



Judicial Council of California · Administrative Office of the Courts

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title	Agenda Item Type
Juvenile Law: Minor Changes for Statutory Compliance	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.695, 5.710, 5.715, 5.720, and 5.805	January 1, 2014
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 3, 2013
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Kimberly J. Nystrom-Geist, Cochair	Tracy Kenny, 916-263-2838 tracy.kenny@jud.ca.gov

Executive Summary

Following legislation enacted in 2012, the Family and Juvenile Law Advisory Committee recommends amending various juvenile law–related rules to ensure that the California Rules of Court accurately and comprehensively reflect the current state of the law. Specifically, code amendments in Senate Bill 1064 and Assembly Bill 324 have prompted this recommendation of updates to rules 5.695, 5.710, 5.715, 5.720, and 5.805 to reflect the changes.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2014, amend the following California Rules of Court:

1. Rule 5.695 (Findings and orders of the court—disposition), to include parents or guardians who are detained by the Department of Homeland Security (DHS) or have been deported to their country of origin among those parents who are entitled, with some exceptions, to receive reunification services to reflect the changes made by SB 1064 (Stats. 2012, ch. 845).

2. Rule 5.710 (Six-month review hearing), to include parents who are detained by DHS or have been deported to their country of origin among those parents for whom the court must consider any particular barriers to maintaining contact with their children to reflect the changes made by SB 1064.
3. Rule 5.715 (Twelve-month permanency hearing), to state that parents who have been arrested and issued an immigration hold, detained by DHS, or deported to their country of origin are entitled to consideration of their special circumstances when the court is determining whether reunification services may be extended to 18 months to reflect the changes made by SB 1064.
4. Rule 5.720 (Eighteen-month permanency review hearing), to state that the court may extend reunification services for up to 24 months for parents recently discharged from DHS custody to reflect the changes made by SB 1064.
5. Rule 5.805 (California Department of Corrections and Rehabilitation, Division of Juvenile Justice, commitments), to reconcile the commitment criteria for the Division of Juvenile Facilities (DJF) with the changes made by AB 324 (Stats. 2012, ch. 7).

The proposed text of the amended rules is attached at pages 5–9.

Previous Council Action

Rule 5.695, on findings and orders at the dispositional phase of a dependency matter, was adopted by the Judicial Council as rule 1456, effective January 1, 1991, and has been amended numerous times. The most recent amendments were effective January 1, 2011, to implement statutory changes requiring the child welfare agency to identify and notify relatives of the child.

Rule 5.710, on procedures for six-month review hearings in dependency matters, was adopted by the Judicial Council as rule 1460, effective January 1, 1990, and has been amended numerous times. The most recent amendments were effective January 1, 2011, to implement statutory changes regarding extension of reunification services for parents who are institutionalized or incarcerated.

Rule 5.715, on procedures for 12-month permanency review hearings in dependency matters, was adopted by the Judicial Council as rule 1461, effective January 1, 1990, and has been amended numerous times. The most recent amendments were effective July 1, 2010, to implement statutory changes regarding extension of reunification services for parents who are institutionalized or incarcerated.

Rule 5.720, on procedures for 18-month permanency review hearings in dependency matters, was adopted by the Judicial Council as rule 1462, effective January 1, 1990, and has been amended numerous times. The most recent amendments were effective July 1, 2010, to

implement statutory changes regarding extension of reunification services for parents who are institutionalized or incarcerated.

Rule 5.805, on commitments to the Department of Juvenile Justice, was adopted by the Judicial Council as rule 1494.5, effective January 1, 2003, and has been amended twice. The most recent amendments were effective January 1, 2007, to renumber the rule and implement statutory changes on eligible commitments to the department.

Rationale for Recommendation

Each of the rule amendments in this proposal is necessary to conform existing rules of court to recently enacted statutory changes in juvenile law. The rationale for these changes is discussed below, by chaptered bill.

Rule changes needed to incorporate changes in statute enacted by AB 324

AB 324 sought to clarify the criteria for a juvenile ward to be committed to DJF in light of the decision of the California Supreme Court in *In re C.H.*, 53 Cal.4th 94 (2011), which held that wards adjudicated delinquent for sex offenses that are subject to registration under Penal Code section 290.008(c) and who were not adjudicated for an offense listed in Welfare and Institutions Code section 707(b) were ineligible for commitment to DJF. Assembly Bill 324 revised Welfare and Institutions Code sections 731 and 733 to make explicit that juvenile courts may commit wards adjudicated for either a 707(b) offense or an offense subject to registration under section 290.008(c). Because AB 324 has expanded the offenses for which a ward may be committed to DJF, rule 5.805 must be amended to reflect that the court must specify in its order that the offense is one that is either listed in Welfare and Institutions Code section 707(b) or described in Penal Code section 290.008(c). To implement this clarification, rule 5.805 would be amended to require the court to specify either a 707(b) or a Penal Code section 290.008 offense when making the commitment.

Rule changes needed to incorporate changes in statute enacted by SB 1064

In 2008, legislation (Assem. Bill 2070 [Bass]; Stats. 2008, ch. 482) was enacted that provides the court with additional discretion to extend reunification services for parents who are incarcerated or institutionalized, in light of the barriers they face in maintaining contact with their children and obtaining court-ordered reunification services. This legislation requires the court to consider those barriers when determining whether services should continue. In 2012, SB 1064 extended those protections to parents who are detained by DHS or who have been deported. Thus, the court must now consider the barriers faced by immigrant parents who are in detention or have been deported in the same manner that they consider them for incarcerated or institutionalized parents. Each of the rules governing the conduct of permanency review hearings in dependency matters must be amended to include the additional provisions, as well as the rule stating the required findings and orders of the court in those hearings. The rules proposed to be amended to made them consistent with these statutory changes are 5.695, 5.710, 5.715, and 5.720.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2013 invitation-to-comment cycle, from April 19 to June 19, 2013, to the standard mailing list for family and juvenile law proposals.¹ 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. Four comments were received on this proposal, all agreeing with the proposal without need for modification. A chart with the full text of the comments received is attached at page 10. Based on these comments, the committee recommends adopting this proposal as circulated.

The committee did consider making a change to the *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732), item 6, to implement the expanded commitment criteria for DJF but determined that the existing form can accommodate the expanded criteria without modification because it provides space for the court to list the code section for which the ward was adjudicated and committed. Given the operational impacts of form changes and the current suitability of the form, the committee preferred to make no revisions to expressly reflect the changes made by AB 324. This preference, coupled with the fact that no commentators suggested revising the form, led the committee to propose no revisions to the form at this time.

Implementation Requirements, Costs, and Operational Impacts

This proposal will result in no new costs to the courts because all of the proposed rule amendments reflect current statutory requirements enacted by recent legislation. Updating the rules will benefit the courts by ensuring that the branch and other juvenile court stakeholders are aware of the requirements of the recently enacted legislation and are in full compliance with them.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal promotes two strategic plan goals. First, Goal II, Independence and Accountability, is furthered by providing judicial officers with up-to-date rules that reflect the current requirements of state law as it pertains to juvenile court proceedings. Second, by providing consistent and accurate procedures to meet the needs of the youth subject to the jurisdiction of the juvenile court, it furthers Goal IV, Quality of Justice and Service to the Public.

Attachments

1. Cal. Rules of Court, rules 5.695, 5.710, 5.715, 5.720, and 5.805, at pages 5–9
2. Chart of comments, at page 10

¹ When this proposal was originally circulated for comment it included changes to rule 5.570 to incorporate statutory changes made by SB 1425 (Stats. 2012, ch. 179). Because the committee's report on rules and form changes pertaining to Juvenile Law: Extended Foster Care also recommends amendments to that rule, the changes to rule 5.570 made by SB 1425 are discussed and presented in that report.

Rules 5.695, 5.710, 5.715, 5.720, and 5.805 of the California Rules of Court are amended, effective January 1, 2014, to read:

1 **Rule 5.695. Findings and orders of the court—disposition**

2
3 (a)–(g) * * *

4
5 **(h) Provision of reunification services (§ 361.5)**

6
7 (1)–(12) * * *

8
9 (13) If the mother, statutorily presumed father, or guardian is institutionalized, ~~or~~
10 incarcerated, or detained by the United States Department of Homeland
11 Security, or has been deported to his or her country of origin, the court must
12 order reunification services unless it finds by clear and convincing evidence
13 that the services would be detrimental to the child, with consideration of the
14 factors in section 361.5(e). The court may order reunification services with an
15 institutionalized, ~~or~~ incarcerated, detained, or deported biological father
16 whose paternity has been declared by the juvenile court or another court of
17 competent jurisdiction, if the court determines that such services would
18 benefit the child, with consideration of the factors in section 361.5(e).

19
20 (14)–(19) * * *

21
22
23 (i)–(l) * * *

24
25
26 **Rule 5.710. Six-month review hearing**

27
28 (a)–(b) * * *

29
30 **(c) Setting a section 366.26 hearing (§§ 366.21, 366.215)**

31
32 (1) The court may set a hearing under section 366.26 within 120 days if:

33
34 (A)–(C) * * *

35
36 (D) The child was under the age of three when initially removed, or a
37 member of a sibling group described in section 361.5(a)(1)(C), and the
38 court finds by clear and convincing evidence that the parent has failed
39 to participate regularly and make substantive progress in any court-
40 ordered treatment plan. If, however, the court finds a substantial
41 probability that the child may be returned within 6 months or within 12
42 months of the date the child entered foster care, whichever is sooner, or

1 that reasonable services have not been offered or provided, the court
2 must continue the case to the 12-month permanency hearing.
3

- 4 (i) In order to find a substantial probability that the child may be
5 returned within the applicable time period, the court should
6 consider the following factors along with any other relevant
7 evidence:
8
- 9 a. Whether the parent or legal guardian has consistently and
10 regularly contacted and visited the child
 - 11
 - 12 b. Whether the parent or legal guardian has made significant
13 progress in resolving the problems that led to the removal
14 of the child; and
 - 15
 - 16 c. Whether the parent or legal guardian has demonstrated the
17 capacity and ability to complete the objectives of the
18 treatment plan and to provide for the child's safety,
19 protection, physical and emotional health, and special
20 needs.
21
- 22 (ii) The court, in determining whether court-ordered services may be
23 extended to the 12-month point, must take into account any
24 particular barriers to a parent's ability to maintain contact with
25 his or her child due to the parent's incarceration, ~~or~~
26 institutionalization, detention by the United States Department of
27 Homeland Security, or deportation. The court may also consider,
28 among other factors, whether the incarcerated, ~~or~~
29 institutionalized, detained, or deported parent has made good
30 faith efforts to maintain contact with the child and whether there
31 are any other barriers to the parent's access to services.
32

33 (2) * * *

34
35 (d) * * *

36
37
38 **Rule 5.715. Twelve-month permanency hearing**

39
40 (a) * * *

41
42 (b) **Determinations and conduct of hearing (§§ 361.5, 366, 366.1, 366.21)**
43

1 At the hearing, the court and all parties must comply with all relevant requirements
2 and procedures in rule 5.708, General review hearing requirements. The court must
3 make all appropriate findings and orders specified in rule 5.708 and proceed as
4 follows:

5
6 (1)–(3) * * *

7
8 (4) If the court does not order return of the child to the parent or legal guardian
9 and the time period for providing court-ordered services has been met or
10 exceeded, as provided in section 361.5(a)(1), the court must specify the
11 factual basis for its finding of risk of detriment to the child and proceed as
12 follows in selecting a permanent plan:

13
14 (A) If the court finds that there is a substantial probability that the child will
15 be returned within 18 months or that reasonable services have not been
16 offered or provided, the court must continue the case for a permanency
17 review hearing to a date not later than 18 months from the date of the
18 initial removal. If the court continues the case for an 18-month
19 permanency review hearing, the court must inform the parent or legal
20 guardian that if the child cannot be returned home by the next hearing,
21 a proceeding under section 366.26 may be instituted.

22
23 (i) In order to find a substantial probability that the child will be
24 returned within the 18-month period, the court must find all of
25 the following:

- 26
27 a. The parent or legal guardian has consistently and regularly
28 contacted and visited the child;
29
30 b. The parent or legal guardian has made significant progress
31 in resolving the problems that led to the removal of the
32 child; and
33
34 c. The parent or legal guardian has demonstrated the capacity
35 and ability to complete the objectives of the treatment plan
36 and to provide for the child's safety, protection, physical
37 and emotional health, and special needs.

38
39 (ii) In determining whether court-ordered services may be extended
40 to the 18-month point, the court must consider the special
41 circumstances of a parent or legal guardian who is incarcerated,
42 institutionalized or court-ordered to a residential substance abuse
43 treatment program, or arrested and issued an immigration hold,

1 detained by the United States Department of Homeland Security,
2 or deported to his or her country of origin, including, but not
3 limited to, barriers to the parent’s or legal guardian’s access to
4 services and ability to maintain contact with his or her child. The
5 court must also consider, among other factors, good faith efforts
6 that the parent or legal guardian has made to maintain contact
7 with the child.
8

9 (B)–(C) * * *

10
11
12 **Rule 5.720. Eighteen-month permanency review hearing**
13

14 (a) * * *

15
16 (b) **Determinations and conduct of hearing (§§ 361.5, 366.22)**
17

18 At the hearing the court and all parties must comply with all relevant requirements
19 and procedures in rule 5.708, General review hearing requirements. The court must
20 make all appropriate findings and orders specified in rule 5.708 and proceed as
21 follows:
22

23 (1)–(2) * * *

24
25 (3) If the court does not order return of the child to the custody of the parent or
26 legal guardian, the court must specify the factual basis for its finding of risk
27 of detriment and do one of the following:
28

29 (A) Continue the case for a subsequent permanency review hearing not
30 later than 24 months from the date of the initial removal if the court
31 finds that there is a substantial probability that the child will be
32 returned within that time or that reasonable services have not been
33 offered or provided. To extend services to the 24-month point, the court
34 must also find by clear and convincing evidence that additional
35 reunification services are in the best interest of the child and that the
36 parent or legal guardian is making significant and consistent progress in
37 a substance abuse treatment program, or a parent is recently discharged
38 from incarceration, ~~or~~ institutionalization, or the custody of the United
39 States Department of Homeland Security, and making significant and
40 consistent progress in establishing a safe home for the child’s return.
41 The court must also inform the parent or legal guardian that, if the child
42 cannot be returned home by the subsequent permanency review
43 hearing, a hearing under section 366.26 may be instituted.

1
2 In order to find a substantial probability that the child will be returned
3 within the 24-month period, the court must find all of the following:
4

- 5 (i) The parent or legal guardian has consistently and regularly
6 contacted and visited the child;
7
8 (ii) The parent or legal guardian has made significant and consistent
9 progress in the prior 18 months in resolving the problems that led
10 to the removal of the child; and
11
12 (iii) The parent or legal guardian has demonstrated the capacity and
13 ability both to complete the objectives of his or her substance
14 abuse treatment plan as evidenced by reports from a substance
15 abuse provider, as applicable, or to complete a treatment plan
16 postdischarge from incarceration, ~~or~~ institutionalization, or
17 detention or following deportation to his or her country of origin
18 or his or her return to the United States, and to provide for the
19 child's safety, protection, physical and emotional health, and
20 special needs.
21

22 (B)–(C) * * *

23
24 (4) * * *
25
26

27 **Rule 5.805. California Department of Corrections and Rehabilitation, Division of**
28 **Juvenile Justice, commitments**
29

30 If the court orders the youth committed to the California Department of Corrections and
31 Rehabilitation, Division of Juvenile Justice (DJJ):
32

33 (1) The court must complete Commitment to the California Department of Corrections
34 and Rehabilitation, Division of Juvenile Justice (form JV-732).
35

36 (2) The court must specify whether the offense is one listed in section 707(b) or
37 subdivision (c) of Penal Code section 290.008.
38

39 (3)–(5) * * *
40
41

SPR13-27

Juvenile Law: Minor Changes for Statutory Compliance (Amend Cal. Rules of Court, rules 5.570, 5.695, 5.710, 5.715, 5.720, and 5.805)

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

	Commentator	Position	Comment	Committee Response
1.	Los Angeles County Counsel's Office Jim Owens Asst. County Counsel	A	The changed rules are consistent with the legislative amendments to the Welfare and Institutions Code.	No response required
2.	Orange County Bar Association Wayne R. Gross President	A	No specific comments received.	No response required
3.	Superior Court of San Diego County Michael Roddy Executive Officer	A	No specific comments received.	No response required
4.	Superior Court of Tulare County	A	In agreement with the proposed updated policies and Judicial Counsel forms. This would ensure the most updated information is being utilized by the agency and County Clerk.	No response required