring court even where a petitioner has met the requirements to seal and the court has sealed other records.</p> <p>Explicitly requiring courts to seal the records of transferring courts is especially important given that proposed forms JV-595 and JV-595-INFO inform petitioners that "If your case was</p>	<p>As noted in the response on page 1, the committee has clarified that the court must determine if the records of the other court should be sealed in a transfer case.</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>transferred from one county to another, your records in both counties will be sealed" (JV-595) (emphasis added) and that petitioners need to file petitions in every court that has their records unless their case was transferred (JV-595-INFO). These forms indicate to petitioners that they need not file petitions in a transferring court. If the transferee court then fails to seal transferring court records -perhaps at a hearing at which the petitioner was not present -the petitioner would likely nevertheless believe that the records had been sealed based on the information contained in the forms.</p> <p>The Youth Law Center strongly recommends that Rule 5.830(a)(6) be revised along the following lines: "If the petition is granted, the court must order the sealing of all records described in section 781 using form JV-590, Order to Seal Juvenile Records-Welfare and Institutions Code Section 781, or a similar form. Where a case has been transferred to a court's jurisdiction under rules 5.610 and 5.612, the court shall order the sealing of all records described in section 781 in the transferring county, including the records of the transferring court."</p> <p>Recommendation 3: Delete Reference to Automatically Sealed Records in Rule 5.830</p> <p>The committee has proposed revising Rule 5.830 to title it "Rule 5.830. Sealing Records (§</p>	<p>Because the court is required to provide information on record sealing to all wards at their end of their case by section 781(h) the committee has opted to retain this in the rule pertaining to section 781 because even those youth whose</p>

W16-07

Juvenile law: sealing of records (Adopt Cal. Rules of Court, rule 5.840; amend rule 5.830; adopt forms JV-591, JV-595, JV-595-INFO, JV-596, and JV-596-INFO; revise forms JV-590 and JV-600)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>781). Proposed new subrule 5.830(a)(2) states that:</p> <p>At the time jurisdiction is terminated or the case is dismissed, the court must provide or instruct the probation department to provide form JV-595-INFO, How to Make Your Juvenile Records Private, and form JV-595, Request to Seal Juvenile Records, to the ward if the court does not seal the ward's records under section 786. <i>If the court does seal the ward's records under section 786, the court must provide or instruct the probation department to provide form JV-596-INFO, Sealing of Records at Termination and Dismissal, and a copy of the sealing order as provided in rule 5.840.</i></p> <p>(emphasis added).</p> <p>The Youth Law Center believes that reference to the procedure that a court should follow if it seals a ward's records under section 786 may be unnecessarily confusing if placed in a rule that refers specifically to the procedure to be followed if an individual must petition to have his or her records sealed under section 781.</p>	<p>records are sealed under section 786 are required to get information under section 781(h).</p>



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

MEMORANDUM

Date February 9, 2016	Action Requested Please Review
To Family and Juvenile Law Advisory Committee Members	Deadline N/A
From Nicole Giacinti	Contact Nicole Giacinti 415-865-7598 phone nicole.giacinti@jud.ca.gov
Subject Juvenile Law: Inter-County Transfers	

Background

In Winter 2014 this committee circulated a proposal to create rules and forms for the inter-county transfer of nonminor dependent cases. However, when the proposal circulated several Southern California courts were in the process of piloting a transfer protocol including the use of a modified form JV-550. In addition to the modified form, the Southern California courts were following a specific protocol that included use of a mandatory transfer out motion. Anticipating that the Southern California inter-county transfer pilot project could impact the nonminor dependent transfer proposal, the committee decided to defer the proposal pending the conclusion of the Southern California pilot project.

The Southern California pilot project has concluded and at its December 2015 meeting the Judicial Council approved use of the modified JV-550 by the courts involved in the Southern California protocol. The Southern California courts are the second group of courts to receive approval to use a modified version of form JV-550. In approximately 2007, several Northern California courts received approval to use a modified version of form JV-550 as part of their SacJoaquin protocol. Because creating a rule and form for intercounty transfer of nonminor dependent cases requires review of our current transfer rules and form, and because the Southern California and SaqJoaquin protocols have been successful, a group of members (the work-group)

has been meeting to determine what changes, if any, should be made to the statewide transfer process. The work-group recommends: a) revising form JV-550 to include all the information contained in the modified version used in Southern California; b) adopting the Motion for Transfer used by the Southern California courts as a mandatory judicial council form; and, c) revising rule 5.610 to mandate use of the Motion for Transfer form and the revised JV-550, carving out as optional some sections of each form. The work-group also requests committee discussion and consideration of the use of electronic document storage and file-sharing technology to facilitate transfer statewide.

The Proposal

Nonminor Dependent Transfer Orders (Form JV-552 & Rule 5.613)

The work-group proposes adopting Rule 5.613, which mandates transfer-out and transfer-in procedures for the transfer of nonminor dependent cases, in conformance with the mandate set forth in AB 1712, which revised Welfare and Institutions Code sections 17.1 and 375. The version of rule 5.613 proposed for the Spring 2017 cycle largely tracks the rule circulated in Winter 2014, with a couple differences. Unlike the version circulated in Winter 2014, the current proposed version of rule 5.613 requires use of the proposed mandatory *Motion for Transfer Out*, form JV-448. Recognizing that all courts may not have the resources to complete every section of form JV-448, rule 5.613 subsection (5) makes items D and E on form JV-448 optional.

In addition, subsection (8) of rule 5.613, which concerns transmittal of documents, has been revised. It now provides that in nonminor cases, the entire underlying juvenile case file need not be transmitted. Rather, only those documents associated with the final hearing held prior to the nonminor reaching the age of the majority need be transmitted. There is no prohibition on transmitting the entire juvenile file but it is not mandated. The version of rule 5.613 proposed for the Spring 2017 cycle is attached.

The work-group also recommends that a new mandatory form (form JV-552) related to the transfer of nonminor cases from one county to another be adopted. The JV-552 will alert the new court to the existence of the transfer and allow the receiving court to set a transfer-in hearing within ten days of receiving case file materials. While largely based on the form proposed during the Winter 2014 cycle, various sections of the version of form JV-552 proposed for the Spring 2017 cycle have been rearranged and a new section that allows the transfer-out court to schedule the transfer-in hearing has been added.

Revisions to Rules and Forms Governing Intercounty Transfer of Minor Cases

Form JV-550

The work-group recommends revising Judicial Council form JV-550 to track the version of the form used by the Southern California courts. The modified form used in Southern California includes checkboxes for whether the transfer has been granted or denied, as well as additional case details, such as ICWA information, special education issues, educational rights holder

details, visitation, parentage, and 241.1 status. This modified version of form JV-550 also includes a section that allows the transfer-out court to schedule, and notice the parties for, the transfer-in hearing. A draft of the proposed form JV-550 is attached and includes highlighting that shows the proposed new sections.

Motion for Transfer Out, Form JV-448

The work-group also recommends adopting as a mandatory form the Motion for Transfer that is used by the Southern California courts. Form JV-448 includes the case type, documentation of verification of residence, education information, and other important case details. The details in the transfer out motion increase efficiency for the transfer-out and transfer-in court. A copy of the Motion for Transfer used in Southern California and recommended for adoption as a mandatory form is attached.

Rule 5.610

The work-group recommends revising rule 5.610 to mandate use of the Motion for Transfer Out, form JV-448. The revisions to rule also make some of the items in the Motion for Transfer Out, form JV-448, and proposed form JV-550 optional. The work-group recognizes that some courts may not have the resources to provide all the information requested in forms JV-550 and JV-448; as such, rule 5.610 specifies that some of the sections requiring detailed case information may be left blank. A draft of rule 5.610 with the proposed revisions is attached.

Electronic Document Storage and File-Sharing

The work-group recommends that the committee consider mandating the use of electronic file sharing to expedite the inter-county transfer of the file associated with the case to be transferred. Both the SacJoaquin and Southern California protocols use an electronic file sharing system that obviates the need to mail paper copies of the court file. These file sharing systems expedite the transfer-in process and save court resources.

Conclusion

In sum, the work-group seeks discussion of the following issues:

- a. Should rule 5.613, related to nonminor transfer, and the concomitant form (JV-552) be adopted as proposed or are their revisions that need to be made;
- b. Should form JV-550 be revised to mirror the revised version of form JV-550 used by the Southern California courts;
- c. Should the proposed Motion for Transfer Out, form JV-448, be adopted as a mandatory form. If not as a mandatory form, should it be adopted as an optional form;
- d. Should rule 5.610 be revised to mandate use of Motion for Transfer out, form JV-448;
- e. Should use of electronic documents and file-sharing related to transfer cases be explored?

Attachments

1. Proposed new Cal. Rules of Court, rule 5.613;
2. Proposed new Judicial Council form, JV-552 (the Southern California nonminor transfer out form);
3. Proposed revised Cal. Rules of Court, rule 5.610;
4. Proposed revised Cal. Rules of Court, rule 5.612;
5. Proposed revised Judicial Council form, JV-550 (the Southern California revised JV-550);
6. Proposed new Judicial Council form, JV-448 (the Southern California Motion for Transfer).

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title

Juvenile Law: Inter-county Transfers

Action Requested

Thursday, February 18, 2016

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.610 and 5.612; approve Cal. Rules of Court, rule 5.613; revise form JV-550; adopt form JV-552 and JV-448

Proposed Effective Date

January 1, 2017

Contact

Nicole Giacinti
nicole.giacinti@jud.ca.gov
(415) 865-7598

Proposed by

Family and Juvenile Law Advisory
Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee recommends adopting one new rule and approving one new mandatory form to implement the transfer provisions for nonminor dependents in Assembly Bill 1712 (Beall; Stats. 2012, ch. 846). The committee further recommends revising the current intercounty transfer rules and form JV-550 to include provisions that have streamlined the transfer process for counties involved in the SacJoaquin and Southern California transfer protocols. Specifically, the committee recommends adopting the modified version of form JV-550 created by the Southern California courts and approving the Motion for Transfer used by those same courts, as a mandatory form. These forms provide a synopsis of pertinent procedural and factual information of the case being transferred. Lastly, the committee recommends revising rules 5.610 and 5.612 to require mandatory use of the Motion for Transfer and revised form JV-550.

Background

The original proposal to create rules and forms for the intercounty transfer of nonminor dependent cases circulated in Winter 2014. The proposal was necessitated by the implementation of legislation creating extended foster care (AB12, AB 212, AB 1712, and AB 787). While most of the changes needed to implement these various bills had previously been made by the Judicial Council, no action had been taken to clarify the procedure to transfer the case of a nonminor dependent from one county to another.

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.

However, when the proposal circulated several Southern California courts were in the process of piloting the use of a modified form JV-550. In addition to the modified form, the Southern California courts were following a specific protocol that included use of a mandatory transfer out motion. Anticipating that the Southern California inter-county transfer pilot project could impact the nonminor dependent transfer proposal, the committee decided to defer the proposal pending the conclusion of the Southern California pilot project. The Southern California pilot project has concluded and the Judicial Council recently approved use of the modified JV-550 by the courts involved in the Southern California protocol.

Since creating the nonminor dependent transfer rule and form necessitates review of the juvenile transfer rules and form and because the Southern California and SacJoaquin protocols are so successful, the committee recommends adopting the provisions of the Southern California protocol.

Prior Circulation

The proposal to create rules and forms for the intercounty transfer of nonminor dependent cases previously circulated in Winter 2014. The proposal was deferred pending the conclusion of the Southern California inter-county transfer pilot project.

The Proposal

The addition of rule 5.613 and the approval of form JV-552 will ensure conformance with the requirements of the legislation implementing extended foster care, which requires that a process for the intercounty transfer of nonminor cases be established. Amending rules 5.610 and 5.612, revising form JV-550, and approving the Motion for Transfer Out as a mandatory form will enhance efficiency, for courts and parties, in the intercounty transfer of juvenile and nonminor cases.

Intercounty Transfer of Nonminor Cases

The Family and Juvenile Law Advisory Committee proposes amending the California Rules of Court to add rule 5.613 and revising the Judicial Council forms to include JV-552.

- Rule 5.613 mandates transfer-out and transfer-in procedures for the transfer of nonminor dependent cases, in conformance with the mandate set forth in AB 1712, which revised Welfare and Institutions Code sections 17.1 and 375 to provide that a nonminor dependent who has been placed in a planned permanent living arrangement and has continuously resided as a nonminor dependent in a county other than the county of jurisdiction for at least 12 months with the intent to continue to reside in that county may have his or her case transferred to that county of residence.

The procedures to transfer the cases of minor wards and dependents are currently governed by two rules of the California Rules of Court,¹ rule 5.610, which states the requirements for a hearing to transfer a case out, and rule 5.612, which governs transfer-in proceedings. Rule 5.613 largely tracks the procedural requirements for transfer of minor cases as they apply to minors who are not detained; however, rule 5.613 includes transfer-out and -in requirements in one rule rather than two.

In addition, one additional requirement for the transfer of a nonminor dependent that is not present for a minor ward or dependent is a proposed requirement that the nonminor support the transfer. Comments questioning the inclusion of this requirement were received during the Winter 2014 cycle comment period but the committee recommends maintaining the requirement. Because extended foster care is a voluntary status intended to assist the nonminor in achieving independence, the committee believes that to allow a court to transfer the jurisdiction of a nonminor over his or her objection would be inconsistent with the intent of the California Fostering Connections to Success Act.

The version of rule 5.613 currently being circulated contains language requiring use of the proposed mandatory *Motion for Transfer Out* form, form JV-448. Recognizing that all courts may not have the resources to complete every section of form JV-448, rule 5.613 subsection (5) makes items D and E on form JV-448 optional.

Another difference between the version of rule 5.613 circulated during the Winter 2014 cycle and the current version appears in subsection (8). Subsection (8) concerns transmittal of documents and provides that in nonminor cases, the entire underlying juvenile case file need not be transmitted. Rather, only those documents associated with the final hearing held prior to the nonminor reaching the age of the majority need be transmitted. There is no prohibition on transmitting the entire juvenile file but it is not mandated.

- The committee recommends a new mandatory form (form JV-552) related to the transfer of nonminor cases from one county to another be adopted. The JV-552 will alert the new court to the existence of the transfer and allow the sending court to set a transfer-in hearing within ten days of the transfer-out hearing. While largely based on the form proposed during the Winter 2014 cycle, various sections of the version of form JV-552 proposed for the Spring 2017 cycle have been rearranged and a new section that allows the transfer-out court to schedule the transfer-in hearing has been added.

Revisions to Rules and Forms Governing Intercounty Transfer of Minor Cases

The Family and Juvenile Law Advisory Committee recommends amending form JV-550, adopting form JV-448, *Motion for Transfer Out*, and revising rules 5.610 and 5.612.

¹ All further rule references are to the California Rules of Court unless otherwise indicated.

- The proposed amendments to form JV-550 would incorporate the modifications tested during Southern California’s intercounty transfer pilot project. Specifically, the committee proposes adding a section that states whether the transfer request was granted or denied, as well as a section that documents the delinquency disposition imposed. It is further recommended that form JV-550 include additional details about the case, such as ICWA information, special education issues, educational rights holder details, visitation, parentage, and 241.1 status. Including these details in form JV-550 will provide the transfer-in court with an “at-a-glance” snapshot of all the important case details, insuring that the transfer-in court has all the information it needs to conduct the transfer-in hearing and set appropriate future hearings.

Lastly, it is recommended that form JV-550 include a section that allows the transfer-out court to schedule, and notice the parties for, the transfer-in hearing. Currently, the transfer-in hearing is scheduled by the transfer-in court after that court receives notice of the transfer. The parties receive notice of the transfer-in hearing by mail. This method of scheduling the transfer-in hearing can lead to delays, which could be avoided if the transfer-out court is able to schedule the transfer-in hearing and notice the parties during the transfer-out hearing.

- In addition to revising form JV-550, the committee recommends adopting for mandatory use Motion for Transfer Out as form JV-448. Form JV-448 includes the case type, documentation of verification of residence, education information, and other important case details. Form JV-448, like form JV-550, provides a synopsis of the pertinent facts and procedural history of the case. This level of detail insures that the transfer-out court has the information necessary to rule on the requested transfer. The additional details provided in the transfer-out motion benefit the transfer-in court as well; highlighting procedural steps that still need to be taken and enabling the court to easily identify the procedural posture of the case.
- The committee recommends revising rules 5.610 and 5.612 to require the transfer-out court to set the transfer-in hearing and mandate use of *Motion for Transfer Out*, form JV-448. Form JV-550 is a mandatory form and has been since its inception. Courts have expressed their appreciation for the consistency created by using this mandatory form to unify transfer, which is a statewide process.

The revisions to rule 5.610 also make some of the items in the Motion for Transfer Out, form JV-448, and Juvenile Court Transfer Orders, form JV-550 optional. The committee recognizes that some courts may not have the resources to provide all the information requested in forms JV-550 and JV-448; as such, rule 5.610 specifies that some of the sections requiring detailed case information may be left blank. Structuring the rule this way insures that court’s with limited resources will not be overburdened, while still encouraging all courts to provide the requested information.

Alternatives Considered

The committee considered proposing only the rule and form related to the transfer of nonminor dependent cases; however, based on the proven gains in efficiency achieved by the SacJoaquin and Southern California protocols the committee decided to propose revisions to the process for intercounty transfer of minor cases.

Implementation Requirements, Costs, and Operational Impacts

This proposal may result in minimal additional record keeping related to filing proposed new forms, JV-552 and JV-448.

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?
- Rather than allowing courts to leave certain sections of forms JV-448 and JV-550 blank, should all the information included on these forms be mandatory?

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 12 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 [Heading 1 - Arial 12, bold]

1. Proposed new Cal. Rules of Court, rule 5.613;
2. Proposed new Judicial Council form, JV-551;
3. Proposed amended Cal. Rules of Court, rule 5.610;
4. Proposed amended Cal. Rules of Court, rule 5.612;
5. Proposed revised Judicial Council form, JV-550;
6. Proposed new Judicial Council form, JV-448.

1 **Rule 5.610. Transfer-out hearing**

2
3 **(a) Determination of residence—special rule on intercounty transfers (§§ 375,**
4 **750)**

- 5
6 (1) For purposes of rules 5.610 and 5.612, the residence of the child is the
7 residence of the person who has the legal right to physical custody of the
8 child according to prior court order, including:
9
10 (A) A juvenile court order under section 361.2; and
11
12 (B) An order appointing a guardian of the person of the child.
13
14 (2) If there is no order determining custody, both parents are deemed to have
15 physical custody.
16
17 (3) The juvenile court may make a finding of paternity under rule 5.635. If there
18 is no finding of paternity, the mother is deemed to have physical custody.
19
20 (4) For the purposes of transfer of wardship, residence of a ward may be with the
21 person with whom the child resides with approval of the court.
22

23 *(Subd (a) amended effective January 1, 2007; previously amended effective January 1,*
24 *2004.)*

25
26 **(b) Verification of residence**

27
28 The residence of the person entitled to physical custody may be verified ~~by that~~
29 ~~person in court~~ or by declaration of a social worker or probation officer in the
30 transferring or receiving county.
31

32 *(Subd (b) amended effective January 1, 2007; previously amended effective January 1,*
33 *2004.)*

34
35 **(c) Transfer to county of child's residence (§§ 375, 750)**

- 36
37 (1) After making its jurisdictional finding, the court may order the case
38 transferred to the juvenile court of the child's residence if:
39
40 (A) The petition was filed in a county other than that of the child's
41 residence; or
42
43 (B) The child's residence was changed to another county after the petition
44 was filed.
45

1 (2) If the court decides to transfer a delinquency case, the court must order the
2 transfer before beginning the disposition hearing without adjudging the child
3 to be a ward.

4
5 (3) If the court decides to transfer a dependency case, the court may order the
6 transfer before or after the disposition hearing.

7
8 *(Subd (c) amended effective January 1, 2007; previously amended effective January 1,*
9 *2004.)*

10
11 **(d) Transfer on subsequent change in child's residence (§§ 375, 750)**

12
13 If, after the child has been placed under a program of supervision, the residence is
14 changed to another county, the court may, on an application for modification under
15 rule 5.570, transfer the case to the juvenile court of the other county.

16
17 *(Subd (d) amended effective January 1, 2007; previously amended effective January 1,*
18 *2004.)*

19
20 **(e) Conduct of hearing**

21
22 The request for transfer must be made on *Motion for Transfer Out* (form JV-448).
23 Counties that are unable to provide the information in items D and E may leave
24 those items blank. The information requested in all other items must be included.

25
26 After the court determines the identity and residence of the child's custodian, the
27 court must consider whether transfer of the case would be in the child's best
28 interest. The court may not transfer the case unless it determines that the transfer
29 will protect or further the child's best interest.

30
31 If the transfer-out motion is granted, the sending court shall set a date certain for the
32 transfer-in hearing in the receiving court: within five (5) court days of the transfer-
33 out order if the child is in-custody and within ten (10) court days of the transfer-out
34 order if the child is out of custody. The sending court shall state on the record the
35 date, time, and location of the hearing in the receiving court.

36
37 *(Subd (e) amended effective January 1, 2007; repealed and adopted effective January 1,*
38 *1990; previously amended effective January 1, 1993, and January 1, 2004.)*

39
40 **(f) Order of transfer (§§ 377, 752)**

41
42 The order of transfer must be entered on *Juvenile Court Transfer Orders* (form JV-
43 550), which must include all required information and findings. Counties that are
44 unable to provide the information in items 6(e) and (m) may leave those items
45 blank. The remainder of the required information and findings must be completed.
46

1 (Subd (f) amended effective January 1, 2007; repealed and adopted effective January 1,
2 1990; previously amended effective January 1, 1993, and January 1, 2004.)
3

4 **(g) Modification of form JV-550**
5

6 *Juvenile Court Transfer Orders* (form JV-550) may be modified as follows:
7

- 8 (1) Notwithstanding the mandatory use of form JV-550, the form may be
9 modified for use by a formalized regional collaboration of courts to facilitate
10 the efficient processing of transfer cases among those courts if the
11 modification has been approved by the Judicial Council of California.
12
- 13 (2) The mandatory form must be used by a regional collaboration when
14 transferring a case to a court outside the collaboration or when accepting a
15 transfer from a court outside the collaboration.
16

17 (Subd (g) amended January 1, 2015; adopted January 1, 2007.)
18

19 **(h) Transport of child and transmittal of documents (§§ 377, 752)**
20

- 21 (1) If the child is ordered transported in custody to the receiving county, the child
22 must be delivered to the receiving county ~~within 7 court days~~ at least two (2)
23 business days before the transfer-in hearing, and the clerk of the court of the
24 transferring county must prepare a certified copy of the complete case file so
25 that it may be transported with the child to the court of the receiving county.
26
- 27 (2) If the child is not ordered transported in custody, the clerk of the transferring
28 court must transmit to the clerk of the court of the receiving county within ~~10~~
29 5 court days a certified copy of the complete case file.
30
- 31 (3) A certified copy of the complete case file is deemed an original.
32

33 (Subd (d) amended and relettered effective January 1, 2007; repealed and adopted as subd
34 (g); previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and
35 January 1, 2004.)
36

37 **(i) Appeal of transfer order (§§ 379, 754)**
38

39 The order of transfer may be appealed by the transferring or receiving county and
40 notice of appeal must be filed in the transferring county, under rule 8.400.
41 Notwithstanding the filing of a notice of appeal, the receiving county must assume
42 jurisdiction of the case on receipt and filing of the order of transfer.
43

44 (Subd (i) amended and relettered effective January 1, 2007; repealed and adopted as subd
45 (h); previously amended effective January 1, 1992, and January 1, 2004.)
46

1 *Rule 5.610 amended effective January 1, 2015; adopted as rule 1425 effective January 1, 1990;*
2 *previously amended effective January 1, 1992, January 1, 1993, July 1, 1999, and January 1,*
3 *2004; previously amended and renumbered effective January 1, 2007.*
4

1
2 **Rule 5.612. Transfer-in hearing**
3

4 **(a) Procedure on transfer (§§ 378, 753)**

5 (1) On receipt and filing of a certified copy of a transfer order, the receiving court
6 must accept jurisdiction of the case. The receiving court may not reject the case.
7 The clerk of the receiving court must ~~immediately place the transferred case on~~
8 ~~the court calendar for a transfer-in hearing~~ confirm the transfer-in hearing date
9 scheduled by the sending court and ensure that date is on the receiving court's
10 calendar. The receiving court must notify the transferring court on receipt and
11 filing of the certified copies of the transfer order and complete case file.

12 (A) ~~Within 2 court days after the transfer out order and documents are received~~
13 ~~if the child has been transported in custody and remains detained; or~~

14 (B) ~~Within 10 court days after the transfer out order and documents are received~~
15 ~~if the child is not detained in custody.~~

16 ~~(2) No requests for additional time for the transfer-in hearing may be approved.~~
17 ~~The clerk must immediately cause notice to be given to the child and the~~
18 ~~parent or guardian, orally or in writing, of the time and place of the transfer-~~
19 ~~in hearing. The receiving court must notify the transferring court on receipt~~
20 ~~and filing of the certified copies of the transfer order and complete case file.~~

21 *(Subd (a) amended effective January 1, 2007; repealed and adopted effective*
22 *January 1, 1990; previously amended effective January 1, 1992, July 1, 1999,*
23 *and January 1, 2004.)*

24 **(b) Conduct of hearing**

25 At the transfer-in hearing, the court must:

26 (1) Advise the child and the parent or guardian of the purpose and scope of the
27 hearing;

28 (2) Provide for the appointment of counsel if appropriate; and

29 (3) If the child was transferred to the county in custody, determine whether the
30 child must be further detained under rule 5.667.

31 *(Subd (b) amended effective January 1, 2007; previously amended effective*
32 *January 1, 2004.)*

33 **(c) Subsequent proceedings**

34 The proceedings in the receiving court must commence at the same phase as when
35 the case was transferred. The court may continue the hearing for an
36 investigation and report to a date not to exceed 10 court days if the child is in
37 custody or 15 court days if the child is not detained in custody.

1 *(Subd (c) amended effective January 1, 2004; previously amended effective July 1,*
2 *1999.)*

3 **(d) Limitation on more restrictive custody (§§ 387, 777)**

4 If a disposition order has already been made in the transferring county, a more
5 restrictive level of physical custody may not be ordered in the receiving
6 county, except after a hearing on a supplemental petition under rule 5.565.

7 *(Subd (d) amended effective January 1, 2007; previously amended effective*
8 *January 1, 2004.)*

9 **(e) Setting six-month review (§ 366)**

10 When an order of transfer is received and filed relating to a child who has been
11 declared a dependent, the court must set a date for a six-month review within
12 six months of the disposition or the most recent review hearing.

13 *(Subd (e) amended effective January 1, 2004.)*

14 **(f) Change of circumstances or additional facts (§§ 388, 778)**

15 If the receiving court believes that a change of circumstances or additional facts
16 indicate that the child does not reside in the receiving county, a transfer-out
17 hearing must be held under rules 5.610 and 5.570. The court may direct the
18 department of social services or the probation department to seek a
19 modification of orders under section 388 or 778 and under rule 5.570.

20 *(Subd (f) amended effective January 1, 2007; adopted effective January 1, 1992;*
21 *previously amended effective July 1, 1999, and January 1, 2004.)*

22 *Rule 5.612 amended and renumbered effective January 1, 2007; adopted as rule*
23 *1426 effective January 1, 1990; previously amended effective January 1,*
24 *1992, July 1, 1999, and January 1, 2004.*

25

Rule 5.613 of the California Rules of Courts would be adopted, effective July 1, 2014, to read:

1 **Rule 5.613. Transfer of nonminor dependents**
2

3 **(a) Purpose**
4

5 This rule applies to requests to transfer the county of jurisdiction of a nonminor dependent
6 as allowed by Welfare and Institutions Code section 375. This rule sets forth the procedures
7 that a court is to follow when it seeks to order a transfer of a nonminor dependent and those
8 to be followed by the court receiving the transfer. All other intercounty transfers of
9 juveniles are subject to rules 5.610 and 5.612.
10

11 **(b) Transfer-out hearing**
12

13 **(1) Determination of residence—special rule on intercounty transfers (§ 375)**
14

15 (A) For purposes of this rule, the residence of a nonminor dependent who is placed
16 in a planned permanent living arrangement may be either the county in which
17 the court that has jurisdiction over the nonminor is located or the county in
18 which the nonminor has resided continuously for at least one year as a nonminor
19 dependent and the nonminor dependent has expressed his or her intent to
20 remain.
21

22 (B) If a nonminor dependent’s dependency jurisdiction has been resumed, or if
23 transition jurisdiction has been assumed or resumed by the juvenile court that
24 retained general jurisdiction over the nonminor under section 303, the county
25 that the nonminor dependent is residing in may be deemed the county of
26 residence of the nonminor dependent. The court may make this determination if
27 the nonminor has established a continuous physical presence in the county for
28 one year as a nonminor and has expressed his or her intent to remain in that
29 county after the court grants the petition to resume jurisdiction. The period of
30 continuous physical presence includes any period of continuous residence
31 immediately before filing the petition.
32

33 **(2) Verification of residence**
34

35 The residence of a nonminor may be verified by declaration of a social worker or
36 probation officer in the transferring or receiving county.
37

38 **(3) Transfer to county of nonminor’s residence (§ 375)**
39

40 If the court is resuming dependency jurisdiction or assuming or resuming transition
41 jurisdiction for a nonminor for whom the court has retained general jurisdiction under
42 subdivision (b) of section 303 as a result of a petition filed pursuant to subdivision (e)
43 of section 388, after granting the petition the court may order the transfer of the case

1 to the juvenile court of the county in which the nonminor is living if the nonminor
2 establishes residency in that county as provided in (1)(b) and the court finds that the
3 transfer is in the minor’s best interest.

4
5 **(4) Transfer on change in nonminor’s residence (§ 375)**

6
7 If a nonminor dependent under the dependency or transition jurisdiction of the court
8 is placed in a planned permanent living arrangement in a county other than the county
9 with jurisdiction over the nonminor, the court may, on an application for modification
10 under rule 5.570, transfer the case to the juvenile court of the county in which the
11 nonminor is living if the nonminor establishes residency in that county as provided in
12 (1)(b).

13
14 **(5) Conduct of hearing**

15
16 The request for transfer must be made on *Motion for Transfer Out* (form JV-448).
17 Counties that are unable to provide the information in items D and E may leave those
18 items blank. The information requested in all other items must be included.

19
20 After the court determines whether a nonminor has established residency in another
21 county as required in (b), the court must consider whether transfer of the case would
22 be in the nonminor’s best interest. The court may not transfer the case unless it
23 determines that the nonminor supports the transfer and that the transfer will protect or
24 further the nonminor’s best interest.

25
26 If the transfer-out motion is granted, the sending court shall set a date certain for the
27 transfer-in hearing in the receiving court, which must be within ten (10) court days of
28 the transfer-out order. The sending court shall state on the record the date, time, and
29 location of the hearing in the receiving court.

30
31 **(6) Order of transfer (§ 377)**

32
33 The order of transfer must be entered on *Nonminor Dependent Transfer Orders* (form
34 JV-552), which must include all required information and findings.

35
36 **(7) Modification of form JV-552**

37
38 *Nonminor Dependent Transfer Orders* (form JV-552) may be modified as follows:

39
40 **(A) Notwithstanding the mandatory use of form JV-552, the form may be modified**
41 **for use by a formalized regional collaboration of courts to facilitate the efficient**
42 **processing of transfer cases among those courts if the modification has been**
43 **approved by the Judicial Council.**

1
2 (B) The mandatory form must be used by a regional collaboration when transferring
3 a case to a court outside the collaboration or when accepting a transfer from a
4 court outside the collaboration.

5
6 **(8) Transmittal of documents (§ 377)**

7
8 The clerk of the transferring court must transmit to the clerk of the court of the
9 receiving county no later than 5 court days from date of the transfer-out order, a
10 certified copy of, at a minimum, all documents associated with the last hearing held
11 before the nonminor reached majority, including the court report and all findings and
12 orders. The file may be transferred electronically, if possible. ~~the complete case file.~~
13 A certified copy of the complete case file is deemed an original.

14
15 **(9) Appeal of transfer order (§ 379)**

16
17 The order of transfer may be appealed by the transferring or receiving county, and
18 notice of appeal must be filed in the transferring county, under rule 8.400.
19 Notwithstanding the filing of a notice of appeal, the receiving county must assume
20 jurisdiction of the case on receipt and filing of the order of transfer.

21
22 **(c) Transfer-in hearing**

23
24 **(1) Procedure on transfer (§ 378)**

25
26 (A) On receipt and filing of a certified copy of a transfer order, the receiving court
27 must accept jurisdiction of the case. The receiving court may not reject the case.
28 The receiving court must notify the transferring court on receipt and filing of the
29 certified copies of the transfer order and complete case file. The clerk of the
30 receiving court must confirm the transfer-in hearing date scheduled by the
31 sending court and ensure that date is on the receiving court's calendar.

32
33 (B) No requests for additional time for the transfer in hearing may be approved. The
34 clerk must immediately cause notice to be given to the nonminor, orally or in
35 writing, of the time and place of the transfer in hearing. The receiving court
36 must notify the transferring court on receipt and filing of the certified copies of
37 the transfer order and complete case file.

38
39 **(2) Conduct of hearing**

40
41 At the transfer-in hearing, the court must:

42
43 (A) Advise the nonminor of the purpose and scope of the hearing; and

1
2 (B) Provide for the appointment of counsel, if appropriate.

3
4 **(3) Subsequent proceedings**

5
6 The proceedings in the receiving court must commence at the same phase as when the
7 case was transferred. The court may continue the hearing for an investigation and a
8 report to a date not to exceed 15 court days.

9
10 **(4) Setting six-month review (§ 366.31)**

11
12 When an order of transfer is received and filed relating to a nonminor dependent, the
13 court must set a date for a six-month review within six months of the most recent
14 review hearing or, if the sending court transferred the case immediately after
15 assuming or resuming jurisdiction, within six months of the date a voluntary reentry
16 agreement was signed.

17
18 **(5) Change of circumstances or additional facts (§§ 388, 778)**

19
20 If the receiving court believes that a change of circumstances or additional facts
21 indicate that the nonminor does not reside in the receiving county, a transfer-out
22 hearing must be held under this rule and rule 5.570. The court may direct the
23 department of social services or the probation department to seek a modification of
24 orders under section 388 or section 778 and under rule 5.570.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ 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 Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: _____	
CHILD'S NAME: _____	CASE NUMBER: _____
HEARING DATE: _____	TIME: _____
DEPARTMENT: _____	
MOTION FOR TRANSFER OUT	

_____ County Child Welfare Department, by and through counsel, or
 Probation Department, requests an order transferring the above-referenced case to
 _____ County.

_____, attorney for _____
 requests an order transferring the above-referenced case to _____ County.

The motion is brought pursuant to Welfare and Institutions Code \$375 \$750 Other:

A. Facts of Case

1. Type of Case

Delinquency Dependency Nonminor Dependent

2. Disposition

Disposition not yet imposed/deferred Disposition imposed from sending county on :

3. Confinement Time/Custody Credit (*Delinquency Cases Only*)

a. As of _____ the overall term of confinement time in the sending county was:

b. Overall Custody Credits:

B. Best Interests (*State why the proposed transfer is in the best interest of the minor or nonminor.*)

C. Verification of Residence

1. The parent's/legal guardian's address nonminor's address in the proposed receiving county
 was confirmed by the sending county's agency as:

Name:

Address:

City:

State:

Zip:

Phone:

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

2. The probation officer social worker in the receiving county sending county has conducted an address check and verified the address.
3. Verification completed by: _____ Date verified: _____
4. Documentation establishing residency in the proposed receiving county is attached to this motion. The following documentation is attached:

D. Education Information

1. Name of last school attended: _____
2. Name of school district: _____
3. Name of current Educational Rights Holder or Surrogate Parent: _____
4. Name of proposed Educational Rights Holder or Surrogate Parent: _____
5. There is an Individual Education Plan (IEP) for the minor.

E. Services

1. The level of services required by the minor can cannot be met in the proposed receiving county.
2. The level of services required by parent or legal guardian can cannot be met in the proposed receiving county.
3. Describe the type and level of service or supervision required by the minor and/or parent or legal guardian (e.g., drug treatment, residential, outpatient, NA only, etc.).
4. A copy of the most recent case plan is attached.
 Probation did not previously supervise the minor.

F. Other

1. The current status of the Indian Child Welfare Act (ICWA) is (specify): _____
2. Parentage has been determined as indicated in minute order dated: _____
3. A WIC §241.1 determination has been made as indicated in the minute order dated: _____
4. Restitution has been determined in the amount of \$ _____
See minute order dated: _____
5. The minor has exceptional medical needs (specify): _____
6. The minor qualifies for regional center services.
7. There are pending Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) issues in this case.
8. A Special Juvenile Immigrant Status (SJIS) application is pending.
9. A Social Security Income (SSI) application is pending.
10. There are active orders regarding psychotropic medications. The last order is dated: _____

CASE NAME:	CASE NUMBER:
------------	--------------

11. If applicable, in the below box, please list all dependency and delinquency case for the minor.

Case Number	County	Case Type

12. Other:

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

Date:

 (TYPE OR PRINT NAME OF PROBATION OFFICER SOCIAL WORKER)

 SIGNATURE

 (TYPE OR PRINT NAME OF PARTY ATTORNEY FOR PARTY)

 SIGNATURE

CASE NAME:	CASE NUMBER:
------------	--------------

PROOF OF SERVICE

I served a copy of the Motion for Transfer on the following persons or entities by personally delivering a copy to the person served, OR by emailing the document to an agreed upon email address of the person served, OR by faxing the document to the fax number provided by the person served, OR by delivering a copy to a competent adult at the usual place of residence or business of the person served and thereafter mailing a copy by first-class mail to the person served at the place where the copy was delivered, OR by placing a copy in a sealed envelope and depositing the envelope directly in the U.S. mail with postage prepaid or at my place of business for same-day collection and mailing with the U.S. mail, following our ordinary business practices with which I am readily familiar:

- | | | |
|--|---|---|
| 1. <input type="checkbox"/> Social worker
a. Name and address:

b. Date of service:
c. Method of service: | <input type="checkbox"/> Probation officer

<input type="checkbox"/> Legal Guardian
a. Name and address:

b. Date of service:
c. Method of service: | <input type="checkbox"/> Attorney
a. Name and address:

b. Date of service:
c. Method of service: |
| 2. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal Guardian
a. Name and address:

b. Date of service:
c. Method of service: | <input type="checkbox"/> Attorney
a. Name and address:

b. Date of service:
c. Method of service: | |
| 3. <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Legal Guardian
a. Name and address:

b. Date of service:
c. Method of service: | <input type="checkbox"/> Attorney
a. Name and address:

b. Date of service:
c. Method of service: | |
| 4. <input type="checkbox"/> Child (if 10 years of age or older)
a. Name and address:

b. Date of service:
c. Method of service: | <input type="checkbox"/> Attorney
a. Name and address:

b. Date of service:
c. Method of service: | |

Additional parties served. Additional Proof of Service form attached.

5. At the time of service, I was at least 18 years of age and not a party to this cause. I am a resident of, or employed in, the county where the mailing occurred. My residence or business address is specify):

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

Date:

_____ TYPE OR PRINT NAME		_____ JUDICIAL OFFICER OF THE JUVENILE COURT
-----------------------------	--	---

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

- c. The child currently resides with: Parents Mother Father
 Guardian Relative (*relationship*):

Name (s) (if different from 5a above):

- Foster Home (name):
 Group Home (name):
 Residential Facility (name):
 Other (name):

The address of the child's parent(s) (*other than listed in 5a or 5c above*):

Name: _____	Name: _____
Address: _____	Address: _____
State: _____ Zip: _____	State: _____ Zip: _____

- d. The child is detained placed. out-of-custody.
e. The child's case is ordered transferred to the county of (*specify*): _____ Zip: _____

- f. (1) The child shall remain at the present address.
(2) The child shall be transported in custody to the receiving county at least two business days before the transfer-in hearing date.
(3) Under prior orders of this court.
(i) The child was detained on (*date*): _____
(ii) The child was found to be described by section 300, subdivision:
 (a) (b)(1) (b)(2) (c) (d) (e) (f) (g)
 (h) (i) (j) on (*date*): _____
(iii) Dependency was declared on (*date*): _____
(iv) The child was found to be described by section 601 602 on (*date*): _____
(v) Delinquency Disposition:
 Wardship was declared on (*date*): _____
 Section 725 imposed on (*date*): _____
 Section 790 deferred entry of judgment was deferred on (*date*): _____
 Out of home placement order was made on (*date*): _____
(vi) The last hearing was on (*date*): _____
(iv) On (*date*): _____ the court ordered the mother father
 child to appear at the transfer-in hearing.

g. A transfer-In Hearing has been set for: _____

Transfer-In hearing in receiving court is scheduled for (<i>date</i>): _____
at (<i>time</i>): _____ In Dept.: _____
Transfer-In Hearing will be held at the following address: _____

- h. The following hearings have been scheduled or need to be scheduled:
 Disposition Hearing
 has been scheduled for (*date*): _____
 Needs to be scheduled.
 other (*identify*): _____
 Review Hearing Type of Review Hearing: _____
 has been scheduled for (*date*): _____
 Needs to be scheduled.

CASE NAME:	CASE NUMBER:
------------	--------------

6. The court further finds:
- a. Regarding the Indian Child Welfare Act (ICWA):
 - ICWA does apply; see minute order dated: _____
 - ICWA does not apply; see minute order dated: _____
 - The court has not yet determined whether ICWA is applicable. _____
 - b. Jurisdiction pursuant to The Uniform Child Custody Jurisdiction and Enforcement Act
 - has been established. _____
 - has not been established. _____
 - c. An application for special immigrant juvenile status is pending.
 - d. An application for SSI is pending.
 - e. (1) This child does have special education needs. An individual Education Plan has been created by (school district): _____
 - The child does not have special education needs. _____
 - The child has other education issues (specify): _____
 - (2) The court has limited the rights of the parent or guardian to make educational or developmental-services decisions for the child.
 - The court has appointed an educational rights holder pursuant to the JV-535 (dated): _____
 - The local educational agency has appointed a surrogate parent pursuant to the JV-536 (dated): _____
 Provide the name of the educational rights holder or surrogate parent: _____
 - (3) Name of minor/child's last school and or school district attended: _____
 - f. Visitation has been determined as indicated on minute order dated: _____
 - g. Reunification services were ordered for the parent(s)/legal guardian(s) on minute order dated: _____
 - h. Parentage has been determined as indicated on minute order dated: _____
 - i. A WIC § 241.1 determination that (check one or both if a dual status county)
 - dependency _____
 - delinquency serves the best interest of the child and protection of the public is indicated in the minute order dated: _____
 - j. The child has the following extraordinary medical needs: _____
 - k. Orders regarding psychotropic medication were made on: _____
 - l. Confinement Time/Custody Credit (Delinquency Cases Only)
 - i. As of _____ the over all term of confinement time in the sending county was: _____
 - ii. Overall Custody Credits: _____
 - m. The minor has the following juvenile cases:

Case Number	County	Case Type
 - n. Other: _____

CASE NAME:	CASE NUMBER:
------------	--------------

7. The court further orders that:

a. The court clerk has permission to open and access the documents placed under seal in this case for the purpose of transferring the matter to the new county. Once the receiving court has taken delivery of the sealed documents, the receiving county shall re-seal the documents.

b. Other:

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ 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 Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
NONMINOR NAME: _____	
JUVENILE COURT TRANSFER-OUT ORDERS – NONMINOR DEPENDENT	NMD CASE NUMBER: _____

1. Nonminor's name: _____	Language: _____	UNDERLYING JUVENILE CASE NUMBER: _____
---------------------------	-----------------	--

	Dept.:	Room:
--	--------	-------

2. a. Date of hearing: _____
- b. Judicial officer (name): _____
- c. Persons present:
- | | |
|---|--|
| <input type="checkbox"/> Nonminor dependent | <input type="checkbox"/> Nonminor Attorney (name): _____ |
| <input type="checkbox"/> Social Worker | <input type="checkbox"/> Probation Officer |
| <input type="checkbox"/> Other: | <input type="checkbox"/> CASA |
| <input type="checkbox"/> Other: | |

3. The court has read and considered the motion for transfer and
- | | |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | the report of the social worker |
| <input type="checkbox"/> | the report of the probation officer |
| <input type="checkbox"/> | other relevant evidence. |

4. Case History

- a. Findings and orders for nonminor dependent made on (date): _____
- b. The court resumed jurisdiction over the individual as a nonminor dependent on (date): _____
- c. The last hearing was on (date): _____
- d. On (date): _____, the nonminor was personally ordered to appear at the transfer-in hearing.
- e. **A hearing has been set for:**

Transfer-In hearing in receiving court is scheduled for (date):
at (time): _____ **In Dept.:** _____

Transfer-In Hearing will be held at the following address:

- h. The following hearings have been scheduled or need to be scheduled:
- | |
|---|
| <input type="checkbox"/> A Nonminor Dependent Status Review Hearing |
| <input type="checkbox"/> has been scheduled for (date): _____ |
| <input type="checkbox"/> Needs to be scheduled. |
| <input type="checkbox"/> Other: |
| <input type="checkbox"/> has been scheduled for (date): _____ |
| <input type="checkbox"/> Needs to be scheduled. |



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

MEMORANDUM

Date February 11, 2016	Action Requested Please review
To Family and Juvenile Law Advisory Committee	Deadline n/a
From Kerry Doyle, Attorney Center for Families, Children & the Courts	Contact Kerry Doyle 415-865-8791 phone 415-865-7217 fax kerry.doyle@jud.ca.gov
Subject Juvenile Law: Psychotropic Medication Initial Key Issues From Public Comments and Subgroup Responses	

Issue Summary

Senate Bill 238 (Mitchell; Stats. 2015, ch. 534) is a comprehensive bill that seeks to address the issues related to the administration psychotropic drugs in the foster care system by requiring additional training, oversight, and data collection by caregivers, courts, counties, and social workers. The bill requires the Judicial Council, in consultation with other specified groups, to implement specified provisions of the bill. This committee circulated a proposal amending one rule, approving two new optional forms and two new mandatory forms, revising four forms, and revising and renumbering one form in the Winter comment period. Members of this committee as well as stakeholders¹ will meet on February 29, 2016, to discuss comments and develop a

¹ Stakeholder attendees represent the County Behavioral Health Directors Association, California Academy of Child & Adolescent Psychiatry, California Psychiatric Association, National Center for Youth Law, East Bay Children's Law Office, Chief Probation Officers of California, County Welfare Directors Association, California Department

proposal for Judicial Council consideration in April. Below is a list of key issues for consideration. Interested members are encouraged to provide input or attend the February 29th meeting if available. There were 30 commentators, resulting in a 156 page comment chart. Staff is still drafting committee responses to the comments and a comment chart will be available for members to review soon. A small subgroup of members of this committee have discussed many of the comments received and have identified a number of issues for the full committee to consider and discuss.

Key Issues

1. Length of *Prescribing Physician's Statement*

Commentators believe *Prescribing Physician's Statement—Attachment* (form JV-220(A)) is too long; increased from 3-6 pages and 1 narrative question to 7. This will result in decreased access to care.

- Faced with the increased administrative burden, some ethical and capable psychiatrists and pediatricians will stop addressing mental health needs of foster youth.
- Increased time filling out form will decrease time spent with patient and family.
- The length and level of detail required will discourage providers from pursuing psychotropic medication when it would be indicated and beneficial.

*Staff has compared the current form with the proposed form. Some of the increased length comes from reformatting to allow more space for items that were already on the form. SB 319 also required additional questions and this committee added other questions that it believed were critical. The new questions on the proposed form that are not required by SB 319 are:

- How long have you been treating the child?
- In what capacity have you been treating the child?
- Describe the child's response to any current psychotropic medication
 - This question arguably is required by SB 319's mandate that the rationale for the proposed medication must be provided in the context of past and current treatment efforts.
- Administration schedule mandatory rather than optional

Question for consideration: Can the form be split into two forms, one for initial requests and one for continuing request by the same physician, to decrease the length of the form for renewal requests? The committee's subgroup proposes removing items 3, 7, 8, 10, 12(c), 13-16, 19, and 24 and creating a new form, JV-220(A2) to decrease the amount of information and time needed to complete the form when the same physician is requesting a renewal of a medication previously authorized by the court. This would decrease the form from 6 to 3 ½ pages.

2. Balancing Meaningful Input with Medical Information Confidentiality

Is there a way to balance the court's need for input from the child and caregiver, as mandated by SB 238, with the child's right to doctor/patient confidentiality? As originally circulated, the committee proposed providing the child and caregiver with a copy of *Prescribing Physician's Statement—Attachment* (form JV-220(A)). Many commentators, including both physicians and child advocacy groups, opposed providing a copy of form JV-220(A) to parents and caregivers. Is there another way to provide parents and caregivers information to prompt better input on the child's history and impact of medications on child without providing the JV-220(A)?

Comments concerned about providing JV-220(A):

- Violates patient/doctor confidentiality; will limit information patient provides to doctor
 - If doctor is unable to ensure appropriate confidentiality, may compromise relationship with the child and not be able to gather information essential to treatment.
 - Compromising confidentiality could discourage children from engaging meaningfully in their mental health treatment because of their perception that personal information will be shared widely.
- Violates law
 - Providing to parents conflicts with several statutes enacted as part of SB 1407 (Leno) in 2012;² the language in each provision is identical: Notwithstanding Section 3025 of the Family Code... or any other provision of law, a psychotherapist³ who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6... shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records⁴ of the minor patient after finding that such an order would not be detrimental to the minor patient.
 - Possible breaches of HIPAA which may have a chilling effect on the potential pool of providers for this population due to penalties related to HIPAA violations
 - HIPAA requires that except in very specific circumstances, a covered entity such as a doctor share only the minimum necessary medical information with an outside entity to accomplish a specific, authorized purpose.⁵
- Further research needs to be done regarding the legality of providing form JV-220(A) to the child's CASA

² Civil Code §56.106, Health & Safety Code §123116, and Welf. & Inst. Code §5328.03

³ Psychotherapist is broadly described in Evidence Code § 1010 and includes sixteen categories of health care professionals.

⁴ Mental health records is broadly described in Health & Safety Code § 123105 as patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

⁵ 45 C.F.R. §164.502(b)

Comments in support of, and against, caregivers having form JV-220(A):

- There is some support from commentators for providing a copy of form JV-220(A) to caregivers. NCYL states: In addition to the reasons stated for the change, we note that the foster parent, relative or other caregiver with whom the child is living, needs the information that is provided on form JV-220(A) – e.g., dosage, possible side effects of the medication - in order to ensure the child’s health and safety. Providing the caregiver a copy of the *Physician’s Statement* also is consistent with federal and state law requiring that a foster parent, relative or other caregiver is provided with information about a child’s health care. See, e.g., 42 U.S.C. §675 (5)(D) and Cal. Welf. & Inst. Code §16010.
 - However, as NCYL also points out, medical or mental health treatment records where the minor has a right to consent to the care cannot be shared absent a court order or consent from the minor. Specifically, if the minor consents to mental health treatment (which may be different than a psych med assessment) or could have consented to such services under Family Code 6924 or Health & Safety Code 124260, information may be shared only with the signed authorization of the minor or court order.⁶
 - Public Counsel states that form JV-220(A) provides much more information than is authorized to be provided to caregivers under Welf. & Inst. Code § 16010(a).⁷

3. Temporary Orders

Opposition to 14 day temporary orders when not all the information is contained in the application (proposed Rule 5.640(c)(14).)

- Opposed by, among others, CDSS, NCYL, Public Counsel, and East Bay Children’s Law Office
- Potentially dangerous
- Recommendation from many commentators: If the required information is not provided, the application should be denied subject to the emergency provisions in the existing rule.
- The rule might distinguish between a request for new medication and a renewal; in the latter situation a fourteen-day extension of the court’s previous authorization might be justified.

⁶ Health & Safety Code §§ 123110(a), 123115(a)(1); Cal. Civ. Code §§ 56.10, 56.106; 56.11.

⁷ Caregivers must be provided with a health and education summary that must include, among other things, a record of the child’s relevant mental health history; the child’s known mental health condition and medications; and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services.

4. Notice of Progress Reviews

SB 238 requires the Judicial Council to develop rules and forms to include a process for periodic oversight by the court of orders regarding the administration of psychotropic medication. To implement this requirement, the committee proposed amending rule 5.640 to require a progress review of court-ordered psychotropic medication at every status review hearing and any other time at the court's discretion. After reviewing the comments, however, it became evident to the subgroup that the rule lacked a procedure for notice of progress reviews. The subgroup proposes amending the rule to require that notice of a progress review include blank copies of *Child's Statement Regarding Psychotropic Medication* (form JV-218), *Statement Regarding Psychotropic Medication* (form JV-219), and *Opposition to or Statement About Application Regarding Psychotropic Medication* (form JV-222), as appropriate, mirroring the requirements for notice of the authorization request.

The newly proposed notice requirements did not circulate for public comment, and will increase workload and cost by requiring additional blank forms served with the notice of status review hearings, and additional notice for any psychotropic medication progress review that is not scheduled at the same time as a status review hearing.

Does the committee want a new proof of notice form created so that the form would indicate who received what blank forms?

Issues Resolved by Subgroup

1. *Social Worker or Probation Officer's Statement—Attachment* (form JV-220(B)) and *Report Regarding Psychotropic Medication—County Staff* (form JV-224) are beyond the scope of social worker and probation officer training
 - Child psychiatry is nuanced and complex; treatment information being asked of probation officers and social workers falls out of the scope of non-medically trained professionals, particularly items 7 & 8 (asking for non-pharmacological and pharmacological treatment alternatives, and if none tried, the rationale for not doing so)
 - Response: The social worker or probation officer would be asking the doctor these questions and reporting back to the court.
 - CWDA does not oppose new forms, but does request that any of the information on form JV-220(A) not be repeated in the social worker forms. Much of the information will need to be obtained from the prescribing physician, and they believe it is more appropriate for the physician to provide that information. It would result in a significant workload on the social worker, and potentially could create liability issues for the worker to ensure the information is correct and complete.

- Response: Form JV-224 would be submitted for any progress reviews on medication. This will usually not be at the same time as the doctor submits a request to reauthorize or change medication.
2. Can the prescriber help the child fill out *Child's Statement Regarding Psychotropic Medication* (form JV-218)? Should the prescriber be added to the list of people through whom the child and caregiver can provide information to the court?
 - Response: No. The subgroup concluded that there should be more checks and balances in place when the child provides input to the court, and it should be someone other than the prescribing physician who helps the child communicate with the court.
 3. NCYL wants application denied if the child checks box on form JV-218 indicating they have not been told either how the medication is supposed to help them or what the potential side effects are. Public Counsel believes this approach could lead to unnecessary delay in the administration of medication, and suggests that the court should hold a hearing to determine if the physician attempted to explain this information to the child and to question the child's attorney about the child's understanding of the situation.
 - Response: The subgroup concluded that the judge should have discretion in granting or denying these requests, and stating in the rule when the court must deny the request does not allow for discretion and could cause unnecessary delays. If the child checks the box indicating they have not been told either how the medication is supposed to help or what the potential side effects are, the court has many tools available to ensure the child is provided with this information including talking with the child, or continuing the matter for the child's attorney to speak with the child.
 4. The new process is deficient in that it does not require the child's attorney, GAL, or CASA if there is one to weigh in similarly to the social worker and the probation officer. Their duties should require them to pay particular attention to issues related to psych meds and they need to weigh in to help the court make the right decisions, particularly in light of heavy caseloads social workers and probation officers have. (Judge Nash)
Mandate form for child's attorney to report to court (one commentator)
 - Response: The subgroup concluded that mandating the child's attorney to fill out a form had a high potential of violating attorney-client privilege. The court can ask the child's attorney his or her position on any application. Additionally, nothing in this proposal removes the duties of the child's attorney under section 317(e).
 5. Public Health Nurses are requesting copies of form JV-220(A), JV-220(B), and form JV-224 for health care coordination and maintenance of the Health and Education Passport (HEP)
 - SB 319 authorizes foster care public health nurses to provide oversight and monitoring of psychotropic medications for children in foster care. In this role,

they assert it is necessary to receive copies of all the forms, however, most specifically JV-220(A), JV-220(B), and JV-224.

- They cite: Civil Code §56.103.(a) A provider of health care may disclose medical information to a county social worker, a probation officer, a foster care public health nurse acting pursuant to Section 16501.3 of the Welfare and Institutions Code, or any other person who is legally authorized to have custody or care of a minor for the purpose of coordinating health care services and medical treatment provided to the minor, including, but not limited to, the sharing of information related to screenings, assessments, and laboratory tests necessary to monitor the administration of psychotropic medications.
 - Response: The subgroup concluded that the Rule 5.640 should contain a cross reference to the newly amended Civil Code §56.103.

Rule 5.640 of the California Rules of Court would be amended, effective July 1, 2016, to read:

1 **Rule 5.640. Psychotropic medications**

2
3 (a)–(b) * * *

4
5 (c) **Procedure to obtain authorization**

6
7 (1) *Application Regarding Psychotropic Medication* (form JV-220), *Prescribing*
8 *Physician’s Statement—Attachment* (form JV-220(A)), *Social Worker or*
9 *Probation Officer’s Statement—Attachment* (form JV-220(B)), *Proof of*
10 *Notice: Application Regarding Psychotropic Medication* (form JV-221),
11 *Opposition to or Statement About Application Regarding Psychotropic*
12 *Medication* (form JV-222), and *Order Regarding Application for*
13 *Psychotropic Medication* (form JV-223) must be used to obtain authorization
14 to administer psychotropic medication to a dependent child of the court who
15 is removed from the custody of the parents or guardian, or to a ward of the
16 court who is removed from the custody of the parents or guardian and placed
17 into foster care.

18
19 (2) The child, caregiver, parents, and Court Appointed Special Advocate, if any,
20 may provide input on the medications being prescribed. Input can be by
21 Child’s Statement Regarding Psychotropic Medication (form JV-218) or
22 Statement Regarding Psychotropic Medication (form JV-219); letter; talking
23 to the court; or through the social worker, probation officer, attorney of
24 record, or Court Appointed Special Advocate. Input from a Court Appointed
25 Special Advocate can also be by a court report.

26
27 (2) (3) Additional information may be provided to the court through the use of local
28 forms that are consistent with this rule.

29
30 (3) (4) Local county practice and local rules of court determine the procedures for
31 completing and filing the forms and for the provision of notice, except as
32 otherwise provided in this rule. The person or persons responsible for
33 providing notice as required by local court rules or local practice protocols
34 are encouraged to use the most expeditious manner of service possible to
35 ensure timely notice.

36
37 (4) (5) An application must be completed and presented to the court, using
38 *Application Regarding Psychotropic Medication* (form JV-220), ~~and~~
39 *Prescribing Physician’s Statement—Attachment* (form JV-220(A), and *Social*
40 *Worker or Probation Officer’s Statement—Attachment* (form JV-220(B)).
41 The court must approve, deny, or set the matter for a hearing within seven
42 court days of the receipt of the completed application.

43
44 (5) (6) *Application Regarding Psychotropic Medication* (form JV-220) may be
45 completed by the prescribing physician, medical office staff, child welfare
46 services staff, probation officer, or the child’s caregiver. The physician

1 prescribing the administration of psychotropic medication for the child must
2 complete and sign *Prescribing Physician's Statement—Attachment* (form JV-
3 220(A)).

4
5 ~~(6)~~ (7) *Prescribing Physician's Statement—Attachment* (form JV-220(A)) must
6 include all of the following:

7
8 (A) The diagnosis of the child's condition that the physician asserts can be
9 treated through the administration of the medication;

10
11 (B) The specific medication recommended, with the recommended
12 maximum daily dosage and length of time this course of treatment will
13 continue and the administration schedule including initial and target
14 schedule for new medication, the current schedule for continuing
15 medication, the recommended dosage and number of doses per day,
16 and if *pro re nata* (PRN) or as needed the conditions and parameters for
17 use;

18
19 (C) An assessment of the child's overall mental health;

20
21 (D) A description of the child's symptoms and treatment plan;

22
23 (E) A description of other pharmacological and nonpharmacological
24 treatments that have been utilized and the child's response to those
25 treatments;

26
27 (F) A description of symptoms not alleviated or ameliorated by other
28 current or past treatment efforts;

29
30 ~~(G)~~ (G) The anticipated benefits to the child of the use of the medication. An
31 explanation of how the medication is expected to improve the child's
32 symptoms;

33
34 ~~(H)~~ (H) A description of possible side effects of the medication;

35
36 ~~(I)~~ (I) A list of any other medications, prescription or otherwise, that the
37 child is currently taking, and a description of any effect these
38 medications may produce in combination with the psychotropic
39 medication;

40
41 ~~(J)~~ (J) A description of any other therapeutic services related to the child's
42 mental health status; and

43
44 ~~(K)~~ (K) A statement that the child has been informed in an age-appropriate
45 manner of the recommended course of treatment, the basis for it, and its

1 possible results. The child's response and an explanation must be
2 included.
3

4 (8) The social worker or probation officer must complete and sign *Social Worker*
5 *or Probation Officer's Statement—Attachment* (form JV-220(B)), and attach
6 it to *Application Regarding Psychotropic Medication* (form JV-220).
7

8 ~~(7)~~ (9) Notice must be provided to the parents or legal guardians, their attorneys of
9 record, the child's attorney of record, the child's Child Abuse Prevention and
10 Treatment Act guardian ad litem, the child's current caregiver, the child's
11 Court Appointed Special Advocate, if any, and where a child has been
12 determined to be an Indian child, the Indian child's tribe (see also 25 U.S.C.
13 § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3).
14

15 Notice must be provided as follows:

- 16
- 17 (A) Notice to the parents or legal guardians and their attorneys of record
18 must include:
- 19
- 20 (i) A statement that a physician is asking to treat the child's
21 emotional or behavioral problems by beginning or continuing the
22 administration of psychotropic medication to the child and the
23 name of the psychotropic medication;
24
- 25 (ii) A statement that an *Application Regarding Psychotropic*
26 *Medication* (form JV-220) and a *Prescribing Physician's*
27 *Statement—Attachment* (form JV-220(A)) are pending before the
28 court;
29
- 30 (iii) A completed copy of *Prescribing Physician's Statement—*
31 *Attachment* (form JV-220(A));
32
- 33 (iv) A completed copy of *Social Worker or Probation Officer's*
34 *Statement—Attachment* (form JV-220(B));
35
- 36 ~~(iii)~~ (v) A copy of *Information About Psychotropic Medication Forms*
37 (form ~~JV-219-INFO~~ JV-217-INFO) or information on how to
38 obtain a copy of the form; and
39
- 40 ~~(iv)~~ (vi) A blank copy of *Opposition to or Statement About Application*
41 *Regarding Psychotropic Medication* (form JV-222) or
42 information on how to obtain a copy of the form.
43
- 44 (B) Notice to the child's current caregiver and Court Appointed Special
45 Advocate, if one has been appointed, must include ~~only~~:
46

- 1 (i) A statement that a physician is asking to treat the child’s
2 emotional or behavioral problems by beginning or continuing the
3 administration of psychotropic medication to the child and the
4 name of the psychotropic medication; ~~and~~
5
6 (ii) A statement that an *Application Regarding Psychotropic*
7 *Medication* (form JV-220) and a *Prescribing Physician’s*
8 *Statement—Attachment* (form JV-220(A)) are pending before the
9 court;
10
11 (iii) A completed copy of *Prescribing Physician’s Statement—*
12 *Attachment* (form JV-220(A));
13
14 (iv) A completed copy of *Social Worker or Probation Officer’s*
15 *Statement—Attachment* (form JV-220(B)); and
16
17 (v) A blank copy of *Child’s Statement Regarding Psychotropic*
18 *Medication* (form JV-218) or information on how to obtain a
19 copy of the form.
20
21 (C) Notice to the child’s attorney of record and any Child Abuse Prevention
22 and Treatment Act guardian ad litem for the child must include:
23
24 (i) A completed copy of ~~the~~ *Application Regarding Psychotropic*
25 *Medication* (form JV-220);
26
27 (ii) A completed copy of ~~the~~ *Prescribing Physician’s Statement—*
28 *Attachment* (form JV-220(A));
29
30 (iii) A completed copy of *Social Worker or Probation Officer’s*
31 *Statement—Attachment* (form JV-220(B));
32
33 ~~(iii)~~ (iv) A copy of *Information About Psychotropic Medication Forms*
34 (form ~~JV-219-INFO~~ JV-217-INFO) or information on how to
35 obtain a copy of the form; ~~and~~
36
37 ~~(iv)~~ (v) A blank copy of *Opposition to or Statement About Application*
38 *Regarding Psychiatric Medication* (form JV-222) or information
39 on how to obtain a copy of the form; ~~and~~
40
41 (vi) A blank copy of *Child’s Statement Regarding Psychotropic*
42 *Medication* (form JV-218) or information on how to obtain a
43 copy of the form.
44
45 (D) Notice to the Indian child’s tribe must include:
46

- 1 (i) A statement that a physician is asking to treat the child’s
2 emotional or behavioral problems by beginning or continuing the
3 administration of psychotropic medication to the child, and the
4 name of the psychotropic medication;
5
6 (ii) A statement that an *Application Regarding Psychotropic*
7 *Medication* (form JV-220) and a *Prescribing Physician’s*
8 *Statement—Attachment* (form JV-220(A)) are pending before the
9 court;
10
11 (iii) A completed copy of *Prescribing Physician’s Statement—*
12 *Attachment* (form JV-220(A));
13
14 (iv) A completed copy of *Social Worker or Probation Officer’s*
15 *Statement—Attachment* (form JV-220(B));
16
17 ~~(iii)~~ (v) A copy of *Information About Psychotropic Medication Forms*
18 (form ~~JV-219-INFO~~ JV-217 INFO) or information on how to
19 obtain a copy of the form; ~~and~~
20
21 ~~(iv)~~ (vi) A blank copy of *Opposition to or Statement About Application*
22 *Regarding Psychotropic Medication* (form JV-222) or
23 information on how to obtain a copy of the form; ~~and~~
24
25 ~~(vi)~~ (vii) A blank copy of *Child’s Statement Regarding Psychotropic*
26 *Medication* (form JV-218) or information on how to obtain a
27 copy of the form.
28
29 (E) Proof of notice of the application regarding psychotropic medication
30 must be filed with the court using *Proof of Notice: Application*
31 *Regarding Psychotropic Medication* (form JV-221).
32
33 ~~(8)~~ (10) A parent or guardian, his or her attorney of record, a child’s attorney of
34 record, a child’s Child Abuse Prevention and Treatment Act guardian ad
35 litem appointed under rule 5.662 of the California Rules of Court, or the
36 Indian child’s tribe that is opposed to the administration of the proposed
37 psychotropic medication must file a completed *Opposition to or Statement*
38 *About Application Regarding Psychotropic Medication* (form JV-222) within
39 four court days of service of notice of the pending application for
40 psychotropic medication.
41
42 (11) A child can file a completed *Child’s Statement Regarding Psychotropic*
43 *Medication* (form JV-218). If form JV-218 is filed, it must be filed within
44 four court days of service of notice of the pending application for
45 psychotropic medication.
46

1 (12) A child's caregiver, parents, or Court Appointed Special Advocate can file
2 Statement Regarding Psychotropic Medication (form JV-219). If form JV-
3 219 is filed, it must be filed within four court days of service of notice of the
4 pending application for psychotropic medication.

5
6 (13) A child's Court Appointed Special Advocate can file a court report under
7 local rule.

8
9 (14) If all the required information is not included in the request for authorization,
10 the court can temporarily grant the application for authorization for a period
11 not to exceed 14 calendar days or deny the application, and order the
12 department to provide the required information.

13
14 (15) The court may grant the application without a hearing or may set the matter
15 for hearing at the court's discretion. If the court sets the matter for a hearing,
16 the clerk of the court must provide notice of the date, time, and location of
17 the hearing to the parents or legal guardians, their attorneys of record, the
18 dependent child if 12 years of age or older, a ward of the juvenile court of
19 any age, the child's attorney of record, the child's current caregiver, the
20 child's social worker or probation officer, the social worker's or probation
21 officer's attorney of record, the child's Child Abuse Prevention and
22 Treatment Act guardian ad litem, the child's Court Appointed Special
23 Advocate, if any, and the Indian child's tribe at least two court days before
24 the hearing. Notice must be provided to the child's probation officer and the
25 district attorney, if the child is a ward of the juvenile court.

26
27 (d) **Conduct of hearing on application**

28
29 At the hearing on the application, the procedures described in rule 5.570 must be
30 followed. The court may deny, grant, or modify the application for authorization,
31 ~~and may~~ If the court grants or modifies the application for authorization, the court
32 must set a date for review of the child's progress and condition. This review must
33 occur at every status review hearing and may occur at any other time at the court's
34 discretion.

35
36 (e) ***

37
38 (f) **Continued treatment**

39
40 If the court grants the request or modifies and then grants the request, the order for
41 authorization is effective until terminated or modified by court order or until 180
42 days from the order, whichever is earlier. ~~If a progress review is set, it may be by~~
43 ~~an appearance hearing or a report to the court and parties and attorneys, at the~~
44 ~~discretion of the court.~~

1 **(g) Progress review**

- 2
- 3 (1) A progress review must occur at every status review hearing and may occur
- 4 at any other time at the court's discretion.
- 5
- 6 (2) Before each progress review, the social worker or probation officer must file
- 7 a completed *Report Regarding Psychotropic Medication—County Staff* (form
- 8 JV-224). If the progress review is set at the same time as a status review
- 9 hearing, form JV-224 must be attached to and filed with the report at least ten
- 10 calendar days before the hearing.
- 11
- 12 (3) Notice must be provided to the parents or legal guardians, their attorneys of
- 13 record, the child's attorney of record, the child's Child Abuse Prevention and
- 14 Treatment Act guardian ad litem, the child's current caregiver, the child's
- 15 Court Appointed Special Advocate, if any, and where a child has been
- 16 determined to be an Indian child, the Indian child's tribe (see also 25 U.S.C.
- 17 § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3).

18

19 Notice must be provided as follows:

20

21 (A) Notice to the parents or legal guardians and their attorneys of record

22 must include:

23

24 (i) A completed copy of *Report Regarding Psychotropic*

25 *Medication—County Staff* (form JV-224);

26

27 (ii) A copy of *Information About Psychotropic Medication Forms*

28 (form ~~JV-219-INFO~~ JV-217-INFO) or information on how to

29 obtain a copy of the form; and

30

31 (iii) A blank copy of *Opposition to or Statement About Application*

32 *Regarding Psychotropic Medication* (form JV-222) or

33 information on how to obtain a copy of the form.

34

35 (B) Notice to the child's current caregiver and Court Appointed Special

36 Advocate, if one has been appointed, must include:

37

38 (i) A completed copy of *Report Regarding Psychotropic*

39 *Medication—County Staff* (form JV-224);

40

41 (ii) A copy of *Information About Psychotropic Medication Forms*

42 (form JV-217-INFO) or information on how to obtain a copy of

43 the form;

44

1 (iii) A blank copy of *Statement Regarding Psychotropic Medication*
2 (form JV-219) or information on how to obtain a copy of the
3 form; and

4
5 (v) A blank copy of *Child’s Statement Regarding Psychotropic*
6 *Medication* (form JV-218) or information on how to obtain a
7 copy of the form.

8
9 (C) Notice to the child’s attorney of record and any Child Abuse Prevention
10 and Treatment Act guardian ad litem for the child must include:

11
12 (i) A completed copy of *Report Regarding Psychotropic*
13 *Medication—County Staff* (form JV-224);

14
15 (ii) A copy of *Information About Psychotropic Medication Forms*
16 (form JV-217-INFO) or information on how to obtain a copy of
17 the form;

18
19 (iii) A blank copy of *Opposition to or Statement About Application*
20 *Regarding Psychotropic Medication* (form JV-222) or
21 information on how to obtain a copy of the form; and

22
23 (iv) A blank copy of *Child’s Statement Regarding Psychotropic*
24 *Medication* (form JV-218) or information on how to obtain a
25 copy of the form.

26
27
28
29 (D) Notice to the Indian child’s tribe must include:

30
31 (i) A completed copy of *Report Regarding Psychotropic*
32 *Medication—County Staff* (form JV-224);

33
34 (ii) A copy of *Information About Psychotropic Medication Forms*
35 (form JV-217-INFO) or information on how to obtain a copy of
36 the form; and

37
38 (iii) A blank copy of *Opposition to or Statement About Application*
39 *Regarding Psychotropic Medication* (form JV-222) or
40 information on how to obtain a copy of the form; and

41
42 (iv) A blank copy of *Child’s Statement Regarding Psychotropic*
43 *Medication* (form JV-218) or information on how to obtain a
44 copy of the form.

1 (E) Proof of notice of the progress review must be filed with the court.

2
3
4 **(h) Copy of order to caregiver**

5
6 Upon the approval or denial of the application, including the temporary approval or
7 denial, the county child welfare agency, probation department, or other person or
8 entity who submitted the request must provide a copy of the court order approving
9 or denying the request to the child’s caregiver. The copy must be provided in
10 person or mailed within two days of when the order is made.

11
12 ~~(g)~~ **(i)** * * *

13
14 ~~(h)~~ **(j) Section 601–602 wardships; local rules**

15
16 A local rule of court may be adopted providing that authorization for the
17 administration of such medication to a child declared a ward of the court under
18 sections 601 ~~and~~ or 602 and removed from the custody of the parent or guardian for
19 placement in a facility that is not considered a foster-care placement may be
20 similarly restricted to the juvenile court. If the local court adopts such a local rule,
21 then the procedures under this rule apply; any reference to social worker also
22 applies to probation officer.
23

JV-217

**Child's Statement Regarding
Psychotropic Medication, Initial Request**

Clerk stamps date here when form is filed.

Use the following checklist to help tell the judge the ways you're feeling and behaving.

Read through each checklist item and think about how often you have each symptom. While the list may seem long, it should take only a few minutes to complete.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Child's name: _____

2 Feelings and behaviors

	Never	Some- times	Often	Don't know
a. I have headaches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. I have stomachaches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. I get rashes or other skin irritations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. I get tired easily	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. I have trouble sleeping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. I sleep too much	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. I have problems seeing clearly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. I have problems hearing clearly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3 Weight

	Yes	No
a. I've recently gained a lot of weight	<input type="checkbox"/>	<input type="checkbox"/>
b. I've recently lost a lot of weight	<input type="checkbox"/>	<input type="checkbox"/>

4 Behaviors at school, work, and home

	Never	Sometimes	Often	Don't know
a. I lose my things (school books, lunch, jewelry, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. I have trouble getting organized	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. I have trouble paying attention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. I have trouble sitting still or doing quiet activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. I have trouble stopping one activity and starting another activity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. I start many projects without finishing them	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. I have difficulty waiting my turn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. I act impulsively (quickly without thinking)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. I argue with people in charge (teachers, bosses, caseworkers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. I'm afraid to go to school or I skip school	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. I talk too much or too fast	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. I must follow fixed routines (do the thing in the same way every time)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. I pull out my hair (from my head or other parts of my body)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Child's name: _____

5 Grades

- | | | |
|--|--------------------------|--------------------------|
| | Yes | No |
| a. My grades have dropped a lot recently | <input type="checkbox"/> | <input type="checkbox"/> |

6 Relationships

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| | Never | Sometimes | Often | Don't know |
| a. I fight with kids my age (peers) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. I have little interest in spending time with friends | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. I have trouble making or keeping friends | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Other: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

7 Feelings

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| | Never | Sometimes | Often | Don't know |
| a. I feel sad or "lost" | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. I feel anxious, very worried, or stressed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. I'm easily frustrated | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. I get really angry and have outbursts (throw things, yell) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. I blame others for my mistakes or behaviors | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. My feelings change very quickly (for example, I'm laughing and happy and then quiet and sad) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. I'm afraid to try new things because I may make mistakes | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h. I'm really concerned with my weight | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i. I feel lonely and depressed | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j. I feel that my life is worthless | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| k. I feel that no one loves me or cares about me | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| l. I think about wanting to die | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| m. Other: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

8 Behaviors

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| | Never | Sometimes | Often | Don't know |
| a. I lie or "con" others to get out of trouble, avoid things, or get things I want | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. I've deliberately set fires | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. I've been cruel to animals | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. I bully or threaten others | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. I've hurt others on purpose | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. I've used a weapon to harm a person, animal, or property | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. I've run away or stayed out all night without permission | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h. I've committed crimes | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i. I use drugs or alcohol | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j. I physically hurt myself (cutting) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| k. Other: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



JV-218

Statement Regarding Psychotropic Medication, Initial Request

Clerk stamps date here when form is filed.

1 Child's name: _____

2 What is the child's behavior like at home?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 2" for a title.

3 What is the child's behavior like at school?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 3" for a title.

4 How does the child interact with his or her peers?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 4" for a title.

5 How does the child interact with adults?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 5" for a title.

6 How is the child sleeping, and for how long?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 6" for a title.

7 What type of counseling is the child receiving and how often? (ex. Individual counseling; group counseling)

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 7" for a title.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:



Case Number:

Child's name: _____

8 What other medications does the child regularly take?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 8" for a title.

9 Were you able to meet and provide information to the prescribing physician?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 9" for a title.

10 Were you informed of the recommended medications, the anticipated benefits, and the possible adverse reactions?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 10" for a title.

11 What other side effects are there?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 11" for a title.

12 What else do you want the judge to know?

Check here if you need more space. Attach a sheet of paper and write "JV-218, number 12" for a title.

JV-219

Statement Regarding Psychotropic Medication, Renewal Request

Clerk stamps date here when form is filed.

1 Child's name: _____

2 How is the medication affecting school and/or learning?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 2" for a title.

3 How is the medication affecting ability to concentrate?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 3" for a title.

4 How is the medication affecting sleep?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 4" for a title.

5 How is the medication affecting how you treat people and how people treat you?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 5" for a title.

6 How is the medication affecting hobbies and/or after school activities?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 6" for a title.

7 Weight
a. weight loss pounds: _____
b. weight gain pounds: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:



Case Number:

Child's name: _____

8 Is the medication easy to take?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 8" for a title.

9 Is someone talking regularly with the child about how he or she feels when on this medication?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 9" for a title.

10 Are there other side effects?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 10" for a title.

11 What else do you want the judge to know?

Check here if you need more space. Attach a sheet of paper and write "JV-219, number 11" for a title.

JV-220

**Application Regarding
Psychotropic Medication**

A completed and signed JV-220(A), *Prescribing Physician's Statement—Attachment*, with all its attachments and, if this is a request to continue a psychotropic medication, a completed and signed *Social Worker or Probation Officer's Statement (JV-220(B))* must be attached to this form before it is filed with the court. Read JV-219-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

Clerk stamps date here when form is filed.

Fill in court name and street address:
Superior Court of California, County of

Fill in child's name and date of birth:
Child's Name
Date of Birth:

Court fills in case number when form is filed.
Case Number:

- ① Information about where the child lives:
 - a. The child lives with a relative in a foster home with a nonrelative extended family member in a regular group home in a level 12-14 group home at a juvenile camp at a juvenile ranch other (*specify*): _____
 - b. If applicable, name of facility where child lives: _____
 - c. Contact information for responsible adult where child lives:
 - (1) Name:
 - (2) Phone:

- ② Information about the child's current location:
 - a. The child remains at the location identified in ①.
 - b. The child is currently staying in:
 - (1) a psychiatric hospital (*name*):
 - (2) a juvenile hall (*name*):
 - (3) other (*specify*):

- ③ Child's social worker probation officer
 - a. Name:
 - b. Address:
 - c. Phone: Fax:

- ④ Number of pages attached: _____
- Date: _____ Prescribing physician (*sign on page 3 of JV-220(A)*)

Type or print name of person completing this form

Signature

- Child welfare services staff (*sign above*)
- Probation department staff (*sign above*)
- Medical office staff (*sign above*)
- Caregiver (*sign above*)
- Prescribing physician (*sign on page 3 of JV-220(A)*)

JV-220(A)**Prescribing Physician's
Statement—Attachment**

Case Number: _____

This form must be completed and signed by the prescribing physician. Read JV-219-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

- ① Information about the child (*name*): _____
 Date of birth: _____ Current height: _____ Current weight: _____
 Gender: _____ Ethnicity: _____
- ② Type of request:
 a. An initial request to administer psychotropic medication to this child
 b. A request to continue psychotropic medication the child is currently taking
- ③ This application is made during an emergency situation. The emergency circumstances requiring the temporary administration of psychotropic medication pending the court's decision on this application are:

- ④ Prescribing physician:
 a. Name: _____ License number: _____
 b. Address: _____
 c. Phone numbers: _____
 d. Medical specialty of prescribing physician:
 Child/adolescent psychiatry General psychiatry Family practice/GP Pediatrics
 Other (*specify*): _____
- ⑤ This request is based on a face-to-face clinical evaluation of the child by:
 a. the prescribing physician on (*date*): _____
 b. other (*provide name, professional status, and date of evaluation*): _____

- ⑥ Information about child provided to the prescribing physician by (*check all that apply*):
 child caregiver teacher social worker probation officer parent
 records (*specify*): _____
 other (*specify*): _____
- 7 Are you the child's personal physician? Yes No
- 8 How long have you known the child? _____ years _____ months _____ days
- 9 Describe the child's symptoms, including duration.



Child's name: _____

10 Describe the child's response to any current psychotropic medication.

11 Treatment alternative

a. Describe treatment alternatives to the proposed administration of psychotropic medication that have been tried with the child in the last six months.

b. Describe the child's response to the treatments in (a).

c. If no alternatives have been tried, explain the reasons for not doing so.

d. Describe other medication alternatives to the proposed administration of psychotropic medication.



Case Number: _____

Child's name: _____

e. Describe the child's response to the treatments in (d).

f. If no alternatives have been tried, explain the reasons for not doing so.

12 Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.

13 Describe how the medication being prescribed is expected to improve the child's symptoms.

14 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*
(provide full Axis I and Axis II diagnoses; inclusion of numeric codes is optional):

15 Therapeutic services, other than medication, in which the child will participate during the next six months
(check all that apply; include frequency for group therapy and individual therapy):

a. Group therapy: _____ b. Individual therapy: _____

c. Milieu therapy (explain): _____

d. Other modality (explain): _____



Case Number: _____

Child's name: _____

16 a. Relevant medical history (*describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results*):

b. Relevant laboratory tests performed or ordered (*optional information; provide if required by local court rule*):

kidney function liver function thyroid function UA glucose lipid panel
 CBC EKG pregnancy medication blood levels (*specify*): _____
 other (*specify*): _____

17 **Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

18 a. The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was agreeable other (*explain*): _____

b. The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:
(1) the child is too young.
(2) the child lacks the capacity to provide a response (*explain*): _____

(3) other (*explain*): _____

19 The child's present caregiver was informed of this request, the recommended medications, the anticipated benefits, and the possible adverse reactions. The caregiver's response was agreeable other (*explain*):

20 Additional information regarding medication treatment plan: _____



Case Number: _____

Child's name: _____

21 List all psychotropic medications currently administered that you propose to continue and all psychotropic medications you propose to begin administering. Mark each psychotropic medication as New (N) or Continuing (C). Administration schedule is optional information; provide if required by local court rule.

<i>Medication name (generic or brand) and symptoms targeted by each medication's anticipated benefit to child</i>	<i>C or N</i>	<i>Maximum total mg/day</i>	<i>Treatment duration*</i>	<i>Administration schedule (optional)</i> <ul style="list-style-type: none"> • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Targets:				

**Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.*

22 List all psychotropic medications currently administered that will be stopped if this application is granted.

<i>Medication name (generic or brand)</i>	<i>Reason for stopping</i>

23 List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped if the reasons are known to you.

<i>Medication name (generic or brand)</i>	<i>Reason for stopping</i>

Date: _____

Type or print name of prescribing physician

▶

Signature of prescribing physician

JV-220(A2)

**Prescribing Physician's Statement,
Request to Continue—Attachment**

Case Number:

This form must be completed and signed by the prescribing physician. Read Form JV-217-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 Information about the child (*name*): _____
Date of birth: _____ Current height: _____ Current weight: _____
Gender: _____ Ethnicity: _____

2 Only fill out this form if both boxes are checked:
a. This is a request to continue psychotropic medication the child is currently taking
b. This is the same prescribing physician as the most recent JV-220(A)

3 Prescribing physician:
a. Name: _____ License number: _____
b. Address: _____
c. Phone numbers: _____
d. Medical specialty of prescribing physician:
 Child/adolescent psychiatry General psychiatry Family practice/GP Pediatrics
 Other (*specify*): _____

4 This request is based on a face-to-face clinical evaluation of the child by:
a. the prescribing physician on (*date*): _____
b. other (*provide name, professional status, and date of evaluation*): _____

5 Information about child provided to the prescribing physician by (*check all that apply*):
 child caregiver teacher social worker probation officer parent
 records (*specify*): _____
 other (*specify*): _____

6 Provide to the court your assessment of the child's overall mental health.



Child's name: _____

7 Describe the child's response to any current psychotropic medication.

8 Nonpharmacological treatment alternatives

a. Describe nonpharmacological treatment alternatives to the proposed administration of psychotropic medication that have been tried with the child in the last six months.

b. Describe the child's response to the nonpharmacological treatments in (a).

9 Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.

10 Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months (check all that apply; include frequency for group therapy and individual therapy):

a. Group therapy: _____ b. Individual therapy: _____

c. Milieu therapy (explain): _____

d. Other modality (explain): _____

Child's name: _____

11 a. Relevant medical history (*describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results*):

b. Relevant laboratory tests performed or ordered (*specify frequency and date of most recent test*):

- Kidney function: _____
- Liver function: _____
- Thyroid function: _____
- UA: _____
- Glucose: _____
- Lipid panel: _____
- CBC: _____
- EKG: _____
- Pregnancy: _____
- Medication blood levels (*specify*): _____
- Other (*specify*): _____

12 a. The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was agreeable not agreeable
Explain: _____

b. The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:
(1) the child lacks the capacity to provide a response (*explain*): _____

(2) other (*explain*): _____

13 The child's present caregiver was informed of this request, the recommended medications, the anticipated benefits, and the possible adverse reactions. The caregiver's response was agreeable other (*explain*):



Case Number: _____

Child's name: _____

14 Additional information regarding medication treatment plan: _____

15 List all psychotropic medications currently administered that you propose to continue and all psychotropic medications you propose to begin administering. Mark each psychotropic medication as New (N) or Continuing (C).

<i>Medication name (generic or brand) and symptoms targeted by each medication's anticipated benefit to child</i>	<i>C or N</i>	<i>Maximum total mg/day</i>	<i>Treatment duration*</i>	<i>Administration schedule</i> <ul style="list-style-type: none"> • Initial and target schedule for new medication • Current schedule for continuing medication • Provide mg/dose and # of doses/day • If PRN, provide conditions and parameters for use
Med: Targets:				

*Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.

Date:

 Type or print name of prescribing physician



 Signature of prescribing physician

JV-220(B)

Social Worker or Probation Officer's Statement—Attachment

Case Number:

This form must be completed and signed by the child's social worker or probation officer for each request to continue a psychotropic medication.

1 Child's name: _____

2 Describe what the child reports regarding taking the medication, including side effects.

Check here if you need more space. Attach a sheet of paper and write "JV-220(B), number 2" for a title.

3 The child will provide input on the medication being prescribed (*check all that apply*)

- a. through the social worker
- b. by filling out JV 22*
- c. by writing a letter to the court
- d. by talking to the court at a hearing
- e. other (*specify*): _____

4 Describe what the caregiver reports regarding the child taking the medication, including side effects.

Check here if you need more space. Attach a sheet of paper and write "JV-220(B), number 4" for a title.

5 The caregiver will provide input on the medication being prescribed (*check all that apply*)

- a. through the social worker
- b. by filling out JV 22*
- c. by writing a letter to the court
- d. by talking to the court at a hearing
- e. other (*specify*): _____



JV-221

**Proof of Notice: Application
Regarding Psychotropic Medication**

Read JV-219-INFO, *Information About Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 The following parents/legal guardians of the child were notified of the physician's request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided with JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form.

a. Name: _____ Date notified: _____
Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____
_____ (*time sent*): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

b. Name: _____ Date notified: _____
Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____
_____ (*time sent*): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

c. Name: _____ Date notified: _____ Relationship to child: _____
Manner: In person By phone at (*specify*): _____
 By electronic service at (*e-mail address*): _____ (*time sent*): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (*specify*): _____

2 Parental rights were terminated, and the child has no legal parents who must be informed.

3 Parent/legal guardian (*name*): _____
was not informed because (*state reason*): _____

4 Parent/legal guardian (*name*): _____
was not informed because (*state reason*): _____

5 The child's current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that a JV-220 and a JV-220(A) are pending before the court as follows:

Caregiver (*name*): _____
Manner: In person By phone at (*specify*): _____ By electronic service at (*e-mail address*): _____
_____ (*time sent*): _____ By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the following address (*specify*): _____

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

Date: _____

Type or print name



Sign your name

Signature follows on page 3.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:



Case Number: _____

Child's Name: _____

- 6 The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed JV-220, *Application Regarding Psychotropic Medication*, and JV-220 (A), *Prescribing Physician's Statement—Attachment*; a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*; and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, as follows:
- a. Attorney's name: _____ Date notified: _____
 Manner: In person By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- b. CAPTA guardian ad litem's name: _____ Date notified: _____
 Manner: In person By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing copies in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

- 7 The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided with a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form as follows:
- a. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- b. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____
- c. Attorney's name: _____ Date notified: _____
 Attorney for (name): _____
 Manner: In person By phone at (specify): _____ By fax at (specify): _____
 By electronic service at (e-mail address): _____ (time sent): _____
 By depositing the required information and copies of JV-219-INFO and JV-222 in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

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

Date: _____

Type or print name

Sign your name Signature follows on page 3.

Case Number: _____

Child's Name: _____

- 8 The child's CASA volunteer was notified that a JV-220 and a JV-220(A) are pending before the court as follows: CASA volunteer (name): _____ Date notified: _____
- Manner: In person By phone at (specify): _____
- By electronic service at (e-mail address): _____ (time sent): _____
- By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

- 9 The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that a JV-220, *Application Regarding Psychotropic Medication*, and a JV-220(A), *Prescribing Physician's Statement—Attachment*, are pending before the court. They were also provided a copy of JV-219-INFO, *Information About Psychotropic Medication Forms*, and a blank copy of JV-222, *Opposition to Application Regarding Psychotropic Medication*, or with information on how to obtain a copy of each form, as follows:
- Indian Tribe (name): _____ Date notified: _____
- Manner: In person By phone at (specify): _____ By fax at (specify): _____
- By electronic service at (e-mail address): _____ (time sent): _____
- By depositing the required information in a sealed envelope in the United States mail, with first-class postage prepaid, to the last known address (specify): _____

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

Date:

Type or print name

Sign your name

JV-223

Order Regarding Application for Psychotropic Medication

Clerk stamps date here when form is filed.

The Court read and considered:

- a. JV-220, *Application Regarding Psychotropic Medication*, and JV-220(A), *Prescribing Physician's Statement—Attachment*, filed on (date): _____
- b. JV-222, *Opposition to Application Regarding Psychotropic Medication*, filed on (date): _____
- c. Other (specify): _____

The Court finds and orders:

- 1 a. Notice requirements were met.
- b. Notice requirements were *not* met. Proper notice was not given to: _____

Fill in court name and street address:

Superior Court of California, County of

- 2 The matter is set for hearing on (date): _____ at (time): _____ in (dept.): _____

Fill in child's name and date of birth:

Child's Name

Date of Birth:

- 3 Application was made for authorization to begin or to continue giving the child the psychotropic medication listed in (15) on page 3 of JV-220(A).

Court fills in case number when form is filed.

Case Number:

A copy of page 5 is attached to this order.

The application is (check one):

- a. granted as requested.
- b. granted with the following modification or conditions to the request as made in (15) on the attached page 3 of JV-220(A) (specify all modifications and conditions): _____
- c. denied (specify reason for denial): _____

- 4 Application was made for authorization to begin or to continue giving the child the psychotropic medication listed in (15) on page 5 of JV-220(A), however not all the required information was provided in the application.

A copy of page 5 is attached to this order.

The application is (check one):

- a. temporarily granted as requested until (enter a date no later than 14 calendar days from today's date): _____
 - b. temporarily granted with the following modification or conditions to the request as made in (15) on the attached page of JV-220(A) until (enter a date no later than 14 calendar days from today's date): _____
- (Specify all modifications and conditions): _____

Case Number: _____

Child's name: _____

4 c. temporarily denied until (enter a date no later than 14 calendar days from today's date):

- 5 The
- a. social worker
 - b. probation officer
 - c. person who submitted application

is ordered to give a copy of this order, including page 5 of the JV-220(A) to the child's caregiver either in person or by mail within two days.

6 Other (specify): _____

This order is effective until terminated or modified by court order or until 180 days from the date of this order, whichever is earlier. If the prescribing physician is no longer treating the child, this order extends to subsequent treating physicians. A change in the child's placement does not require a new order regarding psychotropic medication. Except in an emergency situation, a new application must be submitted and consent granted by the court before giving the child medication not authorized in this order or increasing medication dosage beyond the maximum daily dosage authorized in this order.

Date: _____

▶ _____
Signature of judge or judicial officer

JV-224

Report Regarding Psychotropic Medication-County Staff

The social worker or probation officer must file this form at any hearing where the court is providing oversight of psychotropic medications. This includes all scheduled progress reports on orders authorizing psychotropic medication and every status review hearing.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's Name

Date of Birth:

Court fills in case number when form is filed.

Case Number:

1 Your name: _____

2 Your relationship to the child:

- Social worker probation officer
- public health nurse
- other county staff (specify): _____

- 3 a. Name of Caregiver: _____
- b. Address: _____
- c. Relationship to Child: _____
- d. Date of Last Communication with Caregiver: _____

4 Child Information

- a. Child's Height: _____ b. Child's Weight: _____
- c. Prescribing Physician's Name: _____
- d. Date Last Seen by Prescribing Physician: _____
- e. Next Appointment Date: _____
- f. Therapist's Name: _____
- g. Date Last Seen by Therapist: _____

5 Current Court Approved Psychotropic Medications (verify that this is what child is taking.)

Name of Medication	Dosage

Name of Medication	Dosage

6 Did the caregiver report the child is taking the medication?

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 6" for a title.

Child's name: _____

--

7 Describe the caregiver's observations regarding the effectiveness of the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 7" for a title.

8 Describe the caregiver's observations regarding the side effects of the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 8" for a title.

9 Describe any concerns the caregiver has regarding the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 9" for a title.

10 Describe the child's observations regarding the effectiveness of the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 10" for a title.

11 Describe the child's observations regarding the side effects of the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 11" for a title.

12 Describe any concerns or complaints the child has regarding the medication.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 12" for a title.

Case Number: _____

Child's name: _____

13 List the dates of all medication management appointments since the last court hearing.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 13" for a title.

14 List the dates and reasons of other follow up appointments since the last court hearing.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 14" for a title.

15 Describe other mental health treatments that are part of the child's overall treatment plan.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 15" for a title.

16 Provide any other information you think the court should know.

Check here if you need more space. Attach a sheet of paper and write "JV-224, number 16" for a title.

Date:

Type or print name of person completing this form

Signature

Juvenile Law: Congregate Care Reform

Annual Agenda Item:

The progress of congregate care reform is not currently an annual agenda item. However, consideration should be given to making congregate care reform an annual agenda item. Over the next year there will be many changes to the placement types available to foster children; keeping abreast of these changes may provide judges some insight into why certain recommendations are made by child welfare and probation departments.

Background:

Research on the deleterious effects of congregate care is extensive. For over a decade, California has been implementing program and funding changes to reduce the likelihood of children growing up in foster care. During the past three years, in particular, there has been heightened concern about the status of foster youth growing up in group home settings. The result of the heightened attention paid to congregate care was a 2015 report from California Department of Social Services (CDSS) that set forth recommendations for policy and practice changes to reduce the use of congregate care among foster and delinquent youth. AB 403 and SB 794 enact many of the recommendations set forth in the CDSS report.

The legislative changes implemented by AB 403 establish the procedural framework that child welfare and probation must work within. In other words, the changes enacted by AB 403 relate primarily to licensing requirements and standards for those who provide care for foster youth, changes to rate structure, training requirements for care providers, performance measures for care providers and services providers, as well as foster family recruiting. As such, the changes implemented by AB 403 will have minimal direct impact on the court. The majority of the changes enacted by AB 403 do not go into effect until January 1, 2017.

SB 794, on the other hand, enacts the legislative changes that impact the court. In brief, SB 794 changes the permanent plan options available for foster youth by limiting use of another planned permanent living arrangement to children 16 and older, it requires certain additional fact determinations by the court when children remain in foster care or in another planned permanent living arrangement, and requires the inclusion of additional information in court reports. A chart detailing the legislative changes implemented by SB 794 is attached.

Update:

Several of the informational materials provided by the Judicial Council have been updated to reflect the legislative changes enacted by these two bills. The Dependency and Delinquency charts entitled – “Basic Title IV-E Findings to Ensure Compliance” have been updated. The “Written Report Requirements For Delinquency Foster Care Cases” chart has also been revised. Lastly, the Title IV-E general information memoranda for both dependency and delinquency cases are being revised to reflect the legislative changes.

Overview of Statutory Changes Enacted by AB 403 and SB 794¹

Code Section	Law Pre-AB 403 & SB 794	Law Post-AB 403 & SB 794
Family Code 7950	Before child is placed in LTFC ² court must find that the agency has made diligent efforts to locate an appropriate relative	Court must now find at the permanency hearing when services are terminated and every postpermanency hearing for a child not placed for adoption, that the agency made diligent efforts to locate an appropriate relative, and that each relative whose name was submitted as a possible caretaker has been evaluated.
WIC 362.04	Definitions statute related to care of foster children	States that the reasonable and prudent parent standard is defined in section 362.05.
WIC 362.05	Defines reasonable and prudent parent standard, as well as age appropriate	The “reasonable and prudent parent” standard is characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the emotional and developmental growth of the child.
WIC 366	Mandates review hearings every six months and sets forth what must be considered during the hearings	Adds requirement that – for a child 16 or over with APPLA – the court must consider and determine the ongoing and intensive efforts to return the child or finalize permanent plan. 366(a)(2): adds tribal customary adoption and fit and willing relative to permanency options court must consider. Note that this subsection refers to APPLA without limiting it to children 16 or older.

¹ [Assembly Bill 403](#) (Stone; Stats 2015, ch. 773); [Senate Bill 794](#) (Committee on Human Services; Stats 2015, ch. 425).

² A glossary of abbreviations can be found on page 10 of this document.

<p>WIC 366.21(f)(1)(D)</p> <p>WIC 366.21(g)(5)(A)</p>	<p>Discusses notice for status reviews, options available to court at status reviews (terminate services or not etc...)</p>	<p>Requires the court, at the permanency hearing, to determine whether services have been provided to youth 16 or older to help the youth transition from foster care to successful adulthood.</p> <p>Court must make factual findings identifying barriers to achieving the permanent plan. For children under 16 the court must order a permanent plan other than APPLA (can be with a fit and willing relative). For children 16 and older can order APPLA as described in WIC 16501.</p>
<p>WIC 366.22(a)(1) and subsection (b)</p> <p>366.22(a)(3)</p>	<p>Requires court to take into account barriers to completing reunification services faced by incarcerated or institutionalized parent</p>	<p>Adds minor parents and nonminor dependent parents – i.e. court must take into account barriers they face in completing services. Gets rid of “long term” before foster care and says court may order continued placement in FC. Further states that if child is not proper subject for adoption and no one to accept legal guardianship, the court can order foster care with a permanent plan of return home, adoption, TCA, legal guardianship, or placement with fit and willing relative. If child is 16 or older the court can order APPLA but must make factual findings identifying the barriers to achieving the permanent plan as of the hearing date.</p>
<p>WIC 366.25</p>	<p>Discusses permanency hearing that occurs if parent received 24 months of services, what needs to happen when a .26 hearing is ordered, and Kin-GAP eligibility</p>	<p>APPLA is only available for children 16 or older and court must identify any barriers to achieving the permanent plan. For children under 16 for whom a .26 is not appropriate, the court can order the child remain in foster care with a permanent plan of return home, adoption, TCA, legal guardianship or placement with a fit and willing relative.</p>
<p>WIC 366.26</p>		<p>Adds two plan options: ordering child placed with fit and willing relative; ordering child remain in foster care with an identified permanent plan and the court must make factual findings identifying barriers to achieving the permanent plan. This section (c)(4) specifies that guardianship is favored over foster care.</p> <p>(c)(4)(B)(i): if child is placed with a relative who doesn't want to become a guardian, the court must order permanent plan of placement with fit and willing relative.</p> <p>(c)(4)(B)(ii): if child is with nonrelative caregiver who is able to provide stable and</p>

		<p>permanent placement but doesn't want to become guardian, the court must order the child remain in foster care with an identified permanent plan. Court is not to remove if it would be seriously detrimental to the emotional well-being of the child b/c of ties to the caregiver.</p> <p>(c)(4)(B)(iii): if child is in group home on or after 1/1/17, court must order foster care with an identified permanent plan or, for children 16 or over, APPLA.</p>
WIC 366.3(e)	Discusses postpermanency hearings and findings that must be made based on the child's placement	<p>Lowers age at which court needs to inquire about provision of services for transition from foster care to successful adulthood from 16 to 14.</p> <p>Subsection (h): notes that APPLA is limited to children 16 or older and requires court to identify barriers to achieving the permanent plan for ALL children who remain in foster care. For children 16 or older in APPLA, the court must:</p> <ul style="list-style-type: none"> - Ask the child about his desired permanency outcome; - Determine and explain why APPLA remains the best permanency plan. <p>For children 16 or older, the social study must describe:</p> <ul style="list-style-type: none"> - The intensive and ongoing efforts to return the child to the home, adopt, or establish guardianship; - Steps taken to make sure the caregiver is following the reasonable and prudent parent standard and whether the child has regular, ongoing opportunities to engage in appropriate activities, including consulting with the child. <p>If the child is under 16 years of age, the report must identify the barriers to achieving the permanent plan and the agency's efforts to address them.</p>
WIC 366.31	Review hearings before child turns 18 and NMD review hearings	<p>(e)(10) States that an NMD can be placed in another planned permanent living arrangement and, if NMD is placed in one, requires the court to make the following findings: 1) the court must ask NMD about his or desired permanency outcome; 2) court must explain why APPLA is still the best permanency plan for the NMD; 3) state on the</p>

		<p>record the compelling reasons why other permanent plan options are not in best interest of NMD.</p> <p>(h)(1) Adds requirements for the social study if NMD is in another planned permanent living arrangement: 1) include description of intensive and ongoing efforts to return NMD to parent, place for adoption, or place with fit and willing relative; 2) include steps taken to ensure the NMD care provider is following the reasonable and prudent parent standard and has regular opportunities to engage in age/developmentally appropriate activities.</p>
WIC 706.5	Describes what must be included in the probation officer's social study	<p>If the child is 16 years or older and in APPLA, the social study must describe:</p> <ul style="list-style-type: none"> -The ongoing and intensive efforts to return the child home, place him for adoption or establish guardianship -The steps taken to ensure that the child's care provider follows the reasonable and prudent parent standards and determine whether the child has regular opportunity to engage in age/developmentally appropriate activities. <p>If the child is under 16 with a permanent plan of return home, adoption, guardianship, or placement with a fit and willing relative the social study must describe the barriers to achieving the permanent plan and the efforts made to address the barriers.</p>
WIC 706.6	Describes what must be included in the case plan that is attached to the social study each review hearing	<p>Introduces (and defines) the concept of the "child and family team." Requires probation to consider the recommendations of the child and family team (CaFT) and document the reasons for inconsistencies between the case plan and the CaFT recommendation.</p> <p>Case plan must also include:</p> <ul style="list-style-type: none"> -documentation of preplacement assess of the child and his family's strengths and service needs showing that preventative services were provided and reasonable efforts were made to prevent out of home placement. -description of where the child is to be placed and the reasons for the placement decision, include the safety and appropriateness of the placement, and the recommendation of the CaFT.

		<p>Includes “environment that promotes normal childhood experiences” in description of “appropriate placement.” Sets forth order of priority of placements:</p> <ul style="list-style-type: none"> -Placement with relatives or NERFMs; -Foster family homes or resource family foster homes; -Treatment and intensive treatment certified homes or therapeutic foster care homes; -Group care placements in the following order: short-term residential treatment centers group homes, community treatment facilities, out of state residential treatment. <p>If child is placed in community care facility licensed as short-term residential treatment center, the case plan must state that the placement is for short-term, specialized and intensive treatment for the child. It must also discuss why the placement is necessary, the duration of the treatment, and the plan to transition the child to a less restrictive environment and the timeline for that transition.</p> <p>The case plan submitted for the permanency hearing must include a recommended permanent plan. For children under 16 it must be return home, adoption, legal guardianship, or placement with a fit and willing relative. The case plan must also discuss barriers to achieving permanence and steps the agency will take to address those barriers. For children over 16 in APPLA, the case plan must discuss the intensive and ongoing efforts to return the child home, place him for adoption, finalize a guardianship, or place with a fit and willing relative. The efforts must include technology, like social media.</p> <p>Changes independent living to “successful adulthood.”</p>
WIC 727.2	Discusses status review hearings and the findings the court must make	<p>Prior to the first permanency planning hearing, the court must determine the ongoing and intensive efforts to return children 16 or older to the home or complete the steps necessary to finalize permanent placement of the child.</p> <p>Removes APPLA as an option for children under 16.</p>

		Changes independent living to successful adulthood.
WIC 727.3	Discusses permanency planning hearings	<p>(a)(5) Requires the court to make certain inquiries and findings for children 16 and older who are in APPLA: 1) the court must ask the child what his desired permanency outcome is; 2) the court must make a judicial determination explaining why APPLA is still the best permanent plan for the child; 3) the court must state the compelling reason why it is not in the best interest of the child to go home, be adopted, placed with a legal guardian, or placed with a fit and willing relative.</p> <p>(b)(5) Defines fit and willing relative as an approved relative who wants to provide a permanent and stable home but is not willing to become the legal guardian.</p> <p>(b)(6)(A) Revises planned permanent living arrangement such that APPLA is limited to youth 16 and older and only can be ordered when there is a compelling reason to find that it is not in the child's best interest to have a permanent plan.</p> <p>(b)(6)(B) Clarifies that for child under 16 where evidence shows that there is a compelling reason not to terminate parental rights, the court must order that the child remain in foster care with a permanent plan of return home, adoption, legal guardianship, or placement with a fit and willing relative. The court must make factual findings identifying barriers to achieving the permanent plan.</p>
WIC 10618.6	Requires credit checks for foster youth	The amendments lower the age for credit checks from 16 to 14.
WIC 11386	Describes when a child or youth under 19 is eligible for aid	Revises how aid works when a Kin-GAP guardianship ends. If a successor guardian is appointed, who is also a kinship guardian, due to death or incapacity of the kinship guardian and the kinship guardian is named in the kinship agreement or amendment to the agreement there does not need to be a new period of six months of placement with the successor guardian.

WIC 11400	Definitions statute	<p>Adds the following definitions to WIC:</p> <p>(ad) “Short term residential treatment center” means a nondetention, licensed community care facility, as defined in paragraph (18) of subdivision (a) of Section 1502 of the Health and Safety Code, that provides short term, specialized, and intensive treatment for the child or youth, when the child’s or youth’s case plan specifies the need for, nature of, and anticipated duration of this specialized treatment.</p> <p>(ae) “Resource family” means an approved caregiver, as defined in subdivision (c) of Section 16519.5.</p> <p>(af) “Core Services” mean services, made available to children, youth, and nonminor dependents either directly or secured through formal agreement with other agencies, which are trauma informed and culturally relevant as specified in Sections 11462 and 11463.</p>
WIC 16002	Emphasizes the importance of maintaining sibling relationships	Expands the definition of “sibling” from a “child” to a person related to the child in care.
WIC 16501	Definitions statute – defines child welfare services and terms related to provision of child welfare services	<p>Adds definition of “child and family team:” a group of individuals who are convened by the placing agency and who are engaged through a variety of team-based processes to identify the strengths and needs of the child or youth and his family, and to help achieve positive outcomes for safety, permanency, and well-being. The statute goes on to identify the activities of the child and family team.</p> <p>Revises respite care: temporary care not to exceed 72 hours but may be extended up to 14 days in one month.</p> <p>Adds definition of APPLA: A permanent plan ordered by the court for a child 16 years of age or older or a nonminor dependent when there is a compelling reason or reasons to determine that it is not in the best interest of the child or nonminor dependent to return home, be placed for adoption be placed for TCA, or be placed with a fit and willing relative. Placement in group home/STRTC must not be the permanent plan for any child or NMD.</p>

WIC 16501.1	Discusses the role of the case plan in child welfare	<p>(a)(1)(3) – agency to consider recommendations of child and family team and document rationale for inconsistencies between case plan and CaFT recs.</p> <p>(c) – if out of home placement is recommended, case plan must consider recs of CaFT.</p> <p>(d)(1) – recommended family setting must promote normal childhood experiences. Sets forth order of priority of placements.</p> <p>(d)(2) - If a short-term intensive treatment center placement is selected for a child, the case plan must state the needs of the child that necessitate the placement, the plan for transitioning the child to a less restrictive environment, and the projected timeline by which the child will be transitioned to a less restrictive environment.</p> <p>(B) – for children in group care, after 1/1/17 a CaFT meeting must be convened to identify the supports and services needed to achieve permanency and allow the child to be placed in the least restrictive family setting.</p> <p>(3) – successful adulthood and discusses steps to take to get NMDs out of STRTC after 1/1/17.</p> <p>(g) – case plan must be developed considering the recs of the CaFT.</p> <p>(g)(15)(A) – when the plan is adoption or guardianship the case plan shall describe any barriers to achieving legal permanence and the steps the agency will take to address those barriers.</p> <p>(g)(15)(B) – if child is 16 or older and plan is APPLA, the case plan must identify the intensive and ongoing efforts to return the child to the home of the parent, place for adoption, guardianship or with a fit and willing relative.</p> <p>(g)(16)(A) – for 14 or 15 year old the case plan will describe the programs and services</p>
-------------	--	--

		<p>that will help the child prepare for the transition from foster care to successful adulthood.</p> <p>(g)(17) – for children 14 and older the case plan must be developed in consultation with the youth and the youth may request that two members of the case planning team be present and one of those people can be designated to advocate about application of the reasonable and prudent parent standard.</p> <p>(g)(18) – for youth 14 and older in placement and for NMDs the case plan must include: a description of the youth’s education, health, visitation, court participation, and credit reports rights; a signed acknowledgment that the child has received the aforementioned document.</p> <p>(f)(19) – the case plan for a child or NMD at risk of commercial sexual exploitation must document services provided to address that issue.</p>
--	--	---

Glossary of Abbreviations

- ❖ APPLA – another planned permanent living arrangement
- ❖ CaFT – child and family team
- ❖ FC – foster care
- ❖ LTFC – long term foster care
- ❖ NMD – nonminor dependent
- ❖ NREFM – non-related extended family member
- ❖ STRTC – short term residential treatment center
- ❖ TCA – tribal customary adoption

AB 403 (Stone): Foster Youth: Continuum of Care Reform

BILL SUMMARY

AB 403 is a comprehensive reform effort to make sure that youth in foster care have their day-to-day physical, mental, and emotional needs met; that they have the greatest chance to grow up in permanent and supportive homes; and that they have the opportunity to grow into self-sufficient, successful adults.

AB 403 addresses these issues by giving families who provide foster care, now known as resource families, with targeted training and support so that they are better prepared to care for youth living with them. The bill also advances California's long-standing goal to move away from the use of long-term group home care by increasing youth placement in family settings and by transforming existing group home care into places where youth who are not ready to live with families can receive short term, intensive treatment. The measure creates a timeline to implement this shift in placement options and related performance measures.

The measure builds upon many years of policy changes designed to improve outcomes for youth in foster care. It implements recommendations from CDSS's 2015 report, [California's Child Welfare Continuum of Care Reform](#), which were developed with feedback from foster youth, foster families, care providers, child welfare agency staff, policymakers, and other stakeholders.

PROBLEM BACKGROUND

For over a decade, California has implemented policies to reduce the number of children in out-of-home foster care placements, which has resulted in a decline from a high of over 100,000 youth in foster care in 1999 to about 60,000 in 2014. These policy changes have included preventative efforts to reduce the likelihood that a child is removed from his or her home, early intervention in child welfare cases, and assistance with finding children permanent homes with relatives and through adoption.

County child welfare agencies provide services to about 95 percent of youth in foster care, including

making arrangements for where the youth will reside and who will care for and take responsibility for the youth. Juvenile probation departments are responsible for the care of remaining 5 percent of foster youth.

"Continuum of care" refers to the spectrum of care settings for youth in foster care, from the least restrictive and least service-intensive (for instance, a placement with an individual foster family or an extended family member) to the most restrictive and most service-intensive (for instance, a group home with required participation in mental health treatment and limits on when the youth can leave the facility).

Most youth in foster care are placed in homes with resource families, but about 3,000 youth live in group home placements, also known as congregate care. Over two-thirds of the youth in congregate care have remained in such placements longer than two years, and about one-third have lived in such placements for more than five years.

Foster youth who live in congregate care settings are more likely than those who live with families to suffer a variety of negative short- and long-term outcomes. Such placements are associated with the creation of lifelong institutionalized behaviors, an increased likelihood of being involved with the juvenile justice system and the adult correctional system, and low educational attainment levels. Further, children who leave congregate care to return to live with their families are more likely than those who were in placed in family-based care to return to the foster system.

In spite of these well-known problems associated with this type of placement, too many children continue to be placed in, and remain living in, congregate care settings which do not always meet their needs or provide stable, supportive homes. AB 403 addresses this issue through a variety of policy changes.

COMPONENTS OF AB 403

To better meet the needs of youth in foster care and to promote positive outcomes for those youth as they

AB 403 (Stone): Foster Youth: Continuum of Care Reform

transition out of foster care, AB 403 implements the following policy changes:

- Updates the assessment process so that the first out-of-home placement is the right one.
- Establishes core services and supports for foster youth, their families, and resource families;
- Strengthens training and qualifications for resource families providing care to foster youth and congregate care facility staff;
- To the extent that the children are provided needed services and support, transitions children from congregate care into home-based family care with resource families;
- Transforms group homes into a new category of congregate care facility defined as Short-Term Residential Treatment Centers (STRTCs);
- Revises the foster care rate structure;
- Requires STRTCs and treatment foster family agencies to be certified by counties through their mental health plans;
- Evaluates provider performance.

AB 403 accomplishes the above in the following ways:

Home-Based Family Care: Reducing placements in congregate care settings will require specially trained resource families to be available to care for youth in home settings, either in resource families approved by a county or through a Foster Family Agency (FFA). AB 403 increases efforts to recruit and train families to meet the needs of foster youth as they step down from short-term residential placement settings with high service levels to less restrictive settings.

Residential Treatment: In order to reduce reliance on congregate care as a long-term placement setting, AB 403 narrowly redefines the purpose of group care. Group homes will be transitioned into a new facility type, STRTCs, which will provide short-term, specialized, and intensive treatment and will be used only for children whose needs cannot be safely met initially in a family setting. AB 403 establishes a timeline for this transition.

Providing Core Services: FFA programs, STRTCs, and social workers will provide core services and supports to foster youth and their placements. Depending on the type of placement and needs of a youth in foster care, core services may include: arranging access to specialized mental health treatment, providing transitional support from foster placement to permanent home placement, supporting connections with siblings and extended family members, providing transportation to school and other educational activities, and teaching independent living skills to older youth and non-minor dependents.

Cost: AB 403 establishes that both congregate care facilities and FFAs will offer the same level of core services to children at a rate that correlates with the level and type of services they provide. Social workers will provide additional core services and support to resource families. An initial state investment will lead to reduced placement costs, and to lower societal costs from improved outcomes.

Performance Measures and Outcomes: A multi-departmental review team will focus on the programs' administrative and service practices, and overall performance, to ensure providers are operating programs that use best practices, achieve desired outcomes for youth and families and meet local needs. To bolster this work, a satisfaction survey of youth and families will be used to determine their perception of the services they received, including whether the services were trauma-sensitive, and to provide feedback that can help programs serving youth and families make continuous quality improvements.

SUPPORT

- California Department of Social Services (sponsor)

OPPOSITION

- None received

FOR MORE INFORMATION

Contact: Arianna Smith
Office of Assemblymember Mark Stone
Phone: (916) 319-2029
arianna.smith@asm.ca.gov



Mental Health Issues Implementation Task Force: Final Report

A TEMPLATE FOR CHANGING THE
PARADIGM FOR PERSONS WITH
MENTAL ILLNESS IN THE
CALIFORNIA COURT SYSTEM

DECEMBER 2015



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

**Mental Health Issues Implementation Task Force:
Final Report**

**A Template for Changing the Paradigm for
Persons with Mental Illness in the California Court System**

December 2015



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

Judicial Council of California
Operations and Programs Division
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
www.courts.ca.gov/

For more information on the Mental Health Issues Implementation Task Force or to view the 2011 report of the Task Force for Criminal Justice Collaboration on Mental Health Issues online, please visit <http://www.courts.ca.gov/mhiitf.htm>.

Judicial Council of California

Hon. Tani G. Cantil-Sakauye
*Chief Justice of California and
Chair of the Judicial Council*

Martin Hoshino
Administrative Director of the Courts

Jody Patel
Chief of Staff

Millicent Tidwell
Chief Operating Officer

Judicial Council Operations and Programs Division Center for Families, Children & the Courts

Diane Nunn, *Director*

Charlene Depner, PhD, *Assistant Director*

Nancy Taylor, *Manager*

Francine Byrne, *Supervising Research Analyst*

Carrie Zoller, *Supervising Attorney*

Amy Bacharach, PhD, *Senior Research Analyst*

Karen Moen, *Senior Court Services Analyst*

Eve Hershcopf, *Attorney*

Danielle McCurry, *Court Services Analyst*

Yolanda Leung, *Staff Analyst*

Charina Zalzos, *Administrative Coordinator*

**Members of the Mental Health Issues Implementation Task Force,
2012–2015**

Hon. Richard J. Loftus, Jr., Chair
*Judge of the Superior Court of California,
County of Santa Clara*

Hon. Heather D. Morse
*Judge of the Superior Court of California,
County of Santa Cruz*

Hon. Hilary A. Chittick
*Judge of the Superior Court of California,
County of Fresno*

Mr. Michael D. Planet
*Court Executive Officer of the Superior
Court of California, County of Ventura*

Hon. Rogelio R. Flores
*Judge of the Superior Court of California,
County of Santa Barbara*

Mr. Michael M. Roddy
*Court Executive Officer of the Superior
Court of California, County of San Diego*

Hon. Susan M. Gill
*Judge of the Superior Court of California,
County of Kern*

Hon. Jaime R. Román
*Judge of the Superior Court of California,
County of Sacramento*

Hon. Suzanne N. Kingsbury
*Presiding Judge of the Superior Court of
California, County of El Dorado*

Hon. Maria E. Stratton
*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Clifford L. Klein
*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Michael Anthony Tynan
*Judge of the Superior Court of California,
County of Los Angeles*

Hon. Kurt E. Kumli
*Judge of the Superior Court of California,
County of Santa Clara*

Hon. Garrett L. Wong
*Judge of the Superior Court of California,
County of San Francisco*

Hon. Stephen V. Manley
*Judge of the Superior Court of California,
County of Santa Clara*

Acknowledgments

Funding for the Mental Health Issues Implementation Task Force was provided by the following:

- Mental Health Services Act (MHSA) /California Proposition 63 (2004)
- Judicial Council of California

We would like to acknowledge the support of the Judicial Council staff whose work contributed to the accomplishments of the Implementation Task Force, specifically Cory T. Jaspersen, Director of the Office of Governmental Affairs as well as Daniel Pone, Senior Attorney; Sharon Reilly, Attorney; Christine Miklas, Senior Editor; and David Glass, Senior Conference Center Coordinator. We would also like to extend our special thanks to our partners at the Mental Health Services Oversight and Accountability Commission, County Behavioral Health Directors Association of California, California Institute for Behavioral Health Solutions, Chief Probation Officers of California, California State Sheriffs' Association, and the trial courts of California for their valuable contributions to this project.

Contents

Introduction..... 1

Background 3

Mental Health Issues Implementation Task Force Charge 4

Guiding Principles 5

Report and Recommendation Implementation..... 6

 Organization of This Report and Recommendations..... 6

 Implementation of Recommendations 7

 Partnerships..... 8

Section 1: Prevention, Early Intervention, and Diversion Programs 10

Section 2: Court Responses 12

 Judicial Leadership 12

 Case Processing 13

 Coordination of Civil and Criminal Proceedings..... 14

 Competence to Stand Trial..... 14

 Additional Court Resources 14

Section 3: Incarceration 16

Section 4: Probation and Parole 17

 Coordination of Mental Health Treatment and Supervision..... 17

 Alternative Responses to Parole and Local Supervision Violations..... 18

Section 5: Community Reentry..... 20

 Preparation for Release 20

 Implementation of the Discharge Plan..... 21

 Housing upon Release..... 21

Section 6: Juvenile Offenders 23

 Juvenile Probation and Court Responses 23

 Competence to Stand Trial..... 24

 Juvenile Reentry..... 24

 Collaboration..... 25

Education and Training.....	25
Research.....	25
Section 7: Education, Training, and Research.....	27
Education and Training for Judicial Officers, Attorneys, and Criminal Justice Partners.....	27
Collaboration with California Law Schools	28
Research.....	28
Conclusion	30
Future Directions	32
Summary.....	36
Appendices.....	37
Appendix A: MHIITF Responses to the Recommendations of the TFCJCMHI	37
Appendix B: Mental Health Issues Implementation Task Force Fact Sheet	76
Appendix C: 2015 Rules of Court	78
Appendix D: Legislative Proposal: Draft Welfare and Institution Code §709.....	80
Appendix E: Discharge Plan.....	87
Appendix F: Mental Health Protocols and Mental Health Courts.....	89
Appendix G: 2015 Counties with Collaborative Courts.....	94

Introduction

The Task Force for Criminal Justice Collaboration on Mental Health Issues (TFCJCMHI) was established in 2008 as a Chief Justice–led initiative that was part of a national project of the Council of State Governments¹. The project was designed to assist state judicial leaders in their efforts to improve responses to people with mental illnesses in the criminal justice system. The TFCJCMHI was charged with exploring ways to improve practices and procedures in cases involving adult and juvenile offenders with mental illness, to ensure the fair and expeditious administration of justice, and to promote improved access to treatment for defendants with mental illness in the criminal justice system.

The TFCJCMHI developed 137 recommendations designed to improve outcomes for offenders and other individuals with mental illness in the justice system by promoting collaboration at the state and local level.

Specifically, the recommendations were designed to:

- Promote innovative and effective practices to foster the fair and efficient processing and resolution of cases involving persons with mental illness in the court system;
- Expand education programs for the judicial branch, State Bar of California, law enforcement, and mental health service providers to address the needs of offenders with mental illness;
- Foster excellence through implementation of evidence-based practices for serving persons with mental illness; and
- Encourage collaboration among criminal justice partners and other stakeholders to facilitate interagency and interbranch efforts that reduce recidivism and promote improved access to treatment for persons with mental illness.

The recommendations focused on the following areas:

- Community-based services and early intervention strategies that reduce the number of individuals with mental illness who enter the justice system;
- Court responses that enhance case processing practices for cases involving mental health issues and reduce recidivism for this population;
- Policies and procedures of correctional facilities that ensure appropriate mental health treatment for inmates with mental illness;

¹ This project was supported by the Conference of Chief Justices in Resolution II: In support of the Criminal Justice/Mental Health Leadership Initiative <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01182006-In-Support-of-the-Judicial-Criminal-Justice-Mental-Health-Leadership-Initiative.ashx>

- Community supervision strategies that support mental health treatment goals and aim to maintain adult and juvenile probationers and parolees in the community;
- Practices that prepare incarcerated individuals with mental illness for successful reintegration into the community;
- Practices that improve outcomes for juveniles who are involved in the delinquency court system; and
- Education, training, and research initiatives that support the improvement of justice responses to people with mental illness.

The recommendations were outlined in the final report received by the Judicial Council in April 2011.

In January 2012, Chief Justice Tani G. Cantil-Sakauye appointed the Mental Health Issues Implementation Task Force (Implementation Task Force), chaired by Judge Richard J. Loftus, Jr., of the Superior Court of Santa Clara County, to review the recommendations of the TFCJCMHI and to develop a plan for implementing the recommendations of that report. Implementation Task Force membership included judicial officers and court executive officers from throughout the state, as noted in the roster included with this report. While developing the implementation plan, it became clear that mental health issues cut across all case types and treatment, social service, and policy issues impacting defendants and other court users were often complex and multi-faceted. While the Implementation Task Force has focused on identifying ways to improve outcomes and reduce recidivism rates in criminal cases involving mental health issues, being mindful of cost and public safety considerations in the post-recession/post-realignment environment, members recognized the need to develop protocols and practices that support improved outcomes for court users with mental illness across other case types particularly those in juvenile, probate, dependency, and family courts.

Background

As noted in the final report of the TFCJCMHI, people with mental illness are overrepresented in the justice system.² One study found that although only 5.7 percent of the general population has a serious mental illness,³ 14.5 percent of male and 31 percent of female jail inmates have a serious mental illness.⁴ A 2009 study reported that in California there are almost four times more people with mental illness in jails and prisons than in state and private psychiatric hospitals.⁵ It was also noted that inmates with serious mental illness often need the most resources and can be the most challenging to serve while incarcerated.⁶ California's state psychiatric hospitals currently provide treatment primarily to a forensic population. California's forensic state hospital population of approximately 4,600 includes mostly individuals who have been found Not Guilty by Reason of Insanity (NGI) and Incompetent to Stand Trial (IST) or who are categorized as Mentally Disordered Offenders (MDO) or Sexually Violent Predators (SVP).⁷ Persons with mental illness are also overrepresented in the courtroom. One study found that 31 percent of arraigned defendants met criteria for a psychiatric diagnosis at some point in their lives and 18.5 percent had a current diagnosis of serious mental illness.⁸

Evidence has demonstrated that only a systemic approach that brings together stakeholders in the justice system with mental health treatment providers and social service agencies can effectively address the needs of persons with mental illness. The TFCJCMHI was established with the recognition that courts are uniquely positioned to take a leadership role in forging collaborative solutions by bringing together these stakeholders. The Mental Health Issues Implementation Task Force was appointed by Chief Justice Tani G. Cantil-Sakauye to continue the important work the original task force had begun. The focus of the Implementation Task Force was to examine how to begin making the systemic changes needed to improve services for people with mental illness who are involved in the justice system. Unlike the original TFCJCMHI, which included representation from a wide array of justice system and mental health treatment partners, the Implementation Task Force is comprised only of trial court judges and court executive officers and was appointed for a limited term, with a sunset date of December 31, 2015.

² Bureau of Justice Statistics Special Report, *Mental Health Problems of Prison and Jail Inmates* (September 2006), www.nami.org/Content/ContentGroups/Press_Room1/2006/Press_September_2006/DOJ_report_mental_illness_in_prison.pdf.

³ Ronald Kessler, Wai Tat Chiu, Olga Demler, and Ellen Walters, "Prevalence, severity, and comorbidity of twelve-month DSM-IV disorders in the National Comorbidity Survey Replication (NCS-R)," *Archives of General Psychiatry*, 62(6) (2005), pp. 617–627.

⁴ Henry J. Steadman, Fred C. Osher, Pamela C. Robbins, Brian Case, and Steven Samuels, "Prevalence of Serious Mental Illness among Jail Inmates," *Psychiatric Services*, 60 (2009), pp. 761–765.

⁵ Treatment Advocacy Center and the National Sheriffs' Association, *More Mentally Ill Persons Are in Jails and Prisons than Hospitals: A Survey of the States* (May 2010).

⁶ *Ibid.*

⁷ Pursuant to e-mail correspondence with Long Term Care Services Division, California Department of Mental Health, January 13, 2009.

⁸ Nahama Broner, Stacy Lamon, Damon Mayrl, and Martin Karopkin, "Arrested Adults Awaiting Arraignment: Mental Health, Substance Abuse, and Criminal Justice Characteristics and Needs," *Fordham Urban Law Review*, 30 (2002–2003), pp. 663–721.

Mental Health Issues Implementation Task Force Charge

The Implementation Task Force is charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve system wide responses to persons with mental illness and to develop an action plan to implement the recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues.

Specifically, the Implementation Task Force is charged with:

1. Identifying recommendations under Judicial Council purview to implement;
2. Identifying potential branch implementation activities; and
3. Developing a plan with key milestones for implementing the recommendations.

This charge recognizes the importance of the work begun by the TFCJCMHI and helps ensure that progress will continue to be made toward helping the criminal justice system and courts address the challenges posed when handling cases involving people with mental illness.

Guiding Principles

Members of the TFCJCHMI identified key principles that focused the work of the initial task force in the formulation of its recommendations. These same principles have guided the work of the Implementation Task Force. These guiding principles include the following:

- Courts should take a leadership role in convening stakeholders to improve the options and outcomes for those who have a mental illness and are at risk of entering or have entered the criminal justice system.
- Resources must be dedicated to identify individuals with mental illness who are involved or who are likely to become involved with the criminal justice system. Interventions and diversion possibilities must be developed and utilized at the earliest possible opportunity.
- Diversion opportunities should exist for defendants with mental illness as they move through the criminal justice system.
- Treatment and disposition alternatives should be encouraged for individuals who are detained, arrested, or incarcerated primarily because of actions resulting from a mental illness or lack of appropriate treatment.
- Effective responses to this population require the collaboration of multiple systems and stakeholders, because offenders with mental illness interface with numerous systems and agencies as they move through the criminal justice system.
- Flexible and integrated funding is necessary to facilitate collaboration between the various agencies that interact with offenders with mental illness.
- Offenders with mental illness must receive continuity of care as they move through the criminal justice system in order to achieve psychiatric stability.
- Information sharing across jurisdictions and agencies is necessary to promote continuity of care and appropriate levels of supervision for offenders with mental illness.
- Individuals with mental illness who have previously gone through the criminal justice system, and family members of criminally involved persons with mental illness, should be involved in all stages of planning and implementation of services for offenders with mental illness.
- Programs and practices with evidence-based practice models should be adopted in an effort to utilize diminishing resources and improve outcomes effectively.

Report and Recommendation Implementation

Organization of This Report and Recommendations

The original 2011 task force report was written using the Sequential Intercept Model (SIM)⁹ as a framework for formulating and organizing its recommendations. The SIM illustrates various points along the justice continuum where interventions may be utilized to prevent individuals from entering or becoming more deeply involved in the system. Ideally, most people can be diverted before entering the justice system, with decreasing numbers at each subsequent point along the continuum.¹⁰

This report follows the same SIM framework used in the 2011 report, and begins with a brief overview of each section, beginning in section one with community-based strategies for early intervention and diversion followed by recommendations in section two focused on court-based strategies and responses for those not successfully diverted and who enter the justice system. The third and fourth sections outline responses related to individuals in custody or on probation or parole. The fifth section focuses on reducing recidivism and ensuring successful community reentry for those with mental illness. The sixth section focuses exclusively on juveniles with mental health issues in the delinquency system. The final section of the report highlights the education, training, and research necessary to implement the recommendations effectively and to measure the effectiveness of practices targeting justice-involved persons with mental illness.

The narrative portion of this report primarily discusses the recommendations that were found to be within the Judicial Council's purview and were the focus of the work of the Implementation Task Force. Next steps and the need for continuing the work is addressed at the conclusion of the report. Appendix A provides a chart of all 137 of the recommendations contained in the TFCJCMHI's final report, the full text of each recommendation, and the Implementation Task Force's response to each recommendation.

The work of both task forces, pursuant to their respective charges, focused on people with mental illnesses who may be, or are at risk of becoming, involved in the criminal justice or other juvenile or adult court systems, including dependency, family, or probate court proceedings. For purposes of this report, "mental illness" is used as a collective term for all diagnosable mental disorders; "serious mental illness" is defined to include schizophrenia and other psychotic disorders, bipolar disorder, and other mood disorders, and some anxiety disorders, such as obsessive-compulsive disorder, that cause serious impairment. Typically, both task forces focused their work on individuals with diagnoses that fall within the scope of serious mental illness. The terms "mental illness" or "offenders/people with mental illness" throughout the report should be understood to include co-occurring disorders, as approximately 50 percent of those in the general population with a mental illness also have a co-occurring substance use

⁹ Created by Summit County, Ohio, and the National GAINS Center.

¹⁰ Mark R. Munetz and Patricia A. Griffin, "Use of the sequential intercept model as an approach to decriminalization of people with serious mental illness," *Psychiatric Services*, 57 (April 2006), pp. 544–549.

disorder,¹¹ and incarcerated individuals with a severe mental illness have been found to have a 72 percent rate of co-occurring substance use disorder.¹²

Implementation of Recommendations

The Implementation Task Force members approached their work by identifying what could be done within the branch and what must be done by partners acting alone or in concert with one another. Although some of the recommendations developed by the initial task force and addressed by the Implementation Task Force may initially appear to be outside the purview of the judicial branch, Implementation Task Force members believe that not addressing relevant areas could have a deleterious impact on the branch and be antithetical to the charge and goals of both task forces.

After identifying recommendations within the judicial branch's purview, the Implementation Task Force prioritized its work, taking into consideration whether implementation would need to occur on a statewide or local level, whether there is a need for collaboration and involvement from justice and mental health partners, and what is needed to make implementation of recommendations viable. Each recommendation was prioritized using this framework and Implementation Task Force members made significant progress toward implementing many of the recommendations, as well as formulating strategies for implementation of recommendations that the Implementation Task Force was not in a position to implement during its limited appointment term.

Members of the original task force and members of the current Implementation Task Force recognized that some of their recommendations may require additional funding, legislative changes, or changes in the culture and practices of systems involved in responding to people with mental illness in the justice system. However, the goal throughout has been to develop and address recommendations that not only can be implemented with little cost but also recommendations that are aspirational in nature and can serve as a blueprint for developing and implementing the best possible responses over time. During the development of the original recommendations and in addressing implementation issues, members of both task forces were sensitive to the current economic climate and the fiscal difficulties still confronting state and local government and community-based programs. However, in both 2011 and in 2015, task force members felt that, even in difficult economic times, it is imperative that courts and counties jointly develop and pursue programs, services, and interventions that will best maximize resources to improve outcomes for offenders with mental illness. Moreover, task force members believe that effective approaches to offenders with mental illness will ultimately reduce the amount of fiscal resources expended on a long-term basis.

¹¹ California Department of Alcohol and Drug Programs, Co-Occurring Disorders Information (*Co-Occurring Disorders Fact Sheet*) http://cojac.ca.gov/cojac/pdf/COD_FactSheet.pdf (as of December 2008).

¹² Karen M. Abram and Linda A. Teplin, "Co-Occurring Disorders Among Mentally Ill Jail Detainees: Implications for Public Policy," *American Psychologist*, 46(10) (1991), pp. 1036–1045; the CMHS National GAINS Center, *The Prevalence of Co-Occurring Mental Illness and Substance Use Disorders in Jails* (2002), <http://gainscenter.samhsa.gov/pdfs/disorders/gainsjailprev.pdf>.

Fostering a collaborative approach to creating solutions for defendants with mental illness has become even more critical in the time since the report of the TFCJCMHI was submitted to the Judicial Council. Criminal justice realignment (realignment), enacted as part of the Budget Act of 2011 and various budget trailer bills, transferred the responsibility for managing and supervising non-serious, non-violent, non-sexual felony offenders from the state to county governments. Under realignment, trial courts are now responsible for conducting revocation hearings in cases where individuals released from prison violate their conditions of supervision. Realignment also gave trial courts the responsibility for setting the terms of mandatory supervision. While this has presented some challenges, it also presents an opportunity to establish local protocols and set local conditions of supervision for individuals with mental illness.

It is important to remember that many of the original recommendations and implementation strategies are cost-neutral recommendations and may not require additional funding. Even without new or additional funding, many recommendations can be implemented at little or no cost through cooperative ventures and through innovative collaborative efforts with state and local justice and mental health partners. In fact, many of the recommendations are associated with cost savings, as they often focus on ways to maintain offenders with mental illness in the community through connections to treatment services as an alternative to costly state hospital stays or incarceration in local or state facilities. However, some recommendations do require additional court and staff time and the implementation of some of these recommendations may be hampered or limited by the serious reduction in judicial branch funding that has occurred since the original TFCJCMHI report was submitted.

In implementing the recommendations, courts and county partners require flexibility in developing appropriate local responses to improving outcomes for people with mental illness in the criminal justice system. Implementation Task Force members have been aware of and sensitive to the differences among California's counties and courts, recognizing that county size, county resources, and local county culture will influence what type of collaborative efforts would be most effective.

The Implementation Task Force identified 74 recommendations as being under Judicial Council purview, benefitting from judicial branch leadership or involvement, requiring educational programs for judicial officers, or being best practice recommendations for the courts. The balance of the recommendations requires implementation by justice or mental health partners or would require executive or legislative branch action.

Partnerships

The Implementation Task Force identified 63 recommendations that are outside of the purview of the Judicial Council and the courts. These are recommendations that can be addressed only by mental health and justice partners, by the legislature, or, as in the case of some regulations such as those arising from the Health Insurance Portability and Accountability Act of 1996 (HIPAA), by the federal government.

To facilitate discussion of these recommendations and potential action by criminal justice and mental health partners, as well as to foster those partnerships forged during the work of the TFCJCMHI, the Implementation Task Force leadership reached out to partners around the state. These partners included the Chief Probation Officers of California, California State Sheriffs' Association, Department of State Hospitals, Mental Health Services Oversight and Accountability Commission's Financial Oversight Committee, California Judges Association, California Institute for Behavioral Health Solutions, and the County Behavioral Health Directors Association of California. Outreach efforts resulted in invitations to make presentations to the executive committees or membership of these groups and to develop courses and teach at various educational programs. Educational presentations by Implementation Task Force members were provided to statewide organizations including the Chief Probation Officers of California, the California Institute for Behavioral Health Solutions, and the California Judges Association. These presentations outlined the work of the Implementation Task Force and discussed on specific recommendations made in the final report of the TFCJCMHI.

Outreach to all partners was important but was particularly significant in the case of the Chief Probation Officers of California (CPOC), and the California State Sheriffs' Association with whom discussions took place about jail treatment services, training of jail staff, discharge planning, and the development of common drug formularies. When speaking with CPOC representatives, Implementation Task Force members also discussed options for training probation officers in evidence-based practices for working with probationers with mental illness. Other efforts were primarily educational, wherein the role of the courts and judges was explained and there was an opportunity to engage in discussion about court and treatment evidence-based practices that can help improve outcomes for individuals with mental illness in the justice system.

The response to focusing on the need to improve outcomes for adults and juveniles involved in the criminal justice, delinquency, and dependency court systems has been favorable. Members of the Judicial Council's Trial Court Presiding Judges Advisory Committee have received regular updates about the work of the Implementation Task Force from the task force chair as have the Mental Health Services Oversight and Accountability Commission members. Task Force members have also provided reports to the Judicial Council's Collaborative Justice Courts, Criminal Law, Family and Juvenile Law, and Probate and Mental Health Advisory Committees regarding Implementation Task Force proposals and activities. Mental health and criminal justice partners repeatedly have noted that it is the involvement of judges and the leadership provided by the Judicial Council that has helped bring focused attention to these matters at local and statewide levels. The courts and their mental health and justice partners have come to realize that no single entity can solve the problem or bring about the changes that will improve outcomes. It is clear that improved outcomes for offenders and other court users with mental illness can only be achieved through collaboration and partnership with others.

Section 1: Prevention, Early Intervention, and Diversion Programs

The final report of the TFCJCMHI discusses factors that contribute to the disproportionate number of people with mental illness in the justice system, including the nature of the illness, negative stigmatization, homelessness, and decentralized and often underfunded mental health service delivery systems. The report's early intervention recommendations focus on the coordination of community services and the creation of community-based interventions/prearrest diversion programs to reduce the number of people entering the criminal justice system. The TFCJCMHI final report acknowledges that addressing these recommendations may be best done through local task forces since the recommendations focus on community agencies serving people with mental illness and on local law enforcement. The Implementation Task Force examined these recommendations and agreed with the assessment of the TFCJCMHI: these recommendations are most effectively addressed through collaboration between local justice partners, mental health agencies, other service providers, individuals, and family members.

While the Implementation Task Force did not specifically focus on the recommendations in this section, several of the projects and activities of the Implementation Task Force supported these recommendations, including:

- Amending rule 10.952 of the California Rules of Court to include additional justice system stakeholders involved with address mental health issues in courts' regular meetings concerning the criminal court system. These rule amendments will encourage judicial leadership in facilitating interbranch and interagency coordinated responses to people with mental illness in the criminal justice system.¹³ (See further discussion, section 2.)
- Presenting at conferences and symposiums held by organizations such as the California Institute for Behavioral Health Solutions, National Association of Drug Court Professionals, California Association of Collaborative Courts, Chief Probation Officers of California, and the California Association of Youth Courts in order to provide education on how community justice partners and mental health professionals can assist people with mental illness who are, or may become, court involved.¹⁴ (See further discussion, sections 3 and 5.)
- Directing and participating in summits cosponsored with partners such as the Center for Court Innovation and the American Bar Association that focus on community prosecution, diversion, and community policing and are designed to promote effective interface between community-based interventions and the courts.¹⁵ (See further discussion, section 5.)

¹³ Recommendations 1, 5, 6, 7.

¹⁴ Recommendations 1, 2, 4, 6, 9, 10.

¹⁵ Recommendations 1, 2, 5.

Improving and increasing the accessibility of services available to people with mental illness, combined with an expansion of pretrial diversion programs, can reduce the number of people with mental illness entering the criminal justice system. Thus, the Implementation Task Force recommends that courts work on the local level to foster connections with justice partners in order to open to branch local dialogues about how community service providers can assist people with mental illness who are currently involved, or at risk of becoming involved, in the justice system.

Section 2: Court Responses

The final report of the Task Force on Criminal Justice Collaboration on Mental Health Issues (TFCJCMHI) acknowledges that cases involving persons with mental illness are often the most challenging for courts to handle appropriately, and often require significant judicial branch resources. The report notes that the traditional adversarial approach is frequently ineffective in cases of defendants with mental illness. The TFCJCMHI indicated that the justice system could improve case processing and outcomes for persons with mental illness or co-occurring disorders by including the justice system partners who are most directly involved with the offenders with mental illness in the courts' criminal justice stakeholder meetings, and by establishing local protocols for these cases.

Recommendations concerning court responses were in five primary areas: judicial leadership, case processing, coordination of civil and criminal proceedings, competence to stand trial, and additional court resources. While the TFCJCMHI didn't make specific recommendations related to Lanterman–Petris–Short Act (LPS) or emergency commitments, it is noteworthy that conversations that took place during the meetings of that task force have resulted in legislative proposals, including AB 1194 (Eggman) which was approved and signed into law on October 7, 2015. This action amends Welfare and Institution 5150 by explicitly expanding the information considered for involuntary commitment and treatment of persons with specified mental disorders to include available relevant information about the historical course of the person's mental disorder and not just consideration of the danger of imminent harm. This bill had the strong support of family members and medical professionals who all too often encounter serious barriers when trying to secure help for an individual.

• *Amended rule 10.952 to add representatives from the following stakeholders to the already mandated meetings that courts hold with justice system partners: parole, the sheriff and police departments; the Forensic Conditional Release Program (CONREP); the local county mental health director; and alcohol and drug programs director.*

The full text of these amended rules can be found in the Appendix C of this report.

Judicial Leadership

Recommendations in this area focused on the critical role judicial leaders can play in improving responses to people with mental illness involved in the justice system by facilitating interbranch and interagency collaboration. In support of this, the Implementation Task Force proposed amendments to California Rules of Court, rules 10.951 and 10.952 to encourage judicial leadership in facilitating interbranch and interagency coordinated responses to people with mental illness in the criminal justice system. The proposed rule changes were adopted by the Judicial Council and effective January 1, 2014.¹⁶

The amendment to rule 10.951 encourages the presiding judge, together with justice partners, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders to help to ensure early identification of and appropriate treatment with the goals of

¹⁶ Recommendations 11 and 12.

reducing recidivism, responding to public safety concerns, and providing better outcomes for these offenders while reducing costs.

The amendment to rule 10.952 added the Forensic Conditional Release Program (CONREP), the county mental health director, the county director of alcohol and drug programs, and representatives from the parole, sheriff, and police departments to the list of justice system stakeholders with whom designated judges are required to meet on a regular basis in order to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern. It is anticipated that, with the addition of these stakeholders, justice system partners on the local level will likely begin to address the complex information-sharing suggestions included in recommendations 13 and 14 of the TFCJCMHI's final report. This will help break down barriers to communicating critical information related to defendants with mental illness to the courts and select court partners, and will facilitate the courts' obtaining information about local agencies that are appropriate and qualified service providers. The Implementation Task Force noted that inclusion of criminal justice partnership will ultimately promote improvements in case processing in other case types such as juvenile, probate, and family law cases, as well as improving criminal case processing.

Case Processing

Recommendations in this section address the idea that courts should use collaborative methods for processing cases involving persons with mental illness. To encourage development of local protocols for those with mental illness, an amendment of rule 10.951 that was adopted by the Judicial Council furthers the recommendations in this section urging that trial courts have a specialized approach, guided by each defendant's mental health needs, to adjudicating cases involving persons with mental illness.¹⁷ Similarly, the amendment of rules 10.951 and 10.952 encourages collaboration between local courts, probation, and mental health professionals, as stated in recommendation 18. Educational materials for judicial officers have been developed by the Implementation Task Force, including sample orders, bench notes, and other resources, to help local courts implement recommendations in this section.¹⁸ These materials were incorporated into CJER On-Line Toolkits. Similarly, the need for continued outreach to justice and mental health partners has been identified by the Implementation Task Force as a component that is critical to achieving case processing based upon evidence-based collaborative practices. These partnerships are expected to improve case processing in case types across the court system.

The California Rules of Court are a set of regulations, adopted by the Judicial Council, which govern court procedure in California. Proposed changes to the rules of court are available for public comment prior to Judicial Council action. As a result of the Implementation Task Force's proposal, the Judicial Council made the following amendments to the rules:

- *Added subdivision (c) to rule 10.951, encouraging the presiding judge, supervising judge or other designated judge, in conjunction with the justice partners, designated in rule 10.952, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders.*

¹⁷ Recommendations 16 and 17.

¹⁸ Recommendations include 17, 20, 22, 23.

Coordination of Civil and Criminal Proceedings

The TFCJCMHI determined that when a court user with mental illness is involved in multiple case types, it is important to coordinate the cases and services. The final report recommended giving judicial officers hearing criminal proceedings the authority to order a conservatorship evaluation and the filing of a petition when there is reasonable cause to believe that a defendant is gravely disabled by a mental illness, and to receive a copy of the conservatorship investigator's report.¹⁹ The Implementation Task Force successfully requested that the Judicial Council sponsor legislation it drafted to increase the options available to courts when handling criminal cases involving potentially gravely ill offenders and improve coordination between the conservatorship court and the criminal court when they have concurrent jurisdiction over an individual with mental illness.

Competence to Stand Trial

The issues of lengthy delays in case processing and competence restoration were addressed in this section. While most of the recommendations in the TFCJCMHI report concerning competence were found to be outside of judicial branch purview or an issue for judicial education, the Implementation Task Force drafted and requested that the Judicial Council sponsor legislation to amend Penal Code sections 1601(a), 1602(a) and (b), and 1603(a) pertaining to outpatient status for offenders who are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism. The amendments would allow the court, when appropriate, to release conditionally a defendant found incompetent to stand trial to a placement in the community, rather than in a custodial or in-patient setting, to receive mental health treatment until competency is restored. The recommended legislation was accepted for Judicial Council sponsorship in the 2014–2015 legislative sessions and was passed and signed into statute as part of AB 2190 and amended 1601, 1602, and 1603 of the Penal Code 53, 54 Welfare and Institutions Code.²⁰

Additional Court Resources

The need for courts to provide additional support to defendants with mental illness through peer support programs and self-help centers was highlighted in this section of the report. It should be

As one of the responsibilities of the Judicial Council is to sponsor legislation consistent with the council's established goals and priorities to support consistent, effective statewide programs and policies, the Implementation Task Force proposed legislation for Judicial Council sponsorship, and two of the proposals were incorporated in AB2190 in 2014. The proposals were designed to:

- *Improve the coordination between conservatorship and criminal courts by allowing the report of a conservatorship investigator to be shared with the criminal court, with the permission of the defendant or defense counsel, if the criminal court orders an evaluation of the defendant's mental condition and that evaluation leads to a conservatorship investigation.*
- *Increase the number of treatment options available for people who have been found incompetent to stand trial by allowing the court to order treatment in the community, thereby giving the court greater discretion in its ability to grant outpatient status to someone who was found incompetent to stand trial or not guilty by reason of insanity.*

¹⁹ Recommendations 24–26.

²⁰ Recommendation 36.

noted that restoration of judicial branch funding is needed in order to have sufficient court resources and staff to fully implement these and other recommendations and to adapt to the changing needs of the justice system in the post-realignment environment. The Implementation Task Force acknowledged that, with the challenges of the current fiscal climate, these recommendations may be seen aspirational best practices and will require a joint commitment from courts and their mental health and justice partners system to implement these recommendations fully. However, the Implementation Task Force believes that implementing the recommendations and providing assistance to court users with mental illness and their families through court self-help centers would help with case processing processes and ultimately be cost-saving measures.

Section 3: Incarceration

The recommendations in this section of the TFCJCMHI's final report are focused on ways to provide appropriate care to people who are incarcerated and have mental illness. While recognizing that correctional facilities face a number of challenges in addressing the mental health needs of their inmate populations, including overcrowding, a shortage of qualified mental health professionals, and cultural aspects inherent in the prison and jail environment that pose additional challenges for persons in custody with mental illness, these recommendations seek to provide guidance on how to better serve people with mental illness through all phases of the incarceration process. The first subsection of these recommendations focuses on the jail booking/admission process and the need to identify, assess, and prepare for release individuals with mental illness. The second subsection examines the need for jails and prisons to address the mental health needs of their inmate populations and establish protocols to coordinate continuity of care both during and after incarceration. The Implementation Task Force considered the Section 3 recommendations and agreed with the TFCJCMHI that making the changes suggested in these recommendations is within the purview of county jails and state prisons and is not specific to the judicial branch.

In October 2011, criminal justice realignment (realignment) legislation went into effect and had a significant impact on the manner in which individuals with non-serious, non-violent, and non-sex crimes were incarcerated and supervised. Although the recommendations of the TFCJCMHI were crafted prior to the enactment of this legislation, the Implementation Task Force has taken steps to support the recommendations in this section in the context of realignment by identifying and contacting criminal justice partners in order address these recommendations during this time of significant change in the criminal justice system.

Members of the Implementation Task Force met with representatives from the State Sheriff's Association to identify common areas of interest and potential collaboration. Topics discussed included identifying common formularies and release strategies to maximize utilization of community resources for discharged individuals with mental illness. Implementation Task Force members have participated in joint educational programming with the State Sheriff's Association and other justice system partners that focus on improving outcomes and linkages to community services. It is anticipated that as more inmates with mental illness are housed and supervised on a local level as a result of criminal justice realignment, courts will need to work with their local sheriff's department and law enforcement justice partners to address how county jails can better meet the assessment and treatment needs of these inmates. The Implementation Task Force strongly recommends the establishment of collaborations with criminal justice partners to examine current booking procedures and treatment options, determine the local needs, and seek ways to improve the service to incarcerated people with mental illness. Judges need to provide leadership by communicating the courts' expectations concerning both the offenders with mental illness who appear before them and the treatment these offenders receive while in custody or under supervision of the court.

Section 4: Probation and Parole

Note: This report focuses on responses to the recommendations of the TFCJCMHI, which was submitted to the Judicial Council before criminal justice realignment became a reality. As such, some of the recommendations are no longer strictly related to parole (state) or probation (local) responsibilities. However, under the umbrella of community supervision, including mandatory supervision and post release supervision, recommendations and responses remain valid, although they are sometimes now in a context somewhat different than was originally envisioned.

The TFCJCMHI examined the issues associated with people with mental illness who are on probation or parole. The final report noted that people with mental illness are overrepresented in the parole and probation populations and are often the most challenging to supervise. People with mental illness have diverse treatment needs and are often economically disadvantaged having lost jobs or public benefits as a result of their incarceration. The TFCJCMHI determined that the challenges of providing supervision to probationers and parolees is exacerbated by the large caseloads and the availability of resources. The TFCJCMHI identified the need for specialized training on mental health issues, including the needs of the population and how mental disorders can interfere with the ability to adhere to supervision requirements, as well as the need to facilitate communication among collaborating treatment and supervision personnel.

The final report's recommendations concerning probation and parole focus on both the need to coordinate mental health treatment and supervision, and also the need for alternative supervision strategies that address public safety concerns and ensure improved outcomes for this population. While many of the recommendations require implementation by criminal justice partners, the Implementation Task Force found several recommendations to be appropriate work for the judicial branch.

Coordination of Mental Health Treatment and Supervision

In order to improve outcomes for probationers and parolees with mental illness, the TFCJCMHI made several recommendations encouraging the use of evidence-based practices that consider the specific treatment and service needs of that population. The Implementation Task Force examined these recommendations and found that education of judges as well as justice and mental health partners is an essential way to achieve the goals stated in the recommendations. In some instances, additional steps were taken to address and implement actions in response to specific recommendations.

The Implementation Task Force wrote an initial draft legislative proposal that, if adopted, would have added a new section to the Penal Code enabling judicial officers to make specific orders about the care, supervision, custody, conduct, maintenance, and support of offenders with mental illness on probation, under mandatory supervision, or placed on post release community supervision. Such legislation would also have given the court the ability to “join” in the criminal proceeding any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the defendant. Consistent with the original recommendation, under the proposed legislation, the agency or service provider would have been given advance notice of, and an opportunity to be heard on, the issue of joinder.²¹ While a legislative proposal was initially drafted, additional collaboration with other stakeholder

²¹ Recommendation 55.

is still needed. The Implementation Task Force members hope that work can continue in this area in the future.

The TFCJCMHI was concerned about the lack of coordination of mental health and other services for probationers, particularly in cases in which probationers committed offenses and sentencing occurred in a county other than the county of residence. This issue was addressed when the Judicial Council amended California Rules of Court, rule 4.530 to add subdivision (f), effective November 1, 2012. This new subdivision to the rule of court governing the jurisdictional transfer of probation cases compelled the court to take into consideration factors that include the availability of appropriate programs, including collaborative courts.²²

The Implementation Task Force acknowledges that a significant amount of work remains to coordinate mental health treatment and supervision strategies. Members of the Implementation Task Force have met with members of the Chief Probation Officers of California to address these issues further and to develop collaborative approaches to issues of mutual concern. This collaboration is critical for the appropriate mandatory supervision of offenders with mental illness. The Implementation Task Force identified mental health courts as an effective approach for high risk/need offenders requiring intensive supervising and coordination of services and this approach was endorsed for both juveniles and adults. Related collaborative court types, such as veterans' courts, community courts, homeless courts, and reentry courts, were also noted as effective in improving outcomes for offenders with mental illness.

Alternative Responses to Parole and Local Supervision Violations

The TFCJCMHI crafted several recommendations related to responses to supervision violations and advocated that formal violations hearings for offenders with mental illness be conducted only as a last resort after the failure of alternative interventions.

Criminal justice realignment legislation transferred the responsibility for hearing the majority of parole violation cases from the Board of Parole Hearings to the local trial courts. It also redistributed funding from the state to local counties to support their new responsibilities and encouraged the use of evidence-based practices. Many counties chose to use this opportunity to expand or establish treatment intervention and/or collaborative justice courts for individuals with mental illness who are supervised by probation or parole. The number of parolee reentry courts in California has expanded from an original pilot program of 6 to 8 courts today.²³ Many other courts are utilizing existing collaborative courts for individuals on local community supervision who violate conditions or are charged with a new offense.

The Implementation Task Force has been instrumental in helping provide and shape judicial education in this area; however, this dynamic area of law continues to evolve and there remains a need for the development of additional judicial education opportunities and as well as the development of additional resource materials for judicial officers.

²² Recommendation 56.

²³ Data on the number of reentry and other collaborative justice courts gathered by the Judicial Council of California, Fall 2015.

In addition, work still needs to be done in developing services based on evidence-based practices that better support probationers and parolees with mental illness and improve both short-term and long-term outcomes for this population.

Section 5: Community Reentry

Acknowledging California's high return-to-prison rate and that parolees with mental illness are more likely than other populations to face possible revocation,²⁴ the TFCJCMHI's final report made recommendations for ways to help offenders overcome some of the obstacles to effective transition to the community. These barriers to successful community reentry can include a loss of income or health benefits during incarceration, difficulties in accessing mental health and other services, problems with maintaining continuity of psychiatric medications, and homelessness. Because reentry can happen at many different points after an individual with mental illness has entered the criminal justice system and not just when a prisoner is released, these recommendations encompass issues encountered with reentry after jail diversion programs, mental health court participation, hospitalization, and post-incarceration, as well as through probation. The TFCJCMHI's community reentry recommendations focus on three areas: preparation for release, implementation of the discharge plan, and housing upon release. The recommendations focus on what can be done while the offender is incarcerated to ensure successful reentry and also outline crucial steps for linking offenders to services immediately following release, emphasizing the essential role that stable housing plays in promoting improved outcomes for this population. However the overarching theme of these recommendations is that the careful creation and implementation of discharge plans is critical to ensuring successful community reentry. The Implementation Task Force also noted the importance of community and family support in successful reentry and reintegration. Implementation Task Force members identified the need to address community reentry issues related to this population as an area in which it is important that additional work continue.

Preparation for Release

Because recommendations in this section focused on improving local procedures and services that prepare people with mental illness for release while the individual is still in custody, the Implementation Task Force found that its role in supporting changes on the local level was best effectuated through education and encouraging collaborations and cooperation between justice partners. The Implementation Task Force believes that the modifications to rules 10.951 and 10.952 will encourage the development of local court mental health protocols and that the addition of mental health stakeholders to already mandated meetings with criminal justice partners will facilitate planning and dialogue between the courts and their criminal justice and mental health partners. To advance this goal, Implementation Task Force members conferred with partners and participated in multidisciplinary educational programs with chief probation officers, mental health directors, and county sheriffs to identify the specific needs of offenders with mental illness during the various stages of incarceration, diversion, and reentry.

Recommendations concerning the need to amend legislation, regulations, and local rules to ensure that federal and state benefits are not terminated while an offender with mental illness is in custody²⁵ and the need to assist these individuals in order to help them obtain benefits immediately upon their reentry into the community²⁶ have been supported by the implementation of the Affordable Care Act (ACA) and Medicaid

²⁴ Ryken Grattet, Joan Petersilia, and Jeffrey Lin, "Parole Violations and Revocations in California" (Washington, DC: National Institute of Justice, October 2008), www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf.

²⁵ Recommendation 75.

²⁶ Recommendation 76.

eligibility expansion. To support these recommendations the Implementation Task Force has provided education to multiple court stakeholders and partners, including the Judicial Council’s Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, concerning the ACA and Medicaid.

Implementation of the Discharge Plan

Judicial officers are a critical link in the discharge planning process and in promoting the coordination among the court, custody staff, probation, parole, the community mental health system, family members where appropriate, and all necessary supportive services. Accordingly, it is essential that judicial officers communicate their expectations regarding offenders with mental illness to justice partners. The Implementation Task Force believes that the leadership role of the court as convener of integrated community partnerships is as an effective strategy for discharge planning prior to release from custody. As discussed above, the Implementation Task Force laid the foundation for development of such linkages through the rule of court amendments that encourage mental health protocols and bring mental health providers into court-community partnerships. Because appropriate discharge planning is so critical to maximizing the possibility of successful outcomes for offenders with mental illness, the Implementation Task Force recommends that efforts continue to encourage partners to coordinate their efforts in developing discharge planning protocols and to provide assistance to help local courts identify ways to promote evidence-based practices, such as discharge planning, in their communities.

The TFCJCMHI and the Implementation Task Force both identified discharge planning as a key element for ensuring success for all offenders, but particularly those with mental illness, upon discharge from jail or prison. Key elements of the post release community plan include outlining the individualized community supervision plan; housing arrangements; transportation needs and options; benefits status; health-care, psychiatric and substance abuse services; and daily activity plans, including employment, job training, school, or other day programming. A sample discharge plan is found at Appendix E of this report.

Housing upon Release

Recommendations in this area focused on the need for every offender with mental illness leaving jail or prison to have in place an arrangement for safe housing. While many of these recommendations fall within the purview of local service providers, education about the important role of housing and the role courts can play in encouraging planning for housing in discharge plans was identified as an appropriate focus for Implementation Task Force consideration.²⁷ Thus, members of the Implementation Task Force participated in education programs sponsored by the American Bar Association’s Commission on Homelessness and Poverty that specifically addressed homelessness among offenders with mental illness, veterans, and the reentry population. Effective practices addressing housing needs that have been developed by some local courts through homeless Stand Down programs, as well as through veterans, mental health, and community courts, were identified by the task force for highlighting as effective practices. Issues related to safe

²⁷ Recommendations 82–84.

housing upon release and effective methods for addressing housing and treatment needs have been included in multidisciplinary education programs in which Implementation Task Force members participated and served as faculty. Ongoing work in the areas of education, partnership development, and identification of effective practices will be needed as part of future work in this area.

Section 6: Juvenile Offenders

Citing research indicating that more than a quarter of the youth in the juvenile justice system should be receiving some form of mental health services,²⁸ the TFCJCMHI identified as a serious concern the prevalence of justice-involved youth with mental health disorders. The final report of the TFCJCMHI identified several challenges faced in handling juveniles in the delinquency system, including obtaining and maintaining appropriate services and medications; having effective procedural guidelines for addressing the restoration / remediation needs of juveniles with competency issues; the need for education, training, and research in the area of juvenile mental health; and the importance of collaboration among stakeholders. This section of the report notes that while some topics overlap with those in other sections of the report, the “uniqueness of juvenile mental health and the juvenile court system necessitates an independent discussion.” Recommendations within this section are broken into six focus areas: juvenile probation and court responses, competence to stand trial, juvenile reentry, collaboration, education and training, and research.

Juvenile Probation and Court Responses

Recommendations in this section addressed the need for juveniles with mental illness involved in the delinquency court system to be identified, assessed, and connected to appropriate services. Because most of the specific recommendations in this area were identified as within the purview of, or requiring significant collaboration with, mental health and juvenile justice partners, much of the work of the Implementation Task Force focused on education about the recommendations and discussions with Judicial Council advisory groups that address juvenile issues. The work also focused on developing a framework to prioritize and address mental health issues in juvenile court. The groups that the Implementation Task Force partnered with include the Family and Juvenile Law Advisory Committee, the Collaborative Justice Courts Advisory Committee, and the Center for Judiciary Education and Research’s (CJER) Juvenile Law Education and Curriculum Committee. A set of issues was identified that impact juvenile involvement in the justice system. These issues include psychological trauma leading to a variety of mental health issues, developmental disability, or mental illnesses that make juveniles vulnerable to exploitation and involvement in crime, such as human trafficking or gang involvement. Also identified were concerns related to socialization and school experiences that children and youth with mental illness or developmental disability are particularly vulnerable to, such as bullying, school discipline or performance issues associated with truancy, family disruption, and trauma. The Implementation Task Force initiated efforts to address these areas through education, identification of research needs, and specific approaches for future work.

Promising court practices that would benefit from the development of educational material and additional research were identified. They include juvenile mental health courts; girls’ courts—especially in the area of human trafficking; and peer/youth courts that address early intervention and issues related to truancy, such as bullying or school discipline. The need for juvenile reentry courts and reentry programs for juveniles and young adult offenders was also noted as part of the consideration of emerging approaches to address

²⁸ Jennie Shufelt and Joseph Coccozza, “Youth with mental health disorders in the juvenile justice system: Results from a multi-state prevalence study,” *Research and Program Brief* (Delmar, NY: National Center for Mental Health and Juvenile Justice, 2006).

juveniles with mental health issues. In general, effective approaches in the court system identify these high risk/high needs youth and provide a coordinated, multidisciplinary approach to assessing treatment needs and ensuring compliance.

Competency to Stand Trial

In partnership with other Judicial Council advisory bodies, the Implementation Task Force helped establish a process for the coordinated development and review of juvenile competency issues in California. Juvenile competency issues have long created problems for the courts and this remains a key issue in the juvenile mental health arena. The collaborative effort also focused on identifying effective local court practices for addressing juvenile competency issues. The information gathered will help inform future efforts including the potential development of rules of court and dissemination of information about evidence-based or promising practices related to juvenile competency issues.

To support the recommendation that juvenile competency definitions and legal procedures be improved, a joint working group on juvenile competency issues was formed with representatives from the Implementation Task Force, the Collaborative Justice Courts Advisory Committee, and the Family and Juvenile Law Advisory Committee. Taking into account recommendations suggested by the California Judges Association, this working group proposed changes to the Welfare and Institutions Code Section 709 that will benefit minors who may be incompetent by providing them with a clear standard for determination, clarifying the procedure for the competency hearing, attributing to the minor the burden of establishing incompetence, clarifying what is expected from an expert who is appointed to evaluate a minor, requiring minors who are found incompetent to receive appropriate services, and requiring the Judicial Council to develop a rule of court outlining the training and experience needed for juvenile competency evaluators. The working group went through an extensive review and public comment process to finalize proposed amendments to Welfare and Institutions Code Section 709; a copy of the proposed modifications can be found in Appendix H of this report. The Judicial Council will review the proposed changes and legislative proposal at its December 2015 meeting.²⁹

Juvenile Reentry

These recommendations focus on the need for the juvenile court and probation to work together to ensure that juveniles have a plan for treatment, have access to medication, and are able to obtain other necessary services when they reenter the community after being in detention or placement. Much of the work on recommendations in this subsection is dependent upon local collaboration and an examination of local procedures. Although the Implementation Task Force identified best practices for courts to include as part of general juvenile court processes including juvenile mental health collaborative court models for high risk/high needs cases, the timing of the task force's sunset and resource constraints leave more work to be done in this arena. Future work, guided by the partnership of the Judicial Council advisory committees involved in juvenile and collaborative court issues, will determine how best to identify effective practices, support effective court models, and inform courts statewide about strategies to support reentry, and reduce juvenile recidivism rates. The Implementation Task Force noted that current work in the adult reentry arena

²⁹ Recommendation 96.

may help identify effective practices, such as reentry courts, for modification and potential use in juvenile courts.

Collaboration

Recommendations in this section focused on the need for juvenile courts to collaborate with community agency partners to coordinate resources for juveniles with mental illness who are involved in the delinquency court system. It is hoped that the amendment of rule 10.952 encouraging local courts to include mental health agencies in court-community networks will result in a strengthened relationship between the courts and partner agencies, thereby creating greater collaboration and additional coordination of services for juvenile offenders with mental illness.³⁰ Implementation Task Force members reached out to community partners, including probation departments and mental health directors, in an effort to highlight approaches to address the needs of persons with mental illness in the courts. This outreach focused on both juvenile and adult offenders and included organizations such as the California Judges Association, the Council on Mentally Ill Offenders (COMIO) and other justice system partners. The Implementation Task Force also identified a need to coordinate across court types, including dependency, family, probate, and criminal courts in which family members and juveniles with mental illness have cases before the court. For the future, coordination among Judicial Council advisory bodies dealing with issues related to dependency, family, probate and criminal courts will be an important first step in developing protocols to address juveniles and families involved in multiple case types.

Education and Training

Citing California Government Code section 68553.5, the TFCJCMHI stressed the need for the Judicial Council to provide training and education about juvenile mental health and developmental disability issues for judicial officers and other individuals who work with children in delinquency proceedings and crafted recommendations addressing this need. The Implementation Task Force also highlighted areas for judicial education, including content related to juvenile mental health issues. In partnership with Judicial Council advisory groups that had similar concerns, members of the Implementation Task Force participated in planning processes that resulted in inclusion of mental health and developmental disability issues as part of CJER's Juvenile Law curriculum. The Implementation Task Force also identified the need for additional educational programming and resource development as a focus for ongoing work in this area. Implementation Task Force members also supported the development of multidisciplinary education programs focused on juvenile mental health issues, such as trauma-informed care, bullying, and human trafficking through Beyond the Bench conferences, Youth Court Summits, and collaborative justice educational programs.³¹ The work of the Implementation Task Force served to crystallize the need for mental health content in juvenile court education programs and to provide support for developing educational content.

Research

The TFCJCMHI's final report highlights the need for additional research in the area of juveniles in the delinquency system. In response to recommendations on this topic, additional research on juvenile mental

³⁰ Recommendations 101–106.

³¹ Recommendations 107–109.

health has been added to the California Courts website (www.courts.ca.gov), with new reports on juvenile mental health being added regularly.³² Areas of focus for ongoing research include human trafficking, juvenile mental health courts, girls' courts and Commercial Sexual Exploitation of Children (CSEC) courts, and peer/youth courts. The joint working group on competency will consider and advise on the juvenile competency research that should be undertaken by the Judicial Council.³³ To assist delinquency and juvenile mental health courts interested in data collection, the Judicial Council published and distributed a report on juvenile delinquency performance measurement as an evidence-based practice (www.courts.ca.gov/documents/JD_Performance_asEBP.pdf). In addition, the Judicial Council worked with the National Center for State Courts to survey all collaborative courts in California and to document preliminary outcome measures for juvenile collaborative justice courts.³⁴ Outcomes data, where available, had been summarized and provided as part of research briefings and summaries. This survey will be replicated to provide an updated snapshot of California's collaborative courts. The Implementation Task Force, along with partnering Judicial Council advisory groups, focused on developing methods to identify and disseminate effective practices in the areas of juvenile competency, juvenile mental health courts, and human trafficking. These efforts of the Implementation Task Force are expected to continue as part of the ongoing work in developing judicial resources, and resources for partners, to address juvenile mental health issues in the court system. For example, Judicial Council staff, with input from the Collaborative Justice Courts Advisory Committee, is developing a briefing on juvenile collaborative court models, including a background in juvenile collaborative justice, the effectiveness and cost-effectiveness of these models, and how they can be replicated. This briefing is scheduled to be completed by mid-2016. In addition, staff is developing a trafficking tool kit for juvenile and criminal court judges to assist them in dealing with potential victims and perpetrators of human trafficking in their courtrooms.

³² Recommendation 110.

³³ Recommendation 111.

³⁴ Recommendation 113.

Section 7: Education, Training, and Research

The TFCJCMHI's final report recognizes the need to heighten awareness and to provide the information and knowledge base necessary for improving outcomes for people with mental illness in the criminal justice system. Concluding that education and training for judicial officers, court staff, and mental health and criminal justice partners is critical, the TFCJCMHI's final report indicates that education and training programs should reflect a multidisciplinary and multisystem approach, and recommends that evidence-based practices and current information about mental health treatment and research findings be included in education efforts. The final report specified:

Training programs should include, at a minimum, information about mental illness (diagnosis and treatment), the impact of mental illness on individuals and families, indicators of mental illness, stabilization and deescalation strategies, legal issues related to mental illness, and community resources (public and private). Training for judicial officers should include additional information about strategies for developing effective court responses for defendants with mental illness. Cross-training between criminal justice, mental health, and drug and alcohol services partners, and training in developing effective collaborations between the courts and mental health and criminal justice partners is critical if effective practices are to be designed and implemented to improve outcomes for individuals with mental illness in courts, jails, and prisons. All training initiatives should be designed to include mental health consumers and family members.

In order to help programs be more effective and to inform government leaders who can affect public policy, the final report calls for additional research to be done to identify best practices in California and to do a cost study, comparing the costs associated with traditional and alternate responses to people with mental illness in the criminal justice system.

The Implementation Task Force examined the recommendations and made efforts to implement those recommendations that were appropriate for judicial branch involvement. It accomplished objectives in all three categories of the TFCJCMHI's recommendations in this section: education and training for court and justice partner staff, collaboration with California law schools, and research.

Education and Training for Judicial Officers, Attorneys, and Criminal Justice Partners

Recommendations in this section center on the need for judicial officers, counsel, and justice partners to receive ongoing mental health education and training in strategies for working effectively with persons with mental illness. A key development in the area of judicial education was inclusion of mental health as an education priority in both the criminal and juvenile delinquency curriculum subcommittees of CJER. This development provides for significant education and materials for judicial education as well as inclusion of mental health content in judicial education programs sponsored by CJER.³⁵

³⁵ Recommendations 117, 118, and 124.

Implementation Task Force members also participated as faculty for CJER's judicial education programs, developing and testing judicial education curricula and materials as part of the work of the Implementation Task Force. Programs were offered at the Cow County Judges Institute, Juvenile Law Institute, Family Law Institute, and Criminal Law Institute. Multidisciplinary education was offered for justice system and treatment partners at Beyond the Bench, Family Law Education Programs, the California Sheriff's Association conference, the Chief Probation Officers of California conference, the County Behavioral Health Directors Association of California conference, the Youth Court Summit, the Community Justice and Homeless Summit, the Reentry Court Summit, the California Judges Association Conference, and the California Association of Collaborative Courts/National Association of Drug Court Professionals conferences.³⁶

The Implementation Task Force also worked with CJER to post an extensive body of newly developed judicial mental health resources on the CJER On-Line website.³⁷ The Implementation Task Force also identified resources that were available outside the court system that address specific issues pertinent to mental health issues in the courts, for adults and juveniles. These resources were cited and catalogued for inclusion in the mental health websites on the judicial branch website. In addition, the Implementation Task Force identified effective practices in the courts, as well as areas where additional materials are needed, and began preparing new materials and cataloguing of effective practices. This area was also identified as an area for follow-up and ongoing maintenance once the project is fully launched.

Collaboration with California Law Schools

The TFCJCMHI's final report recommended that the Judicial Council, California law schools, and the State Bar of California collaborate to promote collaborative justice principles and expand knowledge of issues that arise at the interface of the criminal justice and mental health systems. Implementation Task Force members were invited to present in law schools and individual members included mental health issues and collaborative justice principles as part of their curriculum. Members of the Implementation Task Force also partnered with other advisory committees to reach out to law schools that established externships for law students in collaborative justice and mental health courts.

Research

The TFCJCMHI's final report calls for research to be conducted to evaluate practices aimed at improving outcomes for people with a mental illness who are involved in the justice system and to distribute that research to courts and their partners to better inform their own work. The Implementation Task Force directed or supported several research projects to support these recommendations. The California Courts website (www.courts.ca.gov) has been expanded to include links to several resources for juvenile mental health, including the California Department of Health Care Services and the Council on Mentally Ill Offenders, as well as to provide regular updates on juvenile mental health issues and on juvenile mental health courts.³⁸ Judicial Council staff is providing support for data collection among delinquency and juvenile mental health courts throughout the state and has published a report on juvenile delinquency court

³⁶ Recommendations 116–121; 124.

³⁷ Recommendation 115.

³⁸ Recommendation 132.

performance measurement as an evidence-based practice (www.courts.ca.gov/documents/JD_Performance_asEBP.pdf). Additionally Judicial Council staff has worked closely with collaborative justice court coordinators around the state to identify data definitions and standards and is working with the National Center for State Courts to survey all collaborative justice courts in the state and to identify preliminary outcome measures.

The Implementation Task Force has also supported research projects carried out by the Judicial Council. The Judicial Council published a literature review of mental health court–related research in 2012 that is available on the California Courts website at www.courts.ca.gov/documents/AOCLitReview-Mental_Health_Courts--Web_Version.pdf. In addition, Judicial Council staff is conducting a process evaluation project on California’s mental health courts. This study examines the process and procedures of mental health courts, and identifies preliminary outcomes and promising practices. The project discusses the foundation for understanding California’s mental health courts, describing the case study’s courts in depth, as well as variations among courts’ policies and practices. The final phase is an in-depth study of six specific mental health courts and will include qualitative data from interviews and focus groups and available outcomes from the six study courts. To further this research objective, the Implementation Task Forces recommends that Judicial Council staff seek external grant funding or other potential resources to expand the project and track individual-level data and court-specific outcomes.³⁹

A similar study is being done on the effectiveness of reentry courts in California, which includes a focus on reentry of prisoners with mental illness and will include participant data, service data, and outcome data. Although the study’s focus is on reentry, it is anticipated that the data collected on prisoners with mental illness will yield useful information on program efficacy and provide data that may be applicable to the broader population of offenders with mental illness.⁴⁰ However, the Implementation Task Force recommends that additional studies be conducted to address questions of the effectiveness of treatment programs and barriers to services.

Judicial Council staff, with direction from the Implementation Task Force, continues to provide technical assistance to collaborative justice courts, including mental health courts, on request to help with their efforts to conduct research on the local level. Staff also works with drug courts, mental health courts, and other collaborative justice courts to identify data elements and evaluation standards. In addition, staff is working with the National Center for State Courts on a nationwide survey of collaborative justice courts, assisting with the California portion. The results of this survey are forthcoming.

Finally, research briefings have been developed and disseminated in the areas of human trafficking, mental health courts, drug courts, reentry courts, and evidence-based practices in juvenile courts. The Implementation Task Force identified the need for expanded research and research briefings, specifically addressing outcomes in mental health and other collaborative courts addressing mental health issues, as well as summaries that identify effective practices in local courts as part of needed ongoing follow-up work.

³⁹ Recommendation 133.

⁴⁰ Recommendation 135.

Conclusion

When members of the Implementation Task Force first met in February 2012, there was overwhelming agreement that, even in an era of severe budgetary challenges, the recommendations of the TFCJCMHI remained viable and achievable and implementation of the recommendations would present a unique opportunity to impact the future of people with mental illness in the justice system. It was agreed that, in spite of organizational and fiscal challenges, resolution of long-standing problems is possible through collaborative and innovative efforts that strengthen and expand relationships between the courts and their mental health and justice partners. Members were also in agreement that the final report of the TFCJCMHI outlined a realistic blueprint for moving forward within the branch and with partners, even in the post realignment environment.

Much has been accomplished since that initial convening: Rules of court have been amended to address expanding partnerships at the local level; legislation was passed to help improve the adjudication of cases involving persons with mental illness; and educational materials have been developed, including an online toolkit and ‘just in time’ educational opportunities for judicial officers. Implementation Task Force members have worked closely with educational partners at the Judicial Council’s Center for Judiciary Education and Research/CJER; with the Center for Children, Families & the Courts/CFCC; with the California Judges Association, and with the California Institute for Behavioral Health Solutions to include specialized mental health content in their own educational curricula and programs. Implementation Task Force members have also individually and collectively met and worked with state and local leaders to stress the importance of effectively serving those individuals in the justice system suffering from mental illness. During these meetings, Implementation Task Force members have provided the judicial leadership and the voice needed to effectively address the needs of those who are so often marginalized and powerless. Implementation Task Force members continue to work at the national, state, and local levels with judges, justice partners, and mental and behavioral health partners to promote access to services, including treatment, housing, and employment services, as well as access to improved outcomes that benefit each individual, their families, and local communities. While much has been accomplished, much still remains to be done to meet the needs of the court users with mental illness. The ongoing fiscal limitations that the judicial branch faces run the risk of negatively impacting this vulnerable population. While this ultimately affects case processing in all case types, there is a potentially disproportionate effect on those with mental illness in our courts.

The initial work of the TFCJCMHI focused on criminal justice populations. The Implementation Task Force continued to focus its effort in that area, but also noted that the entire court system is impacted by individuals with mental illness. Family, dependency, and probate courts have self-represented litigants, some with severe mental health and related issues, who can easily become confused during court proceedings and may require additional assistance. The Implementation Task Force took special note of the needs of children impacted by custody and child support disputes, parents away on military deployment, family and community violence, incarceration of family members, and bullying as areas that should be more fully addressed in future work related to mental health issues and the courts. It has also become apparent that veterans or individuals on active duty may appear in our courts with complicated mental health-related conditions that sometimes play a role in family violence or pending criminal or family law cases.

In 2014, one of the barriers restricting access to medical and mental health treatment for many of the individuals served by the court appears to have been removed with the implementation of the Affordable Care Act (ACA) and the expansion of Medicaid eligibility. This development is allowing courts, justice system partners, and community treatment providers to explore options that could not even be considered in the past. While the Implementation Task Force has provided educational briefings and materials about the ACA and Medicaid to presiding judges, members recognize that much more information and training is needed if the courts are to engage in the partnerships that will enable persons with mental illness in the courts to take advantage of the new options for treatment that these policy changes offer.

Similarly, realignment brought new populations back into local communities resulting in new responsibilities for the courts. The reentry court evaluation identified a greater incidence of mental health issues among reentry court participants than in the general parolee population, thus requiring increased focus on mental health issues in the court system. In addition, realignment resulted in changes in the delivery of local juvenile services, social services, treatment, and substance abuse services; these comprehensive changes are still being implemented at the local level. To further complicate matters, the passage of Proposition 47 in November 2014 may mean that the court has less influence over the longer term treatment and rehabilitation of some individuals, including those with mental illness and co-occurring disorders, than had been originally contemplated when realignment went into effect. As a result of all these changes — some small, some large — issues related to persons with mental illness in the courts will need to be addressed in entirely new ways. The Implementation Task Force has noted that continued work and judicial leadership is required to effectively link the courts with justice system and treatment partners in order to realign the justice and service systems at the local level and respond to monumental statewide policy changes.

Throughout its work, the Implementation Task Force has focused on the unique needs of persons with mental illness who are at risk of entering, or who have already entered, the justice system. However, members recommend that the experiences and needs of persons with mental illness who are elderly or disabled, women, veterans, transition-age youth, lesbian, gay, bisexual, or transgender (LGBT), person and those whose first language is not English, who are from diverse cultures, and who are from minority and underserved populations must also be considered and incorporated into the development of programs and services.⁴¹ The Implementation Task Force noted that gender-specific and trauma-informed services are essential for all served in the courts but especially for incarcerated women with mental illness who often have extensive histories of trauma. Similarly, girls in the juvenile justice system appear to have experienced higher rates of physical neglect and higher rates of physical, sexual, and emotional abuse than boys and they can benefit from specific trauma-informed services.⁴² For elderly incarcerated individuals with mental illness, the coordination of medical and mental health services is essential to manage medication needs effectively and to prevent unnecessary and harmful polypharmacy.⁴³ The nexus of dementia and mental illness among the elderly and elder abuse has been noted in trainings and materials

⁴¹ This list is not intended to be exhaustive.

⁴² Kristen M. McCabe, Amy E. Lansing, Ann Garland, and Richard Hough, “Gender Differences in Psychopathology, Functional Impairment, and Familial Risk Factors among Adjudicated Delinquents,” *Journal of the American Academy of Child and Adolescent Psychiatry* 41(7) (2002), pp. 860–867.

⁴³ Judith F. Cox and James E. Lawrence, “Planning Services for Elderly Inmates With Mental Illness,” *Corrections Today* (June 1, 2010).

developed with guidance from the Implementation Task Force. However, specific focus on this area, much like juvenile competency, was identified as an area for on-going work and attention. In addition, while promising practices such as elder courts have emerged, more work to evaluate outcomes and to address sustainability issues for these court programs is needed. In addition, many issues related to individuals with developmental disabilities and limited capacity to understand court proceedings remain unexplored and have been identified by the Implementation Task Force as needing attention and needing to be included in future work plans.

Likewise, veterans have unique experiences and needs often related to posttraumatic stress disorder (PTSD) and traumatic brain injuries (TBI), making it essential to connect veterans with veteran-specific resources and programs. Programs such as veterans' courts, veterans' stand-down courts, and homeless courts have emerged as promising practices that meet these unique needs. However, as in the case of elder courts, issues of sustainability and documenting and evaluating outcomes still need to be addressed, as does alternate sentencing and other relief, such as expungement of records offered to veterans through Penal Code section 1170.9.

Future Directions

Since developing the recommendations of the TFMHICJ and the implementation activities of the Implementation Task Force, major policy, demographic, and economic changes have taken place on the local, state and national levels. Such changes have dramatically altered the landscape for court users with mental illness. They include significant legislative changes in the criminal and juvenile justice and mental health systems, an increase in the number of combat veterans in California, as well as changing demographics in the state. Among the most dramatic changes in California policy is criminal justice realignment⁴⁴ and more recently, Proposition 47.⁴⁵

Criminal Justice Realignment

Criminal justice realignment shifted the responsibility of incarceration and supervision of lower level felony offenders from the state to local counties. In the first year following implementation of realignment 58,746 individuals were released from prison - 30% of whom had a mental health classification while in prison.⁴⁶ Many of those who return to the community after incarceration may suffer from cognitive or physical conditions that may be age related, substance abuse related, or military service related. In addition, Proposition 47 reduced many previous felony offenses to misdemeanors, thus reducing the numbers of offenders in community supervision or jail.

Thus, large numbers of offenders with mental illness are now in the community. To the extent these persons have difficulty reintegrating into the community, but do not commit serious crimes, they may become involved in conflicts such as landlord tenant disputes, civil harassment or family conflicts, as well as quality of life infractions or lesser offenses such as those dealt with in Homeless or Community Courts.

⁴⁴ Public Safety Realignment Act of 2011, Assembly Bill 109 (Stats. 2011, Ch. 5), enacted April 4, 2011

⁴⁵ The Safe Neighborhoods and Schools Act, enacted November 4, 2014.

⁴⁶ Cal. Department of Corrections and Rehabilitation (CDCR), *Realignment Report* (Dec. 2013), http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/Realignment_1_Year_Report_12-23-13.pdf (accessed Oct. 29, 2015).

They could also enter the probate court system through conservatorships or could be involved in court actions as victims of exploitation or abuse.

Demographics

In addition to policy changes, population changes and increases of persons dealing with mental illness may pose further challenges for the courts. In 2014, there were over 14,000 conservatorship and guardianship case filings statewide, and this number will likely increase based on changing demographics.⁴⁷ It is important to note that as well as changes through realignment and the potential release of aging or cognitively impaired individuals, the immediate future is also marked by increases in the aging population of California. In 2000, persons ages 65 and older represented 11% of the total population residing in California. With the ‘baby boomer’ generation aging, that number is expected to increase to 14% of the total population in 2020 and 19% in 2040.⁴⁸ Although much of the increased life expectancy can be attributed to advances in health care, increased life expectancy also carries a greater likelihood of living with chronic disease.⁴⁹ It is estimated that 13% of people ages 65 and older, and half of the people 85 and older, have Alzheimer’s.⁵⁰ These demographics alone suggest that courts will be responding to increases in the numbers of cases involving elder victims or those in need of conservatorship due to cognitive or psychiatric issues.

Veterans

California has the highest number of veterans of any state, many of whom have recently returned from multiple deployments in Iraq and Afghanistan.⁵¹ Of the nearly 2 million veterans residing in the state, approximately half are receiving benefits for service-connected Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI).⁵² Specific policy changes related to veterans with serious mental health issues have been established through PC1170.9.

Returning veterans and their families are also involved in the sometimes challenging and complex process of family reunification after periods of deployment. As such, they may be involved in court proceedings related to family conflict and child custody proceedings. Judges will need to be increasingly aware of issues related to domestic violence wherein PTSD and TBI may be a factor for one of the parties. These changes all point to the need for courts to develop approaches, in noncriminal as well as criminal courts, that can effectively respond to the needs of veterans with service related mental or cognitive disorders.

⁴⁷ Data obtained from the Judicial Council of California’s Office of Court Research

⁴⁸ All population figures are from the California Department of Finance tables, Population Projections by Race/Ethnicity, Gender, and Age for California and Its Counties 2000–2050, available at <http://www.dof.ca.gov/research/demographic/reports/projections/P-3/> (as of October 29, 2015).

⁴⁹ Patricia A. Bomba, “Use of a Single Page Elder Abuse Assessment and Management Tool: A Practical Clinician’s Approach to Identifying Elder Mistreatment,” in M. Joanna Mellor and Patricia Brownell (Eds.) *Elder Abuse and Mistreatment: Policy, Practice, and Research*, (2006), (pp. 103–122). New York: Haworth Press.

⁵⁰ Alzheimer’s Association (2007). *Alzheimer’s Disease Facts and Figures 2007*. Washington, DC: Alzheimer’s Association.

⁵¹ United States Department of Veterans Affairs’ National Center for Veterans Analysis and Statistics http://www.va.gov/vetdata/Veteran_Population.asp (accessed Oct. 25, 2015).

⁵² United States Department of Veterans Affairs’ National Center for Veterans Analysis and Statistics http://www.va.gov/vetdata/Veteran_Population.asp (accessed Oct. 25, 2015).

Families in the courts

As noted for returning veterans, formerly incarcerated persons who succeed in reentry are also likely to have greater involvement in family court and child custody or child support cases as family reunification occurs. It is notable that family reunification was among the issues identified in the reentry court evaluation project as supporting successful reentry.⁵³ Reentry court participants explained that they received support from staff to reconnect with family members and that this reconnection motivated them to maintain their sobriety and their commitment to rebuilding their lives. One reentry court participant noted, “They gave me a chance to go visit my family and be the father I should have been. It made me rethink myself.”

Other studies have indicated that healthy family relationships are important for children of incarcerated parents to avoid multigenerational institutionalization. A new initiative by the Bureau of Justice Assistance regarding children of incarcerated parents reflects a growing awareness of the unique needs of these families. This awareness is already leading to increased involvement in child custody and child support proceedings, as well as parenting programs and substance abuse and mental health treatment.

It is envisioned that courts will increasingly include family centered programs as part of collaborative courts across adult, family, and juvenile case types and that family court programs will prepare to respond in a proactive way to the mental health issues and needs of these families. Again, demographics suggest that at least in the current phase of criminal justice realignment and the return of large numbers of combat veterans, there is likely to be an increase in the numbers of persons with significant mental health issues among the families seeking services and court orders to address child support, custody, visitation, and family reunification.

These families will also be addressing more severe issues through domestic violence, juvenile justice and juvenile dependency proceedings. Many children were left behind during the long incarceration periods prior to realignment or during the extended wars in Iraq and Afghanistan. Effects on families and children are still being documented; however, it is apparent that children suffer emotionally during such disruption and are more at risk of becoming involved in juvenile justice or dependency during family disruption and estrangement.⁵⁴

There were also other factors that contributed to extreme vulnerability of children during this period. Since the economic downturn of 2008, the numbers of homeless children and families has greatly expanded, with one in five children living in poverty.⁵⁵ These conditions have doubtlessly exacerbated any underlying mental health or cognitive disorders that might have already been present. Family or community violence, especially school shootings, and excessive use of force by authorities, have increased the exposure of children to trauma, extreme fear, and grief. Exposure to such trauma can be linked to significant mental health problems in children and can have long lasting impacts.⁵⁶

⁵³ Judicial Council of California, California Reentry Court Evaluation Report. <http://www.courts.ca.gov/documents/jc-20141212-itemC.pdf> (accessed 11/13/15)

⁵⁴ Steve Christian, “Children of incarcerated parents.” *National conference of State legislatures* (2009), <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf> (as of October 29, 2015).

⁵⁵ The U.S. Census’ *Current Population Survey* <https://www.census.gov/hhes/www/poverty/about/overview/> (as of November 2, 2015).

⁵⁶ Lenore C. Terr, “Childhood traumas: An outline and overview,” *Focus* 1.3, (2003), pp. 322-334, http://www.columbia.edu/cu/psychology/courses/3615/Readings/Terr_Childhood_Trauma.pdf (as of November 2, 2015).

Youth in court

It is important to note that children may enter the court system due to serious mental illness or cognitive disorders involving themselves, and/or their parents, that require specialized responses by the court. Many specialized procedures have been developed in family court to respond to domestic violence. In dependency court, children can be detained due to untreated parental mental illness or severe mental health issues from child neglect or abuse.⁵⁷ It is anticipated that use of psychotropic medication in the foster care system will continue to be an area for review to develop effective policies and practices going forward. Likewise, concerns regarding cognitive impairment or mental illness in juveniles facing charges in the juvenile justice system led to proposals regarding juvenile competency. The Implementation Task Force moved forward to help develop draft legislation for the Judicial Council to consider that would address and define juvenile competency in order to assist courts with cases involving some of the most impacted youth in juvenile justice.

With many children and youth that have cognitive impairment or significant mental health issues entering the juvenile court system, a number of innovations have been developed. These include dependency drug courts, juvenile mental health courts, and programs such as the family finding model, which offers methods and strategies to locate and engage relatives of children currently living in out-of-home care. In addition, girls' courts and CSEC courts are designed to help youth who have been exploited through sex trafficking.

Some have noted that the juvenile system is not set up to offer real protections to noncriminal youth, particularly homeless youth, runaways and throwaways. For example, the juvenile system often does not have the necessary trauma-based services for these youth, who are often most at risk for trafficking. Researchers and practitioners have indicated that there should be a collaborative approach that limits criminalization of victims and provides the necessary trauma-informed services and treatment for victims of human trafficking.^{58 59} One example of this is a pilot enacted by Assembly Bill 499 in 2008 (extended by Assembly Bill 799 in 2011) that created a diversion program in Alameda County in which commercially sexually exploited minors are provided with extensive wrap-around services to address their physical, mental health, and survival needs thus avoiding entry into the justice system.

Adapting to change

As outlined above, cases involving serious mental health issues and mental illness are present throughout the court system in all case types. There are also indicators that these cases will increase in the near future, and that courts and policymakers will continue to seek effective approaches to address these cases. For instance, new legislation related to inclusion of mental health history in 5150 evaluation appears to reflect efforts to respond more broadly to gravely disabled mentally ill persons.⁶⁰ Similarly, Laura's Law⁶¹ which

⁵⁷ Welf. & Inst. Code §300(b) and (c)

⁵⁸ T. K. Logan, R. Walker, and G. Hunt, "Understanding Human Trafficking in the United States" (2009) 10(1) *Trauma, Violence, and Abuse* 3–30; Florida State University. (2003). *Florida Responds to Human Trafficking*. Tallahassee: Author (Center for the Advancement of Human Rights), www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf (as of December 6, 2012).

⁵⁹ Annie Fukushima & Cindy Liou, "Weaving Theory and Practice: Anti-Trafficking Partnerships and the Fourth 'P' in the Human Trafficking Paradigm" (2012), http://iis-db.stanford.edu/pubs/23750/Liou%26Fukushima_Final_06_12.pdf (as of December 6, 2012).

⁶⁰ Assembly Bill 1194 (Eggman)

⁶¹ Welf. & Inst. Code §5345-5349.5

passed in 2002 and allows the option for court ordered assisted outpatient treatment for persons with serious mental illness and a record of recent psychiatric hospitalizations, threats or attempts of serious violence, or incarceration, is being increasingly implemented by local jurisdictions. These changes reflect the need for broader responses to mental health crisis intervention that were discussed in the first mental health task force report. Similarly, in the wake of mass shootings by severely disturbed individuals, often youth or young adults, there has been increased focus on firearms regulation through the reporting of proceedings involving mentally ill persons in noncriminal as well as criminal courts. In reviewing the Task Force report, many elements that are recommended for the criminal justice system, such as involvement of court partners; coordination of court proceedings; coordination of services and court programs; appropriate sharing of records; use of collaborative courts; and education for judicial officers and justice partners have been noted as applicable to noncriminal case types as well as to cases in the criminal justice system.

Adapting to the kind of changing landscape the court system is encountering requires flexibility and fresh approaches. Policymaking bodies must be able to adapt to the pressing changes with best practices that also evolve. Key to furthering what was started by both Task Forces is the ability to coordinate the continuing efforts of the Judicial Council to improve services to court users with mental illness. Work done by different committees needs to be united, with liaisons between different groups who can ensure that the work is not being done in silos, and that each affected advisory body is working towards shared goals and a unified vision.

Summary

Implementation of the recommendations made in the final report of the Task Force on Criminal Justice Collaboration is well underway. Judicial leadership and a concentrated, focused effort has made a real difference in how not only our courts, but also in how our justice and mental health partners have begun addressing issues related to offenders and other court users with mental illness.

However, in spite of all that has been accomplished, much remains to be done if we are to achieve our goal of making a real, sustained, lasting, and cost-effective difference in the lives of persons with mental illness who are served by our courts and who, sometimes, are also our own brothers and sisters, mothers and fathers, children, neighbors, or childhood friends. Only by judges working collaboratively with our mental health, social service, and justice partners can our courts begin or continue to see improved outcomes for offenders and other court users impacted by serious mental illness or having limited capacity for understanding court proceedings. Without that leadership, without that collaborative effort, and without that focus, we will continue to cycle and recycle individuals through our jails, through our prisons, and through our courts creating a burden for ourselves and for our communities. With a commitment to addressing the problem, judicial branch leaders have been and remain uniquely positioned to make a real difference today and well into the future as we continue our work together promoting access to justice and fairness for all.

Appendices

Appendix A: Mental Health Issues Implementation Task Force (MHIITF) Responses to the Recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues (TFCJCMHI)

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues		
Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
Section 1: Prevention, Early Intervention, and Diversion Programs <u>Coordination of Community Services</u> <i>To prevent entry or reduce the number of people with mental illness entering the criminal justice system, both public and private services that support this population should be expanded and coordinated. Having a range of available and effective mental health treatment options can help prevent people with mental illness from entering the criminal justice system.</i>		
1	<p>Community partners should collaborate to ensure that community-based mental health services are available and accessible. Community services should include, but are not limited to, income maintenance programs, supportive housing or other housing assistance, transportation, health care, mental health and substance abuse treatment, vocational rehabilitation, and veterans' services. Strategies should be developed for coordinating such services, such as co-location of agencies and the provision of interagency case management services. Services should be client centered, recovery based, and culturally appropriate.</p>	<p>Identified by the Mental Health Issues Implementation Task Force (Implementation Task Force) as not being under the purview of the judicial branch and more appropriately addressed by local mental/behavioral health and social service partners.</p>
2	<p>State and county departments of mental health and drug and alcohol should design and adopt integrated approaches to delivering services to people with co-occurring disorders that cross traditional boundaries between the two service delivery systems and their funding structures. Resources and training should be provided to support the adoption of evidence-based integrated co-occurring disorder treatment, and information from existing co-occurring disorder work groups (e.g., Co-Occurring Joint Action Council and Mental Health Services Oversight and Accountability Commission) should inform the development of integrated service delivery systems.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch more appropriately addressed by state and local mental/behavioral health and substance abuse treatment partners.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
3	Mental health programs, including both voluntary and involuntary services, should be funded at consistent and sustainable levels. Funding should be allocated to programs serving people with mental illness that utilize evidence based practices (e.g., programs established under AB 2034 that serve homeless individuals with mental illness).	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local mental/behavioral health and social service partners.
4	Community mental health agencies should utilize resources such as the California Network of Mental Health Clients; National Alliance on Mental Illness, California (NAMI CA); the United Advocates for Children and Families; local community-based programs that interact with populations most in need; and peer networks to perform outreach and education about local mental health services, drug and alcohol programs, and other programs that serve individuals with mental illness in order to improve service access.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local mental/behavioral health and substance abuse treatment partners.
5	Local task force or work groups composed of representatives from criminal justice and mental health systems should be created to evaluate the local needs of people with mental illness or co-occurring disorders at risk of entering the criminal justice system, to identify and evaluate available resources, and to develop coordinated responses.	Identified by the Implementation Task Force as not being under the purview of the judicial branch more appropriately addressed by local criminal justice, mental/behavioral health and substance abuse treatment partners. The Implementation Task Force noted that local courts could participate or act as conveners of such workgroups.
6	Local mental health agencies should coordinate and provide education and training to first responders about mental illness and available community services as options for diversion (e.g., detoxification and inpatient facilities, crisis centers, homeless shelters, etc.).	Identified by the Implementation Task Force as not being under the purview of the judicial branch more appropriately addressed by local law enforcement and other emergency services, social service, mental/behavioral health, and substance abuse treatment partners.
7	Law enforcement and local mental health organizations should continue to expand the development and utilization of Crisis Intervention Teams (CIT), Mobile Crisis Teams (MCT), and Psychiatric Emergency Response Teams (PERT) to effectively manage incidents that require responses by law enforcement officers. Such teams provide mental health expertise through specially trained police officers or through mental health professionals who accompany officers to the scene. Smaller counties unable to assemble response teams should consider alternative options such as a mental health training module for all cadets and officers.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch more appropriately addressed by state and local law enforcement and mental/behavioral health treatment partners.</p> <p>In October 3, 2015, SB11 and SB29 (Beall) were signed into law amending Penal Code sections relating to police officer training standards both in basic post training and for field training officers.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
8	<p>Community-based crisis centers that operate 24 hours daily, 7 days a week should be designated or created to ensure that law enforcement officers have increased options for people with suspected mental illness in need of timely evaluation and psychiatric stabilization. Local mental health providers, hospitals, and law enforcement agencies should collaborate to designate or create such crisis centers so that individuals are appropriately assessed in the least restrictive setting.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local law enforcement and other emergency services, social service, mental/behavioral health, and substance abuse treatment partners.</p>
9	<p>People with mental illness, working with their mental health care providers, should be encouraged to create Psychiatric Advance Directives (PADs) to distribute to family members or members of their support system so that vital treatment information can be provided to law enforcement officers and other first responders in times of crisis. The development of PADs should be encouraged for persons discharged from correctional or inpatient facilities. PADs should be included in clients' personal health records and abbreviated PADs could be made available in the form of a wallet card.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local law enforcement and mental health treatment partners along with the National Alliance on Mental Illness California (NAMI CA) and mental/behavioral health consumer groups.</p>
10	<p>Discharge planning protocols should be created for people released from state and local psychiatric hospitals and other residential facilities through collaborations among the hospitals, community-based agencies, and pharmacies to ensure that no one is released to the streets without linkage to community services and stable housing. Discharge planning should begin upon facility entry to support a successful transition to the community that may prevent or minimize future interactions with the criminal justice system. Clients, as well as family members when appropriate, should be involved in the development of discharge plans.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local mental hospitals or other mental health residential facilities, social services, and mental/behavioral health treatment partners.</p>
11	<p>California Rule of Court 10.952 (Meetings concerning the criminal court system) should be amended to include participants from parole, the police department, the sheriff's department, and Conditional Release Programs (CONREP), the County Mental Health Director or his or her designee, and the County Director of Alcohol and Drug Programs or his or her designee.</p>	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch. To address this issue, the Implementation Task Force proposed revisions to Rule of Court 10.952. The Judicial Council approved the proposed revisions to the rule that became effective January 1, 2014. The revision expanded the list of those involved in regular meetings with criminal justice partners were representatives of the Forensic Conditional Release Program (CONREP), the county mental health director or designee, and the county alcohol and drug director or designee.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
12	<p>Courts and court partners identified under the proposed amendment of California Rule of Court 10.952 should develop local responses for offenders with mental illness or co-occurring disorders to ensure early identification and appropriate treatment. The goals are to provide better outcomes for this population, reduce recidivism, and respond to public safety concerns.</p>	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch. To address this issue, the Implementation Task Force proposed revisions to Rule of Court 10.951. The Judicial Council approved the proposed revisions to the rule that became effective January 1, 2014. The revision added a subsection to the rule of court related to the development of local protocols for cases involving offenders with mental illness or co-occurring disorders to ensure early identification and appropriate treatment of offenders with mental illness or co-occurring disorders with the goal of reducing recidivism, responding to public safety concerns, and providing better outcomes while using resources responsibly and reducing costs. A sample protocol was developed for educational purpose and is included in the Appendix to this report.</p>
13	<p>Courts and court partners identified under the proposed amendment of California Rule of Court 10.952 should identify information-sharing barriers that complicate collaborations, service delivery, and continuity of care for people with mental illness involved in the criminal justice system. Protocols, based on best or promising practices, and in compliance with Health Insurance Portability and Accountability Act (HIPAA), and other federal and state privacy protection statutes, rules, and regulations, should be developed to facilitate effective sharing of mental health-related information across agencies and systems. Agencies should be encouraged to maintain mental health records electronically and to ensure compatibility between systems.</p>	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch. It is anticipated that the amendment of California Rule of Court 10.952 to include additional stakeholders to already mandated meetings will help break down barriers to communicating critical information.</p> <p>In addition, this recommendation was identified by the Implementation Task Force as being a best practice for courts and their state and local mental/behavioral health partners.</p>
14	<p>LIST OF SERVICE PROVIDERS</p> <p>The presiding judge, or the judge designated under California Rule of Court 10.952, should obtain from county mental health departments a regularly updated list of local agencies that utilize accepted and effective practices to serve defendants with mental illness or co-occurring disorders and should distribute this list to all judicial officers and appropriate court personnel.</p>	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch. It is anticipated that the amendment of California Rule of Court 10.952 to include additional stakeholders to already mandated meetings will help identify the need for information about mental health resources.</p> <p>In addition, this recommendation was identified by the Mental Health Issues Implementation Task Force as being a best practice for courts and their state and local mental/behavioral health partners.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
15	<p>Courts should become involved with local Mental Health Services Act stakeholder teams in order to promote greater collaboration between the courts and local mental health agencies and to support services for people with mental illness involved in the criminal justice system.</p>	<p>Identified by the Implementation Task Force as a best practice for courts and their county mental/behavioral health partners. Local Mental Health Services Act stakeholder meetings are generally convened by county mental/behavioral health partners and courts and other criminal justice partners should be among those invited to attend these meetings. Judicial leaders should work with executive officers or designees to encourage adoption and identification of best practices for the offenders with mental illness.</p>
16	<p>Each California trial court should have a specialized method based upon collaborative justice principles for adjudicating cases of defendants with mental illness, such as a mental health court, a co-occurring disorders court, or a specialized calendar or procedures that promote treatment for the defendant and address public safety concerns. Judicial leadership is essential to the success of these efforts.</p> <p>Information about planning a mental health court is included with the sample mental health protocols in the Appendix to this report.</p>	<p>Identified by the Implementation Task Force as a best practice. By adopting problem-solving approaches and employing collaborative justice principles, courts can better connect defendants with mental illness to treatment, reduce recidivism and promote public safety. Under the current California Rule of Court 10.951 (effective January 1, 2014) courts are encouraged to develop local protocols for cases involving offenders with mental illness or co-occurring disorders to ensure early identification and appropriate treatment of offenders with mental illness or co-occurring disorders with the goal of reducing recidivism, responding to public safety concerns, and providing better outcomes while using resources responsibly and reducing costs.</p>
17	<p>Information concerning a defendant's mental illness should guide case processing (including assignment to a mental health court or specialized calendar program) and disposition of criminal charges consistent with public safety and the defendant's constitutional rights.</p>	<p>Identified by the Implementation Task Force as a best practice. In addition to information about mental health issues being identified as a topic for judicial education programs, this recommendation is supported by the amendment of California Rule of Court 10.951 by encouraging the development of local protocols for offenders with mental illness, and encouraging trial courts to have a specialized approach, guided by the defendant's mental health needs, to adjudicating cases involving defendants with mental illness</p> <p>Implementation Task Force members have also developed additional teaching tools, bench notes and sample orders along with other resources for use in judicial education programs. Materials will be available late summer 2014. These materials have been included as educational resources in the criminal law probate and mental health and family law tool kits of CJER on line.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
18	Local courts, probation, and mental health professionals should collaborate to develop supervised release programs to reduce incarceration for defendants with mental illness or co-occurring disorders, consistent with public safety.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch, but also as an appropriate area to be addressed in partnership with state and local probation, parole, and mental/behavioral health treatment partners.</p> <p>This recommendation is consistent with California Rule of Court 10.951 and California Rule of Court 10.952 (effective January 1, 2014). The judicial officer should exercise their leadership role and require or encourage this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
19	Prosecutors should utilize, as appropriate, disposition alternatives for defendants with mental illness or co-occurring disorders.	Identified by the Issues Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by criminal justice partners.
20	In accordance with the Victim’s Bill of Rights Act of 2008 (Marsy’s Law), judicial officers should consider direct input from victims in cases involving defendants with mental illness or co-occurring disorders to inform disposition or sentencing decisions, recognizing that many victims in such cases are family members, friends, or associates.	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.
21	The court system and the California Department of Mental Health cooperatively should develop and implement video-based linkages between the courts and the state hospitals to avoid delays in case processing for defendants being treated in state hospitals and to prevent the adverse consequences of repeated transfers between hospitals and jails. The use of video-based procedures is to be voluntary, and clients should retain the right to request live hearings. Policies and procedures should be in place to ensure that clients have adequate access to private conversations with defense counsel.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with the California Department State Hospitals (formerly the Department of Mental Health) and criminal justice partners including the California District Attorneys Association, the California Public Defenders Association, and the California Sheriffs Association.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
22	Judicial officers should require the development of a discharge plan for defendants with mental illness as a part of disposition and sentencing. Discharge plans should be developed by custody mental health staff, pretrial services, or probation, depending on the status and location of the defendant, in collaboration with county departments of mental health and drug and alcohol or other designated service providers. Discharge plans must include arrangements for housing and ongoing treatment and support in the community for offenders with mental illness.	<p>Identified by the Implementation Task Force not solely being under the parties of the Judicial Branch but requiring implementation in cooperation with partners such as the Chief Probation Officers Association of California, California Department of Corrections and Rehabilitation (parole), and California Mental Health Directors Association and other partners.</p> <p>This recommendation is consistent with California Rule of Court 10.951 and California Rule of Court 10.952 (effective January 1, 2014). The judicial officer should exercise their leadership role and require or encourage this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
23	Court administrators should develop local policies and procedures to ensure that medical and mental health information deemed confidential by law is maintained in the nonpublic portion of the court file. Mental health information not otherwise a part of the public record, but shared among collaborative court partners, should be treated with sensitivity in recognition of an individual's rights to confidentiality	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in court administration education materials and programs.
24	Conservatorship proceedings and criminal proceedings should be coordinated where a defendant is conserved and has a pending criminal case or a defendant has a pending criminal case and is then conserved. Such coordination could include designating a single judicial officer to preside over both the civil and criminal proceedings. When all parties agree, or a protocol for how such proceedings can be coordinated, when heard by different judicial officers. If a judicial officer presides over both civil and criminal proceedings, he/she should have training in each area.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.</p> <p>Initial work in this area was begun through Judicial Council sponsored legislation drafted by the Implementation Task Force by requesting that the Judicial Council sponsor legislation it drafted to increase the options available to courts when handling criminal cases involving potentially offenders with mental illness, and improve coordination between the conservatorship court and the criminal court when they have concurrent jurisdiction over an individual with mental illness. This legislative proposal has been incorporated into AB 2190 (Maienschein) – Criminal defendants: gravely disabled persons and signed into law on September 28, 2014.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
25	Legislation should be enacted that allows judicial officers to join the county conservatorship investigator (Welf. & Inst. Code, § 5351), the public guardian (Gov. Code, § 27430), private conservators and any agency or person serving as public conservator to criminal proceedings, when the defendant is conserved or is being considered for conservatorship.	<p>Identified by the Implementation Task Force as being most appropriately addressed in conjunction with the state legislature.</p> <p>Initial work in this area began with a legislative proposal drafted by the Implementation Task Force requesting that the Judicial Council sponsor legislation to increase the options available to courts when handling criminal cases involving potentially offenders with mental illness, and improve coordination between the conservatorship court and the criminal court when they have concurrent jurisdiction over an individual with mental illness. The legislative proposal was incorporated into AB 2190 (Maienschein) – Criminal defendants: gravely disabled persons and signed into law on September 28, 2014.</p>
26	Existing legislation should be modified and new legislation should be created where necessary to give judicial officers hearing criminal proceedings involving defendants with mental illness the authority to order a conservatorship evaluation and the filing of a petition when there is reasonable cause to believe that a defendant is gravely disabled within the meaning of Welfare and Institutions Code section 5008(h). The conservatorship proceedings may be held before the referring court if all parties agree. Judicial officers should have training in the area of LPS law if ordering the initiation of conservatorship proceedings.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch. Therefore, the Mental Health Issues Implementation Task Force drafted a legislative proposal that was approved as part of the Judicial Council’s 2014-2015 legislative agenda.</p> <p>The legislative proposal has been incorporated into AB 2190 (Maienschein) – Criminal defendants: gravely disabled persons and signed into law on September 28, 2014.</p>
27	When the criminal court has ordered the initiation of conservatorship proceedings, the conservatorship investigation report should provide recommendations that include appropriate alternatives to conservatorship if a conservatorship is not granted.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.</p> <p>In addition, this recommendation was identified as being appropriate address with county partners.</p>
28	There should be a dedicated court or calendar where a specially trained judicial officer handles all competency matters. Competency proceedings should be initiated and conducted in accordance with California Rule of Court 4.130 and relevant statutory and case law.	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.
29	Each court should develop its own panel of experts who demonstrate training and expertise in competency evaluations.	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
30	Mental health professionals should be compensated for competency evaluations in an amount that will encourage in-depth reports.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice. However, the Implementation Task Force recognizes that because of the current uncertain fiscal situation for the courts, implementation of this recommendation will likely need to be deferred.</p> <p>This recommendation was also identified as being appropriate to address in partnership with legislative and county partners.</p>
31	<p>California Rule of Court 4.130(d) (2) should be amended to delineate the information included in the court-appointed expert report in addition to information required by Penal Code section 1369. The report should include the following:</p> <ol style="list-style-type: none"> a. A brief statement of the examiner’s training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report; b. A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant’s mental disorder and a summary of the defendant’s mental status; c. A detailed analysis of the competence of the defendant to stand trial using California’s current legal standard, including the defendant’s ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder; d. A summary of an assessment conducted for malingering, or feigning symptoms, which may include, but need not be limited to, psychological testing; e. Pursuant to Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant 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 antipsychotic medication in the county jail, and whether the defendant has capacity to make decisions regarding antipsychotic medication; 	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice. The Implementation Task Force recommends work continue to amend California Rule of Court 4.130(d) as stated in this recommendation.</p> <p>In addition, this recommendation was identified as being appropriate to address with state and local partners including the Forensic Mental Health Association of California.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
	<ul style="list-style-type: none"> f. A list of all sources of information considered by the examiner, including, but not limited to, legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion; g. A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witness to the alleged crime, as well as a summary of any information from those sources relevant to the examiner’s opinion of competency; h. A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner’s opinion of competency; and i. A summary of the examiner’s consultation with the prosecutor and defendant’s attorney, and of their impressions of the defendant’s competence-related strengths and weaknesses. 	
32	An ongoing statewide working group of judicial officers, the Administrative Office of the Courts, Department of Mental Health, CONREP, and other stakeholders should be established to collaborate and resolve issues of mutual concern regarding defendants found incompetent to stand trial.	<p>Identified by the Implementation Task Force as needing to be implemented in cooperation with partners such as the California Department State Hospitals (formerly the Department of Mental Health) and the Forensic Conditional Release Program (CONREP).</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
33	State hospitals and mental health outpatient programs should be adequately funded to ensure effective and timely restoration of competency for defendants found incompetent to stand trial in order to eliminate the need to designate jails as treatment facilities (Pen. Code §1369.1).	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by the legislature and partners including the California Department of State Hospitals, CONREP, and state and local mental/behavioral health partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
34	There should be more options for community placement through CONREP and other community-based programs for felony defendants found incompetent to stand trial on nonviolent charges so that not all such defendants need be committed to a state hospital for competency restoration.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including the California Department of State Hospitals, CONREP, and state and local mental/behavioral health partners. It is noted that the recommendation comports with the Judicial Council proposed legislation referenced under recommendation 36.
35	Courts are encouraged to reopen a finding of incompetence to stand trial when new evidence is presented that the person is no longer incompetent. If the defendant is re-evaluated and deemed competent he or she should not be transferred to a state hospital.	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.
36	Existing legislation should be modified or new legislation be created to give judicial officers hearing competency matters access to a variety of alternative procedural and dispositional tools, such as the jurisdiction to conditionally release a defendant found incompetent to stand trial to the community, where appropriate, rather than in a custodial or hospital setting, to receive mental health treatment with supervision until competency is restored.	<p>Implementation Task Force as being under the purview of the judicial branch. Therefore, the Implementation Task Force drafted a legislative proposal that was approved as part of the Judicial Council's 2014-2015 legislative agenda.</p> <p>The legislative proposal has been incorporated into AB 2190 (Maienschein) – Criminal defendants: gravely disabled persons and signed into law on September 28, 2014.</p>
37	Care and treatment of defendants with mental illness should be continued after restoration of competence. Penal Code section 1372(e) should be expanded, consistent with <i>Sell v. United States</i> , to ensure that competence is maintained once restored and that medically appropriate care is provided to defendants until such time that a defendant's incompetent-to-stand-trial status is no longer relevant to the proceedings. In an effort to maintain a defendant's competence once restored, courts, state hospitals, and the California State Sheriff's Association should collaborate to develop common formularies to ensure that medications administered in state hospitals are also available in jails.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with the California Department of State Hospitals, the California Sheriffs Association and local criminal justice and mental/behavioral health partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
38	Forensic Peer Specialist Programs should be utilized within the courts, particularly in mental health courts to assist defendants with mental illness in navigating the criminal justice system.	<p>Identified by the Implementation Task Force as promising practice not solely under the purview of the judicial branch but more appropriately addressed in partnership with local mental/behavioral health partners.</p> <p>The Substance Abuse & Mental Health Services Administration's (SAMSHA) Gains Center reports that case studies clearly suggest that using Forensic Peer Specialists is a promising cost-effective practice: http://www.mhselfhelp.org/storage/resources/tu-clearinghouse-webinars/ForensicPeerGAINSCenter%201.pdf.</p>
39	Court Self-Help Centers should provide materials to defendants with mental illness, family members, and mental health advocates about general court processes, mental health courts or other court-based programs and services for defendants with mental illness, and community and legal resources.	Identified by the Implementation Task Force as a best practice that should be carried out on the local court level insofar as funding allows. Materials should be developed, potentially in partnership with local mental/behavioral health and justice system partners.
40	At the time of initial booking or admission, all individuals should be screened for mental illness and co-occurring disorders through a culturally competent and validated mental health screening tool to increase the early identification of mental health and co-occurring substance use problems of incarcerated individuals.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners. The Implementation Task Force encourages the judiciary to engage with partners, as determined appropriate at the local level, to support efforts to implement recommendations 40-45.
41	The California State Sheriff's Association, California Department of Corrections and Rehabilitation, Corrections Standards Authority, California Department of Mental Health, California Department of Alcohol and Drug Programs, County Alcohol and Drug Program Administrators in California, California Mental Health Directors Association, and the Chief Probation Officers of California should collaborate to develop and validate core questions for a Mental Health and Co-occurring Disorder Initial Screening instrument based on evidence based practices and consistent with the defendant's constitutional rights. All jails and prisons in California should adopt the screening instrument to standardize procedures statewide and to promote consistency and quality of information across counties. The content of such a screening instrument can be expanded upon or automated by local programs.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including state and local criminal justice and mental/behavioral health partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
42	The adopted screening instrument should inquire about the individual's mental health and substance use history, history of trauma, other co-occurring conditions (including physical and metabolic conditions), and military service status, as well as his or her current housing status and any history of homelessness. The screening should be conducted in the incarcerated individual's spoken language whenever possible, the instrument must be sensitive to cultural variations, and staff administering the tool must understand inherent cultural biases.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
43	If the initial screening indicates that an individual in custody has a mental illness or co-occurring disorder, a formal mental health assessment should be administered to determine the level of need for treatment and services while in custody. The assessment should be conducted by a qualified mental health practitioner as close to the date of the initial screening as possible.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
44	Mental health staff should be available at jail-booking and prison admission facilities at all times.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
45	Upon booking or admission, individuals with mental illness should be housed in an appropriate setting within the jail or prison based on their medical and mental health needs as identified in the mental health screening and evaluation.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
46	A discharge plan should be developed for incarcerated individuals with mental illness or co-occurring disorders. The discharge plan will build upon information gathered from the mental health screening and assessment instruments and will document prior mental health treatment and prescribed psychiatric medications to ensure continuity of essential mental health and substance abuse services in order to maximize psychiatric stability while incarcerated as well as after being released. Treatment and services outlined in the discharge plan should be culturally appropriate (e.g., according to ethnicity, race, age, gender) for the individual with mental illness.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.</p> <p>While not under the purview of the judicial branch, the Implementation Task Force identified that it is a best practice for judicial officers to have access to the discharge plan. A sample discharge plan is included in the Appendix.</p> <p>Judicial officers should exercise their leadership role and require or encourage this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
47	Discharge plans should follow the individual across multiple jurisdictions, including local and state correctional systems and mental health and justice agencies to ensure continuity of care. Information sharing across agencies and jurisdictions must follow criminal justice, HIPAA, and other federal and state privacy protection statutes, rules, and regulations.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners. The Implementation Task Force encourages the judiciary to engage with partners, as determined appropriate at the local level, to support efforts to implement recommendations 48-54.
48	Jails and prisons should have sufficient resources and staff to ensure access to mental health treatment services. Assessment and treatment services must begin immediately upon entry into jail or prison and should include, but not be limited to, the following: an assessment and discharge plan developed by custody mental health and psychiatric staff, appropriate psychotherapeutic medications, psychiatric follow up, custody mental health staff to monitor treatment progress, and behavioral and counseling interventions, including peer-based services.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
49	Jails and prisons should implement therapeutic communities or other evidence based programming for incarcerated individuals with mental illness or co-occurring disorders where clinically appropriate.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
50	Custody nursing and mental health staff should be available 24 hours a day in order to sufficiently respond to the needs of incarcerated individuals with mental illness or co-occurring disorders.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.
51	Custody mental health staff should continue the treating community physician's regimen in order to prevent relapse and exacerbation of psychiatric symptoms for incarcerated individuals assessed as having a mental illness, unless a change in treatment regimen is necessary to improve or maintain mental health stability.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including local criminal justice and mental/behavioral health partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
52	The California Department of Mental Health, California Department of Corrections and Rehabilitation, California State Sheriff's Association, and California Department of Health Care Services — Medi-Cal should coordinate, to the greatest extent possible, drug formularies among jail, prison, parole, state hospitals, and community mental health agencies and establish a common purchasing pool to ensure continuity of appropriate care for incarcerated individuals with mental illness. The coordination of formularies should not further restrict the availability of medications.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including state and local criminal justice and mental/behavioral health partners.
53	In the absence of a common drug formulary, jails, prisons, parole, state hospitals, and community mental health agencies should obtain expedited treatment authorizations for off-formulary medication to ensure psychiatric stabilization and continuity of care when necessary.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including state and local criminal justice and mental/behavioral health partners.
54	The California State Sheriff's Association and California Department of Corrections and Rehabilitation should consider utilizing the NAMI California Inmate Mental Health Information Form for use in all California jails and prisons. Both the original jail form and its more recent adaptation by the prison system provide family members an opportunity to share diagnosis and historical treatment information with correctional clinical staff.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by partners including state and local criminal justice and mental/behavioral health partners.
55	The court should have jurisdiction to join to the proceedings those agencies and providers that already have legal obligations to provide services and support to probationers and parolees with mental illness. Before joining, any agency or provider should have advance notice of and an opportunity to be heard on the issue.	<p>Identified by the Mental Health Issues Implementation Task Force as needing to be addressed in partnership with the state legislature.</p> <p>The Mental Health Issues Implementation Task Force has drafted a legislative proposal for consideration by the Judicial Council and its advisory committees that addresses this recommendation.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
56	In cases where the offense is committed and sentencing occurs in a county other than the probationer's county of residence, before the court grants a motion to transfer jurisdiction to that county (pursuant to Pen. Code, § 1203.9), judicial officers should give very careful consideration to the present mental stability of the probationer and determine whether or not the probationer will have immediate access to appropriate mental health treatment and other social service supports in the county of residence. The court must ensure that adequate discharge planning has taken place, including referral to a mental health court if appropriate, to ensure a direct and immediate connection with treatment and services in the county of residence.	<p>Identified by the Mental Health Issues Implementation Task Force as being under the purview of the judicial branch.</p> <p>This recommendation is consistent with California Rule of Court Rule 4.530 regarding the inter-county transfer of probation and mandatory supervision. Effective November 1, 2012, this rule of court was modified to require courts to consider certain factors including the availability of services such as collaborative courts when making their transfer decisions. (<i>Rule 4.530 amended effective February 20, 2014; adopted effective July 1, 2010; previously amended effective November 1, 2012.</i>)</p>
57	Probation and parole supervision should follow the discharge plan approved by the judicial officer as part of the disposition of criminal charges or by California Department of Corrections and Rehabilitation at the time of release. The discharge plan should include probationers' or parolees' treatment and other service needs as well as risks associated with public safety, recidivism, and danger to self. Individuals with low risk or needs may require no supervision and early termination of probation or parole, whereas individuals with high risk or needs may need to receive intensive supervision joined with intensive mental health case management.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local criminal justice partners, including parole and probation, in collaboration with mental/behavioral health partners.</p> <p>Judicial officers should exercise their leadership role and require or encourage this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
58	Probation and parole conditions should be the least restrictive necessary and should be tailored to the probationers' or parolees' needs and capabilities, understanding that successful completion of a period of community supervision can be particularly difficult for offenders with mental illness.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local criminal justice partners, including parole and probation in collaboration with mental/behavioral health partners.</p> <p>Implementation Task Force members met with representatives of the Chief Probation Officers of California to specifically discuss this recommendation. As a result, CPOC created a working group to investigate and address issues related to individuals with mental illness on their caseload.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
59	<p>Probationers and parolees with mental illness or co-occurring disorders should be supervised by probation officers and parole agents with specialized mental health training and reduced caseloads.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments.</p> <p>Implementation Task Force members met with representatives of the Chief Probation Officers of California to specifically discuss this recommendation. As a result, CPOC created a working group to investigate and address issues related to individuals with mental illness on their caseload.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
60	<p>Specialized mental health probation officers and parole agents should utilize a range of graduated incentives and sanctions to compel and encourage compliance with conditions of release. Incentives and positive reinforcement can be effective in helping offenders with mental illness stay in treatment and follow conditions of probation or parole.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments.</p> <p>Implementation Task Force members met with representatives of the Chief Probation Officers of California to specifically discuss this recommendation. As a result, CPOC created a working group to investigate and address issues related to individuals with mental illness on their caseload.</p>
61	<p>Specialized mental health probation officers and parole agents should conduct their supervision and other monitoring responsibilities within the communities, homes, and community-based service programs where the offender with mental illness spends most of his or her time. This approach should reorient the supervision process from enforcement to intervention.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments.</p> <p>Implementation Task Force members met with representatives of the Chief Probation Officers of California to specifically discuss this recommendation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
62	Specialized mental health probation officers and parole agents should work closely with mental health treatment providers and case managers to ensure that probationers and parolees with mental illness receive the services and resources specified in their discharge plans, and that released offenders are connected to a 24-hour crisis service.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.</p> <p>Implementation Task Force members met with representatives of the Chief Probation Officers of California to specifically discuss this recommendation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
63	Working agreements and relationships should be developed between community-based service providers and probation and parole to increase understanding and coordination of supervision and treatment goals and to ensure continuity of care once supervision is terminated.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.</p>
64	Probationers and parolees with mental illness or co-occurring disorders should receive mental health and substance abuse treatment that is considered an evidence based or promising practice.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.</p> <p>Judge should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
65	Judicial officers should avoid stating fixed sentencing terms that mandate state prison for an offender with mental illness upon violation of probation conditions regardless of the seriousness of the violation.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a topic appropriate for inclusion in judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
66	Judicial officers hearing probation violation calendars and deputy commissioners of the Board of Parole Hearings should carefully review the offender's discharge plan and consider the seriousness of the alleged violation(s) as well as the offender's progress or lack thereof in mental health treatment. Absent new serious criminal behavior by the probationer or parolee, alternative responses short of reincarceration should be considered. Incarceration should be reserved for those violations that demonstrate a threat to public safety.	Identified by the Issues Implementation Task Force as being under the purview of the judicial branch, as it relates to courts, and identified as a topic appropriate for inclusion in judicial education materials and programs.
67	Specialized calendars or courts for probationers and parolees with mental illness at risk of returning to custody on a supervision violation should be established in every jurisdiction. Such courts (e.g., reentry courts) or calendars should be modeled after collaborative drug and mental health courts. If an individual is a participant in a mental health court and violates probation, he or she should be returned to the mental health court for adjudication of the violation.	Identified by the Implementation Task Force as being under the purview of the judicial branch and identified as a topic appropriate for inclusion in judicial education materials and programs. The Judicial Council hosted a summit on April 19, 2014, "Court Programs and Practices for Working with Reentry, PRCS and Mandatory Supervision Populations." Although the program was not specifically focused on mental health issues, a task force member advised the planning group to include information on treatment options and programs for individuals with mental illness, as well as evaluation results focusing on participants with mental illness and the Rule of Court 10.952 provide vehicle to address this recommendation and will be a topic for inclusion in judicial education materials and programs.
68	Immediate treatment interventions should be made available to a probationer or parolee with mental illness who considerably decompensate after his or her release or appears to be failing in community treatment.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health partners.
69	Probation officers and parole agents should utilize graduated sanctions and positive incentives and work with mental health treatment providers to increase the level of treatment or intervention or initiate new treatment approaches when probationers and parolees with mental illness violate conditions of supervision.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health partners.
70	Probation officers, parole agents, and treatment providers should provide pertinent treatment information to custody staff for those probationers or parolees with mental illness who are returned to jail or prison to ensure continuity of care.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
71	<p>A community mental health care manager should initiate person-to-person contact with the incarcerated individual in jail who has a mental illness prior to his or her release from custody through an in-reach process in order to engage the individual in the development of his or her community treatment plan, and to provide a “bridge” to the community, thereby increasing the probability that the individual will follow up with treatment upon release. The community health care manager should also work with those involved in the development of the discharge plan to find appropriate stable housing for the incarcerated individual upon release.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.</p> <p>In-reach projects have been established in several jurisdictions including Santa Clara where both the mental health case managers and the veterans’ mental health liaison go into the jail to engage the defendants who are being released. In the event of a re-arrest, they go back into the jail in an effort to re-engage the defendant. This helps bridge the gap between jail and community treatment and supervision. San Diego’s Probation Department has implemented a policy of individually picking up all Post-release Community Supervision (PRCS) offenders who are returned to San Diego including those with a diagnosed mental illness. Individuals processed through the San Diego Community Transition Center (CTC) where they undergo a multi-phased assessment process that includes a mental health screening. The CTC provides temporary housing during the transition period and transportation is also provided to any residential program to which they might be referred.</p> <p>These best practices will be a topic for inclusion in judicial education materials and programs.</p>
72	<p>A formal jail liaison should be designated by local mental health departments and local correctional facilities to improve communication and coordination between agencies involved in the discharge planning and post adjudication services for offenders with mental illness. Jail liaisons provide a single point of access within each system for problem identification and resolution regarding care of specific individuals as well as coordination of systems.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with mental/behavioral health and social service partners.</p> <p>Jail liaison services have been developed in several counties including in the El Dorado jail where two transitional case managers from the Public Guardian Office and a Public Health Nurse from Public Health coordinate the release of inmates with mental illness. Current plans are to expand this service to all inmates. While the inmates are in custody, their care is handled by the jail’s medical vendor. Both offices are under the umbrella of the County Health and Human Services Agency.</p> <p>These best practices will be a topic for inclusion in judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
73	Peer support services, through an in-reach process, should be offered to offenders in jail with mental illness while incarcerated and upon release to help ensure successful community reentry.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by probation departments in collaboration with mental/behavioral health partners.
74	Legislation and regulations, as well as local rules and procedures, should be modified or enacted to ensure that federal and state benefits are suspended rather than terminated while offenders with mental illness are in custody. Administrative procedures should be streamlined to ensure that benefits are reinstated immediately after offenders with mental illness are released from jail or prison.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by Congress and the California legislative and parole and probation departments in collaboration with health care and social service partners.</p> <p>The Affordable Care Act has provided a new avenue to address this issue and the Implementation Task Force has made it a part of a presentation to Presiding Judges and judicial education materials and programs.</p>
75	Offenders with mental illness who do not have federal and state benefits, or have lost them due to the length of their incarceration, should receive assistance from jail or prison staff or in-reach care managers in preparing and submitting the necessary forms and documentation to obtain benefits immediately upon reentry into the community.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by parole and probation departments in collaboration with health care and social service partners.</p> <p>The Affordable Care Act has provided a new avenue to address this issue and the Task Force has made it a part of a presentation to Presiding Judges and judicial education materials and programs.</p>
76	The discharge plan for release from jail, approved by the judicial officer as part of the disposition of criminal charges, should be implemented immediately upon release. The discharge plan should include arrangements for mental health treatment (including medication), drug and alcohol treatment, case management services, housing, applicable benefits, food, clothing, health care, and transportation.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and needing to be addressed in partnership with local criminal justice, mental/behavioral health, and social service partners.</p> <p>This was identified by the Implementation Task Force as a best practice as well as a topic appropriate for inclusion in judicial education materials and programs.</p>
77	Offenders with mental illness should be released during daytime business hours rather than late at night or in the early morning hours to ensure that offenders can be directly connected to critical treatment and support systems.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice, including sheriff departments, mental/behavioral health, and social service partners.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
78	Upon release from jail, the sheriff's department should provide or arrange the offender's transportation to the location designated in the discharge plan. CDCR should utilize similar procedures, to the greatest extent possible, when releasing an offender to parole.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice, including the sheriff's department, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR and parole.
79	Upon release from jail, the sheriff's department should facilitate access to an appropriate supply of medication as ordered in the discharge plan, a prescription, and a list of pharmacies accepting the issued prescription. CDCR should utilize similar procedures, to the greatest extent possible, when releasing an offender to parole.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice, including the sheriff, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR and parole.
80	Upon release from jail, the care manager who engaged the offender through in-reach services while in custody should facilitate timely follow-up care, including psychiatric appointments as outlined in the discharge plan. CDCR should utilize similar procedures, to the greatest extent possible, when releasing an offender to parole.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice, including the sheriff, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR and parole.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
81	The sheriff's department should give advanced notice of the offender's release date and time from jail to the offender's community treatment coordinator as specified in the discharge plan as well as to members of his or her family, as appropriate, and others in his or her support system. CDCR should utilize similar procedures, to the greatest extent possible, when releasing an offender.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice partners including the sheriff, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR and parole.
82	Offenders with mental illness should be released with arrangements for appropriate safe and stable housing in the community as provided in the discharge plan.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice partners including the sheriff, mental/behavioral health, and social service partners. The Implementation Task Force participated in providing education to community partners on these topics.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
83	Courts, prisons, jails, probation, parole, and community partners, including CONREP, should be prepared to assume the role of housing advocate for the release, recognizing that there are explicit as well as implicit prejudices and exclusions based on either mental illness or the criminal history of the release.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with local criminal justice, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR, CONREP, and parole.
84	Courts, prisons, jails, and community partners, including law enforcement, discharge planners, service providers, probation, and parole, should establish agreements with housing programs, including supportive housing, to develop a housing referral network to coordinate stable housing placements for offenders with mental illness who are returning to the community.	Identified by the Mental Health Issues Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with local criminal justice, mental/behavioral health, and social service partners; in the event of an offender being released from prison, this is a recommendation to be addressed by CDCR, CONREP, and parole.
85	Need-based housing options should be available, recognizing that offenders with mental illness and co-occurring disorders require different levels of housing at release that may change over time.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local criminal justice partners including sheriffs and mental/behavioral health, and social service partners.
86	Legislation should be enacted to provide incentives (e.g., funding, tax credits) to housing developers; providers of supportive housing, including peer-run organizations; and owners of rental units, to support the development and availability of housing to incarcerated offenders with mental illness when they are released to reenter the community.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by the legislature and local criminal justice partners including the sheriff, mental/behavioral health, and social service partners.
87	Mental Health Services Act (MHSA) funding dedicated to housing, per the local stakeholder process, should be leveraged with other funding sources to ensure equal access to housing for offenders with mental illness, including those on probation. The state Director of Mental Health and the Mental Health Services Oversight and Accountability Commission (MHSOAC) should ensure that county plans include provisions to secure equal access to housing paid for with MHSA funding for offenders with mental illness.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by the legislature, state and local criminal justice, including sheriffs, mental/behavioral health, and social service partners, and the Mental Health Services Oversight and Accountability Commission (MHSOAC).

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
88	Each presiding judge of the juvenile court should work with relevant stakeholders, including family members, to develop procedures and processes to provide appropriate services to youth in the delinquency system, who have a diagnosable mental illness or a developmental disability, including developmental immaturity, or a co-occurring disorder. These procedures should include collaboration with mental health systems, probation departments, and other community resources.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch to implement on the local level in partnership with local mental/behavioral health, social services, education, and juvenile probation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
89	Every juvenile who has been referred to the probation department pursuant to Welfare and Institutions Code section 602 should be screened or assessed for mental health issues as appropriate.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local criminal justice (including sheriffs), mental/behavioral health, and juvenile probation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
90	Protocols should be developed for obtaining information regarding a child's mental health diagnosis and medical history. Emphasis should be placed on acquiring thorough information in an expedited manner. Memorandums of understanding should be utilized to control the use and communication of information.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with local mental/behavioral health, health services, and juvenile probation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
91	Juveniles in detention should have a medication evaluation upon intake into the detention center. Any psychotropic medication that a juvenile in detention is currently prescribed should be available to that juvenile within 24 hours of intake into detention unless an evaluating psychiatrist determines that it is no longer in the child's best interest.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by local mental/behavioral health and juvenile probation.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
92	Each court should have informational and educational resources for juveniles and their families, in multiple languages if needed, to learn about juveniles' rights, resources available, and how to qualify for services and benefits as they relate to issues of mental health. Those resources could include specially trained personnel, written materials, or any other sources of information. Each local jurisdiction should develop listings of available support and educational nonprofit organizations to assist families in need.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch to be implemented on the local level in partnership with local mental/behavioral health, social services, education, and juvenile probation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
93	Mental health services should continue to be available to youth upon completion of their involvement with the delinquency system. Specifically, services should be extended in a manner consistent with the extension of services to dependent youth after they turn 18. This includes services provided for systemically appropriate transition age youth (18–25 years of age) who were formerly adjudicated as delinquent wards.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by the legislature, local mental/behavioral health and juvenile probation.</p> <p>The Implementation Task Force identified this area as part of juvenile reentry services and identified juvenile reentry courts and programs as promising practices to support this recommendation, noting examples of programs such as the juvenile reentry court and the Back on Track Program in San Francisco. Information on these programs can be found at http://www.sfsuperiorcourt.org/divisions/collaborative/jrc and at http://www.sfdistrictattorney.org/</p>
94	Between the delinquency system and the adult criminal justice system should be improved to ensure that if a person once received mental health treatment as a juvenile, the information regarding that treatment is provided in a timely and appropriate fashion if they enter the adult criminal justice system. Information sharing must be in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and other federal and state privacy protection statutes, rules, and regulations. When deemed appropriate upon assessment, treatment should continue in a consistent fashion if a minor transitions into the adult criminal justice system.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by the legislature, local juvenile and adult mental/behavioral health and juvenile and adult justice system partners.</p> <p>The Implementation Task Force noted examples of programs such as the juvenile reentry court and the Back on Track program in San Francisco as examples of programs that address this recommendation.</p>
95	Experts in juvenile law, psychology, and psychiatry should further study the issue of juvenile competence, including the need for appropriate treatment facilities and services, for the purpose of improving the systemic response to youth found incompetent to stand trial in the delinquency court.	Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by universities and other research-based organizations.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
96	Existing legislation should be modified or new legislation should be created to refine definitions of competency to stand trial for juveniles in delinquency matters and outline legal procedures and processes. Legislation should be separate from the statutes related to competency in adult criminal court and should be based on scientific information about adolescent cognitive and neurological development and should allow for appropriate system responses for children who are found incompetent as well as those remaining under the delinquency court jurisdiction.	<p>Identified by the Implementation Task Force as needing to be addressed in partnership with the state legislature and experts in juvenile law and child development.</p> <p>Representatives of three Judicial Council advisory bodies worked together to consider and propose possible changes to juvenile competency legislation, as well as to examine research and resource needs in this area as a result a legislative proposal amending welfare and institutions code section 709 Juvenile competency.</p>
97	Youth exiting the juvenile delinquency system, including those returning from out-of-state placements, should receive appropriate reentry and aftercare services, including, but not limited to, stable housing, and a discharge plan that addresses mental health, education, and other needs.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with mental/behavioral health, education, and social service partners.</p> <p>The Implementation Task Force identified this area as part of juvenile reentry services and identified juvenile reentry courts and programs as promising practices as regards recommendations 97-100.</p>
98	Upon release from detention or placement, the probation department should facilitate access to an adequate supply of medication to fill any gap in time before having a prescription filled as ordered in the discharge plan. Upon release juveniles should have a scheduled appointment with a mental health agency.	Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by local juvenile mental/behavioral health and juvenile justice system partners.
99	The presiding judge of the juvenile court, working with the probation department, should create memoranda of understanding with local pharmacies and mental health service providers to ensure that juveniles leaving detention or placement have a reasonable distance to travel to fill prescriptions and obtain other necessary mental health services.	<p>Identified by the Implementation Task Force as a best practice to be implemented on the local level in partnership with mental/behavioral health and juvenile justice system partners.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
100	Administrative procedures should be revised and streamlined to ensure that benefits of youth with mental illness are suspended instead of terminated during any period in detention and that those benefits are reinstated upon an individual's release from detention or placement. A youth's probation officer or mental health case manager should assist youth and their families with any associated paperwork.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by local juvenile mental/behavioral health, medical and juvenile justice system partners.</p> <p>The Affordable Care Act has provided a new avenue to address this issue and the Task Force has made it a part of a presentation to Presiding Judges and judicial education materials and programs.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
101	The presiding judge of the juvenile court should work collaboratively with relevant local stakeholders to ensure that mental health services are available for all juveniles in the juvenile court system who need such services, including facilitating the delivery of culturally competent and age appropriate psychological and psychiatric services.	<p>Identified by the Implementation Task Force as a best practice to be implemented on the local level in partnership with mental/behavioral health partners. The Implementation Task Force noted juvenile mental health courts as an effective practice to improve outcomes for high risk/high need juveniles with mental health issues.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
102	The presiding judge of the juvenile court of each county should work collaboratively with relevant agencies to ensure that youth in detention receive adequate and appropriate mental health treatment.	<p>Identified by the Implementation Task Force as a best practice to be implemented on the local level in partnership with local juvenile mental/behavioral health and juvenile justice system partners including juvenile probation.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
103	The presiding judge of the juvenile court should establish an interagency work group to identify and access local, state, and national resources for juveniles with mental health issues. This work group might include, but is not limited to, stakeholders such as schools, mental health, health care, social services, local regional centers, juvenile probation, juvenile prosecutors, juvenile defense attorneys, and others.	<p>Identified by the Implementation Task Force as a best practice to be implemented on the local level in partnership with local juvenile mental/behavioral health, education, medical, social services, regional centers, and juvenile justice system partners.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
104	Guidelines for processes and procedures should be created for information sharing among institutions that protects juveniles' right to privacy, privilege, confidentiality, and due process.	Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by local juvenile mental/behavioral health, education, medical, social services, regional centers, and juvenile justice system partners. Guidelines and protocols may vary based on local conditions and resource availability.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
105	Counties should uniformly apply standards of care for youth in detention who have mental illness or developmental disabilities. Local jurisdictions should collaborate to develop strategies and solutions for providing services to youth with mental health issues that meet this minimum statewide standard of care utilizing available local and state resources.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by local juvenile mental/behavioral health, education, medical, social services, regional centers, and juvenile justice system partners.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
106	The presiding judge of the juvenile court of each county should work collaboratively with relevant local stakeholders to ensure that out-of-custody youth with co-occurring disorders are obtaining community-based mental health services. These stakeholders can include, but are not limited to, schools, mental health, social services, local regional center, juvenile probation, juvenile defense attorneys, drug and alcohol programs, family members, and others.	<p>Identified by the Implementation Task Force as a best practice to be implemented in partnership with local juvenile mental/behavioral health, education, medical, social services, regional centers, and juvenile justice system partners as well as others mentioned in the recommendation. Effective practices, such as juvenile mental health courts, are noted in recommendation 101.</p> <p>Judicial officers should exercise their leadership role and encourage or require this in the context of Rule of Court 10.951 and 10.952. This judicial leadership will be a topic for inclusion in judicial education materials and programs.</p>
107	Education and training related to juvenile development, mental health issues, co-occurring disorders, developmental disabilities, special education, and cultural competency related to these topics should be provided to all judicial officers, probation officers, law enforcement, prosecutors, defense attorneys, court evaluators, school personnel, and social workers. This education and training should include information about the identification, assessment, and provision of mental health, developmental disability, and special education services, as well as funding for those services.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch but important to be addressed by all partners. In addition, this was identified by the Implementation Task Force as a topic appropriate and necessary for inclusion in judicial education materials and programs. Implementation Task Force members worked with the Juvenile Law Curriculum Committee of the Center for Judiciary Education (CJER), which established juvenile mental health and developmental disabilities are priority areas for judicial education curricula and programs.
108	Education and training that is culturally competent should be provided to judicial officers, juvenile defense attorneys and prosecutors, court evaluators, probation officers, school personnel, and family members on how to assist juveniles and their families in qualifying for appropriate mental health treatment services for youth under the jurisdiction of the juvenile delinquency court (e.g., Medi-Cal, housing, SSI).	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch but important to be addressed by all partners.</p> <p>In addition, this was identified by the Implementation Task Force as a topic appropriate and necessary for inclusion in judicial education materials and programs including education about suicide-risk and the impacts of stigma, discrimination and cumulative trauma.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
109	The Administrative Office of the Courts should disseminate information to the courts regarding evidence-based collaborative programs or services that target juvenile defendants with mental illness or co-occurring disorders.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council, with the recommendation that research in this area by the Judicial Council be encouraged and supported.</p> <p>In addition this was identified by the Implementation Task Force as a topic appropriate and necessary for inclusion in judicial education materials and programs.</p>
110	The California Courts website should include links to national and international research on collaborative justice and juvenile mental health issues, as well as information on juvenile mental health courts, promising case processing practices, and subject matter experts available to assist the courts.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council and recommends ongoing development and maintenance of these materials.</p> <p>The California Courts website (www.courts.ca.gov) currently includes links to several resources for juvenile mental health, including the Council on Mentally Ill Offenders (http://www.cdcr.ca.gov/COMIO/index.html) and the California Department of Health Care Services (http://www.dhcs.ca.gov/services/Pages/MentalHealthPrograms-Svcs.aspx).</p> <p>In addition, current information about juvenile mental health courts and mental illness is added to the Juvenile Mental Health Courts home page at http://www.courts.ca.gov/5990.htm.</p>
111	Assessments and evaluations of the current data, processes, and outcomes of juvenile competence to stand trial in California should be conducted. This research should include, but is not limited to, an assessment of the number of cases in which the issue of competence is raised, the number of youth found incompetent versus competent, and what happens when a youth is found to be incompetent to stand trial.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.</p> <p>Representatives of three Judicial Council advisory bodies are worked together to consider and propose possible changes to juvenile competency legislation and the California Rules of Court, as well as to examine research and resource needs in this area as a result a legislative proposal amending welfare and institutions code section 709 Juvenile competency</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
112	<p>Additional research should be conducted related to juvenile mental health issues, including assessments and evaluations of the following:</p> <ul style="list-style-type: none"> a. The mental health services available to juveniles and transition age youth in each county; and b. Any overlap between youth who enter the delinquency system and youth who are eligible to receive mental health services under a special education program provided by the Individuals with Disabilities Education Act (IDEA, in accordance with AB 3632). c. The prevalence of youth with disabilities or mental illness who enter the criminal justice system later as adults. 	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch but important to be addressed by research, education, social service, and juvenile and adult criminal justice partners.</p>
113	<p>Ongoing data should be collected about juveniles diverted from the juvenile delinquency court to other systems, including, but not limited to, the mental health system or juvenile mental health court.</p>	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and needing to be addressed in partnership with mental/behavioral health partners and juvenile justice partners.</p> <p>The Judicial Council currently encourages data collection among delinquency and juvenile mental health courts throughout the state. The Judicial Council published and distributed a report on juvenile delinquency performance measurement as an evidence-based practice: (http://www.courts.ca.gov/documents/JD_Performance_asEBP.pdf).</p> <p>In addition, the Judicial Council is working with the National Center for State Courts to survey all collaborative courts in the state and to document preliminary outcome measures.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
114	Funding for education on collaborative justice principles and mental health issues should be sought from local, state, federal, and private sources.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with California trial courts as well as mental/behavioral health and justice system partners.</p> <p>The Judicial Council of California, Center for Families, Children & the Courts currently disseminates funding and technical assistance information to courts through the collaborative courts coordinators' network and the California Association of Collaborative Courts (CACC) in addition to advisory and task force members.</p>
115	The Administrative Office of the Courts should disseminate to the courts, using advanced technology, information regarding evidence-based collaborative programs or services that target defendants with mental illness or co-occurring disorders.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.</p> <p>In addition, this was identified by the Issues Implementation Task Force as a topic appropriate and necessary for inclusion in judicial education materials and programs including a focus on evidence-based practices in the areas of juvenile and adult mental health, co-occurring disorder, reentry, and veterans' courts.</p> <p>The Judicial Council, Center for Families, Children & the Courts currently disseminates information to courts through the collaborative courts coordinators' network and the California Association of Collaborative Courts (CACC) in addition to posting information on the California Courts website.</p> <p>The Judicial Council, Center for Families, Children & the Courts and through the Center for Judiciary Education (CJER) has increased education programming focusing on mental health issues in the courts and justice system. In addition, a mental health education toolkit with links to traditional CJER mental health resources as well as to education products created specifically for the website by the Implementation Task Force.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
116	<p>The Administrative Office of the Courts, in collaboration with consumer and family groups, the Forensic Mental Health Association, California Institute of Mental Health (CIMH), California Mental Health Directors Association (CMHDA), and other professional mental health organizations, should develop and provide ongoing education for judicial officers, appropriate court staff, and collaborative partners on mental health issues and strategies for responding to people with mental illness or co-occurring disorders in the criminal justice system. Education should include information on diversion programs and community services that target this population.</p>	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with state and local mental/behavioral health and justice system partners.</p> <p>During the tenure of the Mental Health Issues Implementation Task Force, outreach and joint educational programming was accomplished in collaboration with the Forensic Mental Health Association of California where task force members and other judges working in mental health courts or with mental health calendars served as faculty; with the California Institute of Mental Health where task force members served a keynote presenters and faculty, and the 2012 and 2013 Words to Deeds Summit where task force members served a keynote presenters and faculty. In addition, several local courts, including the Kern County Superior Court, developed their own mental health training for judges in conjunction with mental health partners.</p> <p>The Implementation Task Force through its chair also held exploratory meetings with the Chief Probation Officers of California and the California Sheriffs' Association to discuss working in collaboration to develop appropriate mental health training for those two organizations that would help support and complement the work of mental health judges throughout the state.</p>
117	<p>Judicial officers should participate in ongoing education on mental illness and best practices for adjudicating cases involving defendants who have a mental illness or co-occurring disorder. An overview of such information should be provided to all judges during judicial orientation and/or judicial college and should be included in a variety of venues for ongoing education.</p>	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.</p> <p>During the tenure of the Implementation Task Force, educational programming offered through the Center for Families, Children & the Courts (CFCC) and the Center for Judiciary Education (CJER) increased. As of 2014, mental health topics have been added to many curriculum plans and mental health education, including evidence-based practice responses, has been included in primary assignment orientations, institutes, and the judicial college. In addition, mental health education has increased in programs offered through CFCC including at Beyond the Bench, in Family Dispute Resolution programs for family court facilitators and mediators, and in programs offered for collaborative court practitioners.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
118	Ongoing training should be provided to judicial officers and attorneys with assignments in collaborative justice courts on collaborative justice principles and all areas related to defendants with mental illness or co-occurring disorders, including diagnoses, communication techniques, and treatment options. Training should include recent outcome research on collaborative court programs.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with the California Judges Association, the State Bar of California, California law schools, and professional organizations, such as the California Association of Collaborative Court Professionals, the American Bar Association Commission on Homelessness and Poverty, and the California Association of Youth Courts.
119	Continuing Legal Education (CLE) courses focusing on mental health law and participation by mental health professionals in the criminal process should be developed.	Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with the State Bar of California and state and local mental health partners. It is noted that Continuing Education Units for social workers, marriage and family counselors, and psychologists are offered for multidisciplinary education programs at the Judicial Council and that these programs, with participation of Task Force members, have included mental health law and court practices as part of the content.
120	Pretrial services and probation personnel should receive training regarding symptoms of mental illness so that they can refer, or recommend that a judicial officer refer people who may suffer from a mental illness to trained mental health clinicians for a complete mental health assessment.	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in cooperation with pretrial and probation partners.</p> <p>The Implementation Task Force through its chair held exploratory meetings with the Chief Probation Officers of California to discuss working in collaboration to develop appropriate mental health training for probation officers that would help support and complement the work of mental health judges throughout the state.</p>
121	Probation officers and parole agents should receive education and training about mental illness to increase understanding of the unique challenges facing these offenders and to obtain better outcomes for this population. Education and training should promote a problem-solving approach to community supervision that balances both therapeutic and surveillance goals and includes information regarding communication techniques, treatment options, and criminogenic risk factors.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed parole and probation partners.</p> <p>The Implementation Task Force through its chair also held exploratory meetings with the Chief Probation Officers of California to discuss working in collaboration to develop appropriate mental health training for probation officers that would help support and complement the work of mental health judges throughout the state.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
122	<p>Deputy commissioners of the Board of Parole Hearings who are responsible for hearing parole violations should receive education about mental illness and effective methods for addressing violations of supervision conditions by parolees with mental illness.</p>	<p>Identified by the Mental Health Issues Implementation Task Force as now being under the purview of the judicial branch because of changes made through criminal justice realignment. Because courts now do revocation hearings for parolees, judicial or hearing officers making those determinations require training in this area. Moreover, there also remains a need for education of parole officers regarding the persons with mental illness, and work in this area is best accomplished in partnership with parole and probation partners.</p> <p>Implementation Task Force members participated as faculty and served on the planning team for multidisciplinary education programs that had mental health content, including the Reentry Court, Community Justice, and Homeless Summits. These programs were held at the Judicial Council and cosponsored with the Center for Court Innovation and the ABA Commission on Homelessness and Poverty.</p>
123	<p>Crisis intervention training and suicide prevention training should be provided to law enforcement, including jail custody personnel and correctional officers, on an ongoing basis to increase understanding of mental illness and to improve outcomes for and responses to people with mental illness. CIT training and suicide prevention training should also be part of the standard academy training provided to new officers.</p> <p>On October 3, 2015, SB11 and SB29 (Beall) were signed into law amending Penal Code sections relating to police officer training standard in basic post training and for field off training officer.</p>	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed law enforcement and other criminal justice partners.</p> <p>The Implementation Task Force worked with the California Institute of Mental Health to provide information about CIT programs and procedures to state and local mental/behavioral health partners in an effort to encourage local partnerships similar to those in several jurisdictions including the City of Santa Cruz which recently received a Council on Mentally Ill Offenders (COMIO) award in recognition of its MOST team (Making the Most of Collaboration) which focuses on criminal justice system and behavioral health services integration.</p>
124	<p>All mental health training and education should include information on cultural issues relevant to the treatment and supervision of people with mental illness. Custodial facilities, courts, probation, parole, and treatment agencies should be encouraged to actively seek practitioners who have the cultural and language skills to directly relate to people with mental illness.</p>	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch and more appropriately addressed in partnership with mental health and criminal justice partners.</p>
125	<p>Education and training programs for criminal justice partners should utilize mental health advocacy organizations and include presentations by mental health consumers and family members.</p>	<p>Identified by the Issues Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by mental/behavioral health and criminal justice partners.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
126	Mental Health Services Act funding should be actively utilized, per the local stakeholder process as applicable, for state and local educational campaigns and training programs for the general public that reduce stigma and discrimination toward those with mental illness. Educational campaigns and training programs should incorporate the recommendations of the California Strategic Plan on Reducing Mental Health Stigma and Discrimination.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local mental/behavioral health partners including the Mental Health Services Oversight and Accountability Commission.
127	All accredited law schools in California should expand their curricula to include collaborative justice principles and methods, including those focused on defendants with mental health issues.	<p>Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by the State Bar of California and law schools throughout the state.</p> <p>The Collaborative Justice Courts Advisory Committee has undertaken an effort to reach out to California law schools to provide internships for law students in collaborative courts or at the Judicial Council. In addition, presentations have been made by advisory committee members to several law schools throughout the state focusing on collaborative court principles and the ways in which they are applied in the court setting including in mental health courts.</p>
128	<p>The Administrative Director of the Courts should transmit this report to California law school deans and urge them to consider the following strategies:</p> <ol style="list-style-type: none"> a. Develop effective strategies to institutionalize collaborative justice principles and methods in training programs for law school faculty and staff; b. Provide faculty with access to periodic training that focuses on understanding mental illness and how to best represent those with mental illness based on collaborative justice principles and methods; and c. Encourage faculty to develop teaching methods and engage speakers who can integrate the practical aspects of how collaborative justice principles and methods relate to the reality of legal practice in the substantive areas being taught. 	Identified by Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
129	The State Bar of California admissions exam should be expanded to include questions testing knowledge of collaborative justice principles and methods, including those focused on defendants with mental health issues. The Board of Governors and the Committee of Bar Examiners of the State Bar of California should collaborate, as appropriate, with law school deans regarding the inclusion of collaborative justice principles and methods into bar examination questions	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by the State Bar of California and law schools throughout the state.
130	The Administrative Director of the Courts should transmit this report to the Law School Admissions Council (LSAC) and the Board of Governors of the State Bar of California for its information and consideration.	Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.
131	Funding for research initiatives outlined in this report should be sought from local, state, federal, and private sources.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.</p> <p>The Judicial Council continually seeks external funding for research initiatives and provides technical assistance to courts engaging in their own research and evaluation projects. The reentry court evaluation, which focuses on the incidence of participants with mental illness in reentry courts and outcomes for these participants, is funded in part by the California Endowment.</p>
132	The California Courts website should include links to national and international research on collaborative justice and mental health issues, as well as information regarding mental health court and calendar best practices and subject matter experts available to assist the courts.	<p>Identified by the Implementation Task Force as being under the purview of the judicial branch and the Judicial Council.</p> <p>The California Courts website (www.courts.ca.gov) includes links to several resources focused on mental health issues in the courts including the California Department of Health Services, the California Mental Health Directors Association, the Council on Mentally Ill Offenders, and the Council of State Governments along with a number of federal agencies including Substance Abuse and Mental Health Services Administration and the Bureau of Justice Assistance. The Council of State Governments has a particular robust mental health on-line resource center found at http://csgjusticecenter.org/mental-health. California and its Task Force for Criminal Justice Collaboration on Mental Health Issues was one of the seven initial mental health task force projects supported by the Council of State Governments and its Judicial Leadership Initiative.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
133	<p>There should be further research on the effectiveness of programs that serve people with mental illness involved in the criminal justice system, such as crisis intervention teams, mental health courts, reentry courts, and specialized mental health probation programs. Research should analyze mental health, recidivism, and criminal case outcomes, costs, and savings, as well as the elements of such programs that have the most impact. Research should evaluate outcomes for different subgroups (e.g., according to race, gender, diagnosis, etc.) within the participant population.</p>	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch but important to be addressed with research, law enforcement, education, social service, and juvenile and adult criminal justice partners. Implementation Task Force members have provided guidance for several studies underway at the Judicial Council that are described below.</p> <p>The Judicial Council published a literature review of mental health court related research in 2012 that is available on the Judicial Council website at http://courts.ca.gov/documents/AOCLitReview-Mental_Health_Courts--Web_Version.pdf. In addition, the Judicial Council is conducting a process evaluation project of California's mental health courts. This study examines the process and procedures of mental health courts and identifies preliminary outcomes and promising practices. The project discusses the foundation for understanding California's mental health courts, describing the courts in depth, as well as variations among courts' policies and practices. This report is expected to be published by summer 2014. The final phase of the project will be an in-depth study of six specific mental health courts and will include qualitative data from interviews and focus groups and available outcomes from the six study courts. The Judicial Council will seek external grant funding or other potential resources to expand the project and track individual-level data and court specific outcomes.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
		<p>The Judicial Council is conducting an evaluation of reentry courts that includes outcomes and cost analysis as well as identification of incidence of participants with mental illness in these courts and outcomes for those participants.</p> <p>The Judicial Council provides technical assistance to specific courts, such as reentry courts, to conduct research, and works with drug courts, mental health courts, and other collaborative justice courts to identify data elements and evaluation standards. In addition, the Judicial Council is working with the National Center for State Courts on a nationwide survey of collaborative justice courts, including California’s mental courts. The results of this survey are forthcoming.</p> <p>The Judicial Council is also working with the Implementation Task Force to develop a Resource Guide to Innovative Responses to Persons with Mental Illness in California’s Criminal Courts (in press).</p>
134	<p>Programs targeting offenders with mental illness should track outcome data. Although programmatic goals will determine the data collected, key data elements should include the following:</p> <ol style="list-style-type: none"> a. Participant data (e.g., number served and relevant characteristics, such as diagnosis and criminal history); b. Service data (e.g., type of service received, frequency of service, length of service provision); c. Criminal justice outcomes (e.g., number of arrests, types of charges, jail days); d. Mental health outcomes (e.g., number of inpatient hospitalizations and lengths of stay, number of days homeless); and e. Program costs and savings data. 	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch but important to be addressed with research, law enforcement, education, social service, and juvenile and adult criminal justice partners.</p> <p>The Judicial Council encourages data collection among delinquency and juvenile mental health courts throughout the state. A report has been published and distributed on juvenile delinquency performance measurement as an evidence-based practice (http://www.courts.ca.gov/documents/JD_Performance_asEBP.pdf).</p> <p>In addition, the Judicial Council has worked closely with collaborative justice court coordinators, including mental health court coordinators, around the state to identify data definitions and standards and is working with the National Center for State Courts to survey all collaborative courts in the state and to document preliminary outcome measures.</p>

Mental Health Issues Implementation Task Force Responses to the Recommendations of Task Force for Criminal Justice Collaboration on Mental Health Issues

Recommendation #	Original Recommendation	Mental Health Issues Implementation Task Force Responses
135	Statewide evaluations should be conducted to identify and study the effectiveness of inpatient and outpatient programs that regularly accept forensic mental health clients. Barriers to the placement of individuals under forensic mental health commitments should be identified	<p>Identified by the Implementation Task Force as not being solely under the purview of the judicial branch but important to be addressed with research institutions, CONREP, the Forensic Mental Health Association of California, and juvenile and adult criminal justice partners.</p> <p>The Judicial Council is currently conducting a study on the effectiveness of reentry courts and a study California’s mental health courts, both of which include participant data, service data and some outcome data (in progress).</p>
136	Independent researchers should evaluate the effectiveness of competency restoration programs.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by universities, the Department of State Hospitals, and other competency restoration programs.
137	Local public agencies, including law enforcement, should collaborate to create a system in accordance with Health Insurance Portability and Accountability Act (HIPAA) regulations that identifies individuals involved in the criminal justice system, who frequently access services in multiple public systems in order to distinguish those most in need of integrated interventions, such as permanent supportive housing. Public agencies can use this system to achieve cost savings by stabilizing the most frequent and expensive clients.	Identified by the Implementation Task Force as not being under the purview of the judicial branch and more appropriately addressed by state and local mental/behavioral health, social service, and criminal justice partners.

Appendix B: Mental Health Issues Implementation Task Force Fact Sheet



JUDICIAL COUNCIL
OF CALIFORNIA
455 Golden Gate Avenue
San Francisco, CA
94102-3688
Tel 415-865-4200
TDD 415-865-4272
Fax 415-865-4205
www.courts.ca.gov

FACT SHEET

November 2015

Mental Health Issues Implementation Task Force

The Judicial Council's Mental Health Issues Implementation Task Force was appointed to advise the council on ways to implement the recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues. These recommendations were designed to improve the response of the criminal justice system to offenders with mental illness by promoting collaboration at the state and local level. The task force is focused on improving practices and procedures in criminal cases involving adult and juvenile offenders with mental illness, ensuring the fair and expeditious administration of justice, and promoting improved access to treatment for litigants with mental illness in the criminal justice system. The task force is scheduled to sunset on December 31, 2015.

Charge

The task force is charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve systemwide responses to mentally ill offenders and to develop an action plan to implement the recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues.

Specifically, the task force is charged with:

1. Identifying recommendations under Judicial Council purview to implement;
2. Identifying potential branch implementation activities; and
3. Developing a plan with key milestones for implementing the recommendations.

History

The Mental Health Issues Implementation Task Force evolved from the Task Force for Criminal Justice Collaboration on Mental Health Issues which was one of seven similar projects established by state supreme courts throughout the nation with support from the Council of State Governments (CSG) as part of its criminal justice and mental health initiative encouraging effective leadership from different facets of the criminal justice and mental health systems. Continued funding for this project is supported by California's Mental Health Services Act (MHSA) fund.

Presiding Judge Richard J. Loftus, Jr., of the Superior Court of Santa Clara County serves as chair of the task force. Task force membership currently includes judicial officers and court executive officers from throughout the state.

The task force, in collaboration with its mental health and justice system partners, has been addressing ways to improve outcomes and reduce recidivism rates for offenders with mental illness while being mindful of cost and public safety considerations. The work of the task force is based on the final recommendations submitted to the Judicial Council by the Task Force for Criminal Justice Collaboration on Mental Health Issues.

The recommendations are designed to:

- Promote innovative and effective practices to foster the fair and efficient processing and resolution of cases involving mentally ill persons in the criminal justice system;
- Expand education programs for the judicial branch, State Bar of California, law enforcement, and mental health service providers to address the needs of offenders with mental illness;
- Foster excellence through implementation of evidence-based practices for serving persons with mental illness; and
- Encourage collaboration among criminal justice partners and other stakeholders to facilitate interagency and interbranch efforts that reduce recidivism and promote improved access to treatment for persons with mental illness.

Contacts:

Carrie Zoller, Supervising Attorney, Center for Families, Children & the Courts, carrie.zoller@jud.ca.gov

Additional resources:

Criminal Justice/Mental Health Consensus Project <http://consensusproject.org/>; and
Criminal Justice/Mental Health Consensus Project Leadership Initiative:

<http://consensusproject.org/judges-leadership-initiative>

California Department of Mental Health/Mental Health Services Act Information:

http://www.dmh.ca.gov/Prop_63/MHSA/State_Interagency_Partners.asp

Appendix C: Rules of Court



2015 California Rules of Court

Rule 10.951. Duties of supervising judge of the criminal division

(a) Duties

In addition to any other duties assigned by the presiding judge or imposed by these rules, a supervising judge of the criminal division must assign criminal matters requiring a hearing or cases requiring trial to a trial department.

(Subd (a) amended effective January 1, 2007.)

(b) Arraignments, pretrial motions, and readiness conferences

The presiding judge, supervising judge, or other designated judge must conduct arraignments, hear and determine any pretrial motions, preside over readiness conferences, and, where not inconsistent with law, assist in the disposition of cases without trial.

(Subd (b) amended effective January 1, 2008; previously amended effective January 1, 2007.)

(c) Mental health case protocols

The presiding judge, supervising judge, or other designated judge, in conjunction with the justice partners designated in rule 10.952, is encouraged to develop local protocols for cases involving offenders with mental illness or co-occurring disorders to ensure early identification of and appropriate treatment for offenders with mental illness or co-occurring disorders with the goals of reducing recidivism, responding to public safety concerns, and providing better outcomes for those offenders while using resources responsibly and reducing costs.

(Subd (c) adopted effective January 1, 2014.)

(d) Additional judges

To the extent that the business of the court requires, the presiding judge may designate additional judges under the direction of the supervising judge to perform the duties specified in this rule.

(Subd (d) relettered effective January 1, 2014; adopted as subd (c).)

(3) Courts without supervising judge

In a court having no supervising judge, the presiding judge performs the duties of a supervising judge.

(Subd (e) relettered effective January 1, 2014; adopted as subd (d); previously amended effective January 1, 2007.)

Rule 10.951 amended effective January 1, 2014; adopted as rule 227.2 effective January 1, 1985; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.



2015 California Rules of Court

Rule 10.952. Meetings concerning the criminal court system

The supervising judge or, if none, the presiding judge must designate judges of the court to attend regular meetings to be held with the district attorney; public defender; representatives of the local bar, probation department, parole office, sheriff department, police departments, and Forensic Conditional Release Program (CONREP); county mental health director or his or her designee; county alcohol and drug programs director or his or her designee; court personnel; and other interested persons to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern.

Rule 10.952 amended effective January 1, 2015; adopted as rule 227.8 effective January 1, 1985; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2014.

Appendix D: Legislative Proposal: Draft Welfare and Institution Code §709

Draft Juvenile Competency Legislative Proposals

709. (a) Whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court must suspend all proceedings and proceed pursuant to this section.

(1) A minor is mentally incompetent for purposes of this section if he or she is unable to understand the nature of the delinquency proceedings, including his or her role in the proceedings, or to assist counsel in conducting a defense in a rational manner, including a lack of a rational or factual understanding of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or Section 602.

(2) ~~(a) During the pendency of any juvenile proceeding, the minor's counsel or the court may receive information from any source regarding the~~ express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to understand the proceedings. Minor's consult with counsel or the court may express a doubt as to the minor's competency. Information received or expression of doubt and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or does not automatically require suspension of proceedings against him or her. If the court has finds substantial evidence raises a doubt as to the minor's competency, the court shall suspend the proceedings shall be suspended.

(b) Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the ~~Upon suspension of proceedings, the court shall order that the question of the minor's lack of competency, competence be determined at a hearing. The the court~~ court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency, and, if so, whether the minor is competent to stand trial. ~~condition or conditions impair the minor's competency.~~

(1) The expert shall have expertise in child and adolescent development; and ~~training in the forensic evaluation of juveniles, and shall be familiar with~~ for purposes of adjudicating competency, standards and shall be familiar with competency standards and accepted criteria used in evaluating juvenile competency, and shall have received training in conducting juvenile competency evaluations. ~~competence.~~

(2) The expert shall personally interview the minor and review all the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, court records, and any other relevant information that is available. The expert shall consult with the minor's attorney and any other person who has provided information to the court regarding the minor's lack of competency. The expert shall gather a developmental history of the minor. If any information is not available to the expert, he or she shall note in the report the efforts to obtain such information. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding and whether he or she has a rational, as well as factual, understanding of the proceedings against him or her. The expert shall also state the basis

for these conclusions. If the expert concludes that the minor lacks competency, the expert shall make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency, and, if possible, the expert shall address the likelihood of the minor attaining competency within a reasonable period of time.

(3) The Judicial Council shall ~~develop and~~ adopt a rules of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles and shall develop and adopt rules for the implementation of other ~~these~~ requirements related to this subdivision.

(4) Statements made to the appointed expert during the minor's competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of such statements shall not be used in any other delinquency or criminal adjudication against the minor in either juvenile or adult court.

(5) The prosecutor or minor may retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The expert's report and qualifications shall be disclosed to the opposing party within a reasonable time prior to the hearing and not later than five court days prior to the hearing. If disclosure is not made in accordance with this subparagraph, the expert shall not be allowed to testify and the expert's report shall not be considered by the Court unless the Court finds good cause to consider the expert's report and testimony. If, after disclosure of the report, the opposing party requests a continuance in order to prepare further for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time.

(6) ~~(F)~~ If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to

evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency.

(7) An expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center ~~whether regarding the minor is eligible~~ minor's eligibility for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(8) ~~(h)~~ Nothing in this section shall be interpreted to authorize or require the following:

A. ~~(1) The court to place~~ Placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

B. ~~(2) The director of the regional center, or his or her designee, to make~~ Determinations regarding the competency of a minor by the director of the regional center or his or her designee.

(c) The question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert. The minor has the burden of establishing by a preponderance of the evidence that he or she is incompetent to stand trial.

- (d) ~~(e)~~ If the minor is found to be competent, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction.
- (e) ~~(part of (e))~~ If the court finds incompetent by a preponderance of evidence that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future or the court no longer retains jurisdiction. During this time, the court may make orders that it deems appropriate for services, ~~subject to subdivision (h), that may assist the minor in attaining competency.~~ Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, the following:
- (1) Motions to dismiss.
 - (2) Motions ~~by the defense~~ regarding a change in the placement of the minor.
 - (3) Detention hearings.
 - (4) Demurrers.
- (f) Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor to attain competency. Service providers and evaluators shall adhere to the standards set forth in this statute and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety. Priority shall be given to minors in custody. Service providers shall determine the likelihood of the minor attaining competency within a reasonable period of time, and if the opinion is that the minor will not attain competency within a reasonable period of time, the minor shall be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.
- (g) Upon receipt of the recommendation by the remediation program, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the

parties stipulate to or submit on the recommendation of the remediation program. If the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that the minor remains incompetent. If the recommendation is that the minor is not able to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the minor is competent. The provisions of subdivision (c) shall apply at this stage of the proceedings.

(1) ~~(d)~~ If the court finds that the minor is found to be competent has been remediated, the court may proceed commensurate with the court's jurisdiction shall reinstate the delinquency proceedings.

(2) If the court finds that the minor is not yet been remediated, but is likely to be remediated, the court shall order the minor returned to the remediation program.

(3) ~~(e)~~ This section applies to a If the court finds that the minor will not achieve competency, the court must dismiss the petition. The who is alleged to come within the jurisdiction of the court pursuant to Section may invite all persons and agencies with information about the minor to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. Such persons and agencies may include, but not be limited to, the minor and his or her attorney; probation; parents, guardians, or relative caregivers; mental health treatment professionals; public guardian; educational rights holders; education providers; and social service agencies. If appropriate, the court shall refer the minor for evaluation pursuant to Welfare and Institutions Code Sections ~~601~~ or ~~602~~ 6550 et seq. or 5300 et seq.

- (h) The presiding judge of the juvenile court; the County Probation Department; the County Mental Health Department; the Public Defender and/or other entity that provides representation for minors; the District Attorney; the regional center, if appropriate; and any other participants the presiding judge shall designate shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

Appendix E: Discharge plan

Sample Jail/Prison Discharge and Community Re-entry Plan (J/PDCRP)

Client Name _____

Contact Information _____

Family/others contact information : *Provide names contact information for family other key support persons*

• _____

Staff/Person Completing the Initial J/PDCRP:

Name: _____ Title: _____

Agency: _____

1. Community Supervision

Judicial Supervision: Judge/Court: _____

Probation/Parole program

Supervising Agent Name/unit: _____

Phone & e mail contact : _____

After hours/emergency contact: _____

Community Supervision Plan

Pre-release contact with Supervising Agent?

Describe _____

Anticipated type/frequency of contact post-release

• Within 72 hours post-release: _____

• First 30 days post-release: _____

• First supervision appointment:

Date: _____ Time: _____

Location: _____

2. Post Release Housing/living Arrangement

Address: _____

Phone: _____

Type of housing/facility:

Temporary Shelter

Family Residence

Other

Supervised/Treatment Facility

Independent

Staff contact if supervised housing: _____

3. Transportation *Describe immediate post-release transportation needs/arrangements*

4. Benefits: *Describe financial/health benefit status*

• Income/financial: _____

• Health Coverage: _____

Plan for applying for or reinstating health care and other benefits: _____

5. Community Services Plan

Services Coordinator name/agency: _____

Phone & e mail contact: _____

After hours/emergency contact: _____

Services Coordination and Plan

Has Services Coordinator met with offender? Yes No

Immediate post-release Services Coordination Plan: _____

Medications & Psychiatry follow-up

Medications:

of days of medications provided: _____

Prescription(s) to be filled by date: _____

Name/location of pharmacy: _____

List of current medications and directions attached: Yes No

Services Plan: mental health, substance abuse treatment and other services (Include peer recovery, support groups, etc.) Describe: _____

Psychiatry:

Name of Provider: _____

Appointment date: _____ Contact information: _____

Other services: (service, program location, appointment information)

- _____
- _____

Daily activity (Employment, job training, school, etc.) Describe: _____

Healthcare (Indicate any known health care providers and needs for follow-up referrals and appointments)

- _____
- _____

6. Recovery Plan: Strengths, Triggers for relapse, Actions to Address Triggers

Strengths:

- _____
- _____

Triggers--Indicators of risk of relapse/crisis:

- _____
- _____

Actions to Address Triggers:

- _____
- _____

Other needs: Indicate if the individual has needs or requires additional support re: family/parenting role, etc. Describe: _____

Staff/Person(s) Completing the Final J/PDCRP

Name: _____ Agency: _____

Signature: _____ Date: _____

Individual to be Released

Name: _____

I have discussed and agree with this plan for my release: Yes No

I have discussed this plan: (comment): : _____

Signature : _____ Date: _____

Appendix F: Sample Protocols and Mental Health Courts

California Rule of Court 10.951 (c), (d)

(c) Mental health case protocols

The presiding judge, supervising judge, or other designated judge, in conjunction with the justice partners designated in rule 10.952, is encouraged to develop local protocols for cases involving offenders with mental illness or co-occurring disorders to ensure early identification of and appropriate treatment for offenders with mental illness or co-occurring disorders with the goals of reducing recidivism, responding to public safety concerns, and providing better outcomes for those offenders while using resources responsibly and reducing costs.

(d) Additional judges

To the extent that the business of the court requires, the presiding judge may designate additional judges under the direction of the supervising judge to perform the duties specified in this rule.

(Subd (d) relettered effective January 1, 2014; adopted as subd (c).)

Rule 10.951 amended effective January 1, 2014; adopted as rule 227.2 effective January 1, 1985; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2008.

Rule 10.952. Meetings concerning the criminal court system

The supervising judge or, if none, the presiding judge must designate judges of the court to attend regular meetings to be held with the district attorney; public defender; representatives of the local bar, probation department, parole office, sheriff department, police departments, and Forensic Conditional Release Program (CONREP); county mental health director or his or her designee; county alcohol and drug programs director or his or her designee; court personnel; and other interested persons to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern. Rule 10.952 amended effective January 1, 2015; adopted as rule 227.8 effective January 1, 1985; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 2014.

Mental Health Protocols for California Courts A Guide for Implementing California Rule of Court 10.951 (c), (d) and 10.952

These Rules of Court not only make it clear that judges have the responsibility for the oversight and placement of individuals with mental illness who appear in their courts but also provide a mechanism for assisting judges with this responsibility. When bringing together the criminal justice and behavioral health partners noted in Rule of Court 10.952, California courts have the opportunity to address the issue of offenders with mental illness in the criminal justice system. Although only 5.7 percent of the general population has a serious mental illness,⁶² 14.5 percent of male and 31 percent of female jail inmates have a serious mental illness.⁶³ Similar to jail populations, approximately 23 percent of California's prison inmates have a serious mental illness.⁶⁴ It is noted that inmates with serious mental illness often need the most resources and can be the most challenging to serve while incarcerated.⁶⁵

Of special concern to the courts is the fact that persons with mental illness are also overrepresented in the courtroom. One study found that 31 percent of arraigned defendants met criteria for a psychiatric diagnosis at some point in their lives, and 18.5 percent had a current diagnosis of serious mental illness.⁶⁶ In many instances, the traditional adversarial approach is ineffective when processing cases in which the defendant has a mental illness. Connecting the defendant to mental health treatment and support services is often essential to changing behavior and reducing recidivism. This, in turn, may require courts to adopt new collaborative approaches to work more closely with criminal justice partners and other community agencies in order to improve outcomes for offenders with mental illness.

⁶² Ronald Kessler, Wai Tat Chiu, Olga Demler, and Ellen Walters, "Prevalence, severity, and comorbidity of twelve-month DSM-IV disorders in the National Comorbidity Survey Replication (NCS-R)," *Archives of General Psychiatry* 62(6) (2005), pp. 617–627.

⁶³ Henry J. Steadman, Fred C. Osher, Pamela C. Robbins, Brian Case, and Steven Samuels, "Prevalence of Serious Mental Illness among Jail Inmates," *Psychiatric Services* 60 (2009), pp. 761–765.

⁶⁴ Division of Correctional Health Care Services, California Department of Corrections and Rehabilitation, May 24, 2009 e-mail correspondence.

⁶⁵ Treatment Advocacy Center and the National Sheriffs' Association, *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States* (May 2010).

⁶⁶ Nahama Broner, Stacy Lamon, Damon Mayrl, and Martin Karopkin, "Arrested Adults Awaiting Arraignment: Mental Health, Substance Abuse, and Criminal Justice Characteristics and Needs," *30 Fordham Urban Law Review* 663-721 (2002–2003).

This Guide for Implementing California Rule of Court 10.951(c) and 10.952 has been designed by the members of the Mental Health Issues Implementation Task Force to assist presiding and supervising judges of the criminal divisions of California courts in developing local guidelines and protocols for responding to the challenges posed by individuals with mental illness who appear as defendants in criminal courts statewide. This Guide was inspired by recommendations of the Task Force for Criminal Justice Collaboration on Mental Health Issues presented to the Judicial Council in April 2011.

Key Steps in Developing Local Protocols

During the regularly scheduled meetings with criminal justice and mental/behavioral health partners, discuss the following issues:

1. Do custodial officers who oversees prisoners with mental illness ~~mentally ill prisoners~~ in the jail have Crisis Intervention Training (CIT)? How are prisoners with mental illness treated in jail? Are they segregated or put the general population? Is there a special treatment unit in the jail? Have any particular problems been noted when dealing with prisoners with mental illness in the jail? Are prisoners with mental illness receiving their usual medications while in jail (if taking medication on a regular basis)? Are offenders who are mentally ill and in custody being given a supply of medication(s) upon release from jail? Are they given a prescription for medication(s)? Where is the nearest pharmacy that will fill this prescription and when is it accessible? Is it near public transportation? Is there continuity of care for both medical and mental health services including medications once released from jail? Who is responsible for following up to confirm adherence to the discharge/continuity of care plan? Who oversees the discharge/continuity of care plan and updates it as necessary?
2. Does the probation department take into account an offender's mental illness when making disposition recommendations? *If yes, please answer the following questions.*
 - What training is given to probation officers who supervise individuals with mental illness, so that those offenders are not placed on unreasonable terms of probation?
 - Are probationers with mental illness being "violated" based on terms and conditions of probation that are unreasonable given their illness? ("Unreasonable" being defined as terms that an offender with mental illness cannot satisfy)?
3. Does this county/court have a problem with admission of incompetent defendants to the Department of State Hospitals for restoration to competency services? *If yes, please answer the following questions.*
 - How long does an incompetent defendant wait to be transported to the state hospital for treatment to restore competence?
 - Is there a way to expedite the transportation of the incompetent to stand trial to the state hospitals?
 - Does your court address delays in the same way across the board/in every location? If not, why not?
 - Is there an option for developing local competency restoration programs?
 - Does the jail or some local mental health agency in your county prepare a discharge plan for those defendants who are released from custody after being found not restorable to competency?
 - Is there a protocol in your county by which the Public Guardian is advised of those defendants who may be suitable for LPS proceedings?

4. What training are your judges getting with respect to resources in the community as options for sentencing or conditions of diversion?
5. Once issues in your county are identified, a schedule for continuing review should be established: i.e. monthly or bi-monthly meetings, written reports, annual audits, etc. In addition, judges and criminal justice and mental health partners should maintain a current list of community based organizations (CBOs) available in your community to provide services to persons with mental illness or co-occurring disorders. Additional questions: Who maintains the list? To whom is the list distributed? How frequently is it updated? Does the presiding judge of supervising judge of the criminal division of the court have access to this list and is he/she on the distribution list for updated information?
6. Other: you may find your county's collaborative partners may have other questions as you work together to fashion a local response for addressing the needs of persons with mental illness in the criminal justice system or at high risk of recidivism.

Mental Health Courts⁶⁷

Once concerns and issues have been identified addressing challenges related to offenders with mental illness in the criminal court system, many courts and local criminal justice and mental/behavioral health partners have worked together to develop and implement mental/behavioral health courts for both misdemeanants and felons addressing issues related to recidivism reduction and improving overall outcomes for offenders with mental illness. In some instances, defendants in criminal court may also be involved in other court case types, including cases in family and dependency courts, and improved outcomes in the criminal court may favorably impact outcomes in other court case types as well.

Key Steps and Planning Process

Planning is key to developing a successful justice system response to the problems that often result in recidivism and treatment failure. Many courts find that they can build upon the success of pre-existing collaborative courts, including drug and/or veterans' courts, while others find that they can build upon other types of local collaborative partnerships. Key steps in planning effective and evidence based responses to the problem are outlined below.

1. Develop a core mission and goal statement. Goals need to be practical, specific, and measurable.

Goals may include reducing the number of jail bed days, reducing occurrence or frequency of new offenses, reducing psychiatric inpatient bed days, reducing days of homelessness or life on the streets, increasing treatment compliance, achieving a more consistent level of sobriety (if applicable), increasing pro-social activities, and resolving outstanding legal issues.

2. Define team member roles.

Teams typically are comprised of the judge, mental/behavioral court coordinator, mental health forensic supervisor, case manager(s), court probation officer(s), court district attorney, court defense counsel, county sheriff's office, and community treatment provider(s). Each team member has a specific role and responsibilities to the individual participant and to the team.

3. Develop participant eligibility requirements.

These might include all or some of the following: the type of diagnosis, impairment levels, eligibility to have an assigned case manager, receiving psychiatric treatment and medication for his/her disorder, eligibility for

⁶⁷ This guide for addressing the needs of offenders with mental illness in the courts is based on the Behavioral Health Court design developed by the Superior Court of California, County of Santa Cruz with additional input from the members of the Judicial Council's Mental Health Issues Implementation Task Force in September 2015.

county Medi-Cal (or other insurance), and being subject to formal probation terms. Although clients/participants must meet all or most of the diagnostic, functional, and criminal justice requirements, participation is voluntary.

4. *Develop and outline referral process guidelines.*

Develop or approve forms for mental/behavioral health court use including the following: Consent for Release of Confidential Information, Treatment Plan Form, Jail Discharge Form, Probation Discharge Form, and other certificates/forms/documents that may assist in the processing of referrals, intake, or discharge.

5. *Address confidentiality and information sharing issues.*

Determine how information will be shared among team members and for what purposes. Identify information that cannot or should not be expected to be shared.

6. *Develop standard terms of probation.*

While conditions of probation may vary, the mental/behavioral court should develop some standard probation terms that apply in most cases. These standard probation terms might include complying with county mental health directives (program placement, approved house, work programs, support groups, and counseling).

Other directives might include medication adherence, abstaining from alcohol, intoxicants/controlled substances not prescribed by a medical doctor; submitting to regular testing for alcohol, intoxicants/ controlled substances; submitting to search and seizure of person, residence, vehicle, and other areas under the client's domain without a warrant (including weapons if appropriate and determined by sentencing); signing a release of information/release of confidentiality.

7. *Develop client requirements.*

Client requirements often include permission to share protected client information for use by mental/behavioral court team members. Generally, clients are subject to program requirements, including adherence to mental health treatment recommendations, adherence to taking all psychotropic medications as prescribed, participation in residential treatment if recommended, compliance with drug and alcohol testing if appropriate, following all terms of probation, attending mental/behavioral health court as directed, fulfilling any community service requirements, and providing proof of treatment compliance as requested (proof of attendance, group sign-off sheets, etc.).

8. *Outline team decision process and expectations.*

Team members may meet weekly, bi-weekly, or monthly depending on the size of the program and, typically, will receive the treatment plan with updates noting progress or concerns for each participant when on the calendar. Ideally this team meeting is in person, but some courts handle this successfully through teleconference and/or videoconference meetings. The team decision-making process takes into consideration clinical needs while keeping community safety and victims' rights as a priority. Team decision-making approaches are typically collaborative and treatment oriented.

9. *Develop treatment plan templates and expectations for completion.*

Treatment plan templates and an outline of commonly agreed upon expectations will be useful to clinical and probation staff preparing for team staffing meetings to discuss each participant's progress or areas of clinical/probation concern.

10. *Develop commonly understood and agreed upon incentives and sanctions.*

Incentives might include verbal praise from the court, gift cards, applause, less restrictive treatment recommendations, reduced frequency of court appearance, randomized incentives/prizes, certificates of completion, and graduation. In some jurisdictions, the court may suspend, reduce, or convert fines and fees

based on individual participation in the program. Support may be available for individualized pro-social activities or employment and community service hours may be used as a means of paying off court ordered fines and fees.

Sanctions may include verbal reprimands from the court, more restrictive treatment recommendations, increased frequency of court appearances, drug testing, bench warrants, short-term remands, or termination from the mental/behavioral court and return to regular criminal court.

11. *Develop a plan for responding to violations of probation.*

Allegations of probation violations are typically presented to the court as well as to counsel in written form along with written recommendations regarding the violation(s) and impact on the defendant's ability to continue participation in the program. The report also typically includes recommendations for the next steps in handling the defendant's case.

12. *Develop Completion/Graduation Criteria.*

Typically a participant becomes eligible to graduate if he/she complies with his/her probation terms for the designated term and achieves his/her rehabilitative goals. The length of mental/behavioral court participation may vary depending on the term of probation, each individual's program needs and his/her ability to adhere to the treatment plans as well as his/her ability to achieve rehabilitative goals. Consideration for early termination may arise based on the participant's commitment and success in treatment and his/her ongoing needs.

13. *Develop termination protocols.*

Participation in mental/behavioral health court is voluntary, and the defendant may terminate his/her participation at any time. Typically, defendants who choose to terminate participation will have his/her case transitioned back to the department where the case originated. Termination may also be triggered by allegations of a new crime.

14. *Identify additional resources that may be required.*

Additional resources may be needed by the team, including lists of assessment/treatment services for individuals who are in custody or out of custody. Information cards for all team members should be created and updated as needed.

Appendix G: 2015 Counties with Collaborative Courts

California Counties with Collaborative Justice Courts as of October, 2015*

*California has more than 390 collaborative justice courts in 53 of its 58 counties. Collaborative justice courts are defined as those that have a dedicated calendar and judge and use a collaborative justice model (i.e., drug court model) that combines judicial supervision with social and treatment services to offenders in lieu of detention, jail, or prison. This includes using a multidisciplinary, nonadversarial team approach with involvement from justice system representatives, treatment providers, and other stakeholders. Data have been voluntarily provided by the courts in an ongoing effort to maintain a roster of all collaborative justice courts in California. This chart provides information on select collaborative justice courts that meet the above definition of collaborative justice court; not all court types may be represented here. There may be multiple courts of the same type within one county.

<u>Superior Court of California, County of</u>	<u>COMMUNITY</u>	<u>DRUG - ADULT</u>	<u>DRUG - JUVENILE DELINQUENCY</u>	<u>DRUG - DEPENDENCY</u>	<u>DUI</u>	<u>ELDER</u>	<u>HOMELESS</u>	<u>MENTAL HEALTH - ADULT</u>	<u>MENTAL HEALTH - JUVENILE</u>	<u>REENTRY</u>	<u>STAND-DOWN</u>	<u>TRUANCY</u>	<u>VETERANS</u>	<u>YOUTH/PEER</u>
Alameda		X		X		X	X	X	X	X	X	X	X	X
Alpine														
Amador		X												X
Butte		X		X	X									X
Calaveras		X											X	
Colusa														
Contra Costa		X				X	X	X		X				
Del Norte		X												
El Dorado		X	X	X	X			X					X	X
Fresno		X	X	X		X		X	X		X			X
Glenn		X	X											
Humboldt		X					X		X					X
Imperial														
Inyo		X												
Kern		X					X	X						
Kings		X											X	
Lake			X	X									X	
Lassen		X												X
Los Angeles	X	X	X	X			X			X			X	X
Madera		X												
Marin	X	X	X					X						X
Mariposa		X												
Mendocino		X	X	X										X
Merced		X	X	X				X						

