



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 24, 2018

Title	Agenda Item Type
Juvenile Law: Presumptive Transfer of Specialty Mental Health Services	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 5.647; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber JV-215 as JV-212	September 1, 2018
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	May 11, 2018
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Daniel Richardson, 415-865-7619 Daniel.richardson@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee proposes the adoption of one statewide rule and four juvenile law (JV) forms, including an information sheet. The rule and forms implement a procedural framework and are intended to provide procedural clarity for a juvenile court review hearing created by recent legislation involving foster children's access to specialty mental health services under federal early and periodic screening, diagnosis and treatment services. The committee also recommends renumbering a JV form to keep the JV forms related to this proposal in sequential order with other JV forms related to mental health treatment for foster children, including the administration of a foster child's psychotropic medications.

Recommendation

The Family and Juvenile Law Advisory committee recommends that the Judicial Council, effective September 1, 2018:

1. Adopt the following rule and forms:

- Rule 5.647 of the California Rules of Court;
 - *Request for Hearing on Waiver of Presumptive Transfer* (form JV-214);
 - *Notice of and Order on Request for Hearing on Waiver of Presumptive Transfer* (form JV-214(A));
 - *Instructions for Requesting a Hearing to Review Waiver of Presumptive Transfer of Specialty Mental Health Services* (form JV-214-INFO); and
 - *Order After Hearing on Waiver of Presumptive Transfer* (form JV-215); and
2. Renumber *Application to Review Decision by Social Worker Not to Commence Proceedings* from JV-215 to JV-212.

The text of the proposed rule and the new forms are attached at pages 14-26.

Relevant Previous Council Action

Because the proposal addresses the creation of procedures related to new legislation, the council has never before taken action related to this proposal.

Analysis/Rationale

When a foster child or nonminor is moved to a different county, the responsibility for providing and arranging for specialty mental health services (SMHS) is presumptively transferred to the new county unless certain exceptions apply. Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603) gives certain individuals the right to request a hearing to challenge a placing agency's determination regarding whether an exception applies to presumptive transfer. This proposal is in response to AB 1299. SMHS jurisdiction is to be presumptively transferred to the county of residence, unless an exception listed under Welfare and Institutions Code section 14717.1(d)(5)(A)–(D) applies.¹ Certain individuals may request that presumptive transfer be waived based on an exception. The placing agency is responsible for determining whether an exception to presumptive transfer applies. The placing agency's determination may be challenged by the person who requested the waiver and any party to the case, who may petition the juvenile court for judicial review of the placing agency's decision.

The procedures related to this judicial review are the focus of this proposal and the proposed new rule of court and JV forms. The process related to presumptive transfer is often noted for being complicated, and stakeholders involved in its implementation requested that the Judicial Council explore the creation of a rule of court to aid participants and the courts when a hearing is considered. A rule of court addressing a procedural framework for these hearings will therefore benefit courts statewide, in addition to the participants in the presumptive transfer process. The committee proposes the creation of the rule of court and the four Judicial Council forms to create a procedural framework for the holding and conducting of the hearing related to AB 1299.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

In addition, the committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* from JV-215 to JV-212. Doing so will ensure that the forms addressed in this proposal will be in sequential order with forms related to the administration of a foster child's psychotropic medications.²

Presumptive transfer, exceptions, and review hearing

Assembly Bill 1299 created section 14717.1 to address lengthy delays or denials in accessing mental health services for children placed in an out-of-county³ placement. To overcome barriers to care when the child or nonminor⁴ changes placements, SMHS jurisdiction must presumptively transfer from the county of original jurisdiction to the county of residence unless an exception applies and the mental health plan in the county of original jurisdiction demonstrates an existing contract with a specialty mental health care provider or the ability to enter into a contract within 30 days of the waiver determination.⁵ Section 14717.1(d)(5) provides the four possible exceptions:

- It is determined that the transfer would disrupt continuity of care or delay access to services provided to the foster child.
- It is determined that the transfer would interfere with family reunification efforts documented in the individual case plan.
- The foster child's placement in a county other than the county of original jurisdiction is expected to last less than six months.
- The foster child's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

² *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216); *Guide to Psychotropic Medication Forms* (JV-217-INFO); *Child's Opinion About the Medicine* (form JV-218); *Statement About Medicine Prescribed* (JV-219); *Application for Psychotropic Medication* (JV-220).

³ A placement in a county other than the one in which the child originally entered foster care (i.e., the county of original jurisdiction).

⁴ The committee elected to specify that the rule applies to nonminors as well as children. Section 14717.1 refers to foster children in most places, but (b)(2)(A) and (c)(2) mention foster *youth*. Federal early and periodic screening, diagnosis, and treatment services, the services that are the subject of this proposal, are available to Medicaid beneficiaries under age 21 (42 U.S.C. § 1396d; Cal. Code Regs., tit. 22, § 51340). The committee, therefore, elected to include nonminors in the rule.

⁵ Under section 14717.1, presumptive transfer refers to the transfer of SMHS jurisdiction from the county of *original jurisdiction*. Therefore, any determination of an exception to presumptive transfer will apply to maintaining SMHS jurisdiction in the county of original jurisdiction. This includes the situation where a child or nonminor moves from one out-of-county placement to another. Section 14717.1(c) defines presumptive transfer as "absent any exceptions as established pursuant to this section, responsibility for providing or arranging for specialty mental health services shall promptly transfer *from the county of original jurisdiction* to the county in which the foster child resides..." (italics added). Likewise, section 14717.1(d)(1) states that "presumptive transfer may be waived and the responsibility for the provision of specialty mental health services *shall remain with the county of original jurisdiction* if any of the exceptions described in paragraph (5) exist." (italics added). All County Letter 17-77 also defines presumptive transfer as the "prompt transfer of the responsibility for the provision of, or arranging and payment for SMHS *from the county of original jurisdiction* to the county in which the foster child resides." (p. 2).

The person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor, the county probation agency or child welfare services agency with responsibility for the care and placement of the child or nonminor, or any other interested party who owes a legal duty to the child involving the child's health or welfare, as defined by the department,⁶ may request a waiver of presumptive transfer.⁷ The placing agency, in consultation with the child and family team (CFT),⁸ is responsible for responding to the waiver request and determining whether an exception under section 14717.1(d)(5)(A)–(D) applies. Once this determination is made, the placing agency is responsible for informing the CFT, the person or agency who requested the waiver, and parties to the case of the placing agency's determination.

The individual who requested the waiver, or any party to the case, may request a judicial review of the placing agency's determination before the county's determination becomes final. Under section 14717.1(d)(4), the court may set the matter for hearing and confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child.

Proposed rule and JV forms

This proposal is directed at providing procedural clarity for the court and parties on hearings related to the waiver of presumptive transfer. Proposed rule 5.647 addresses the notice requirements, reporting requirements, and conduct of the hearing. Rule 5.647 would apply to any placement change to an out-of-county placement after the rule's effective date of September 1, 2018. The rule would also apply to those children and nonminors who are placed out of county as of December 31, 2017, continue to reside in an out-of-county placement, and have not had a presumptive transfer determination as required under section 14717.1. The various elements of the proposed rules are highlighted below.

Notice. Proposed rule 5.647 requires the clerk to provide notice of the hearing if a hearing is granted by the court. The committee elected to require notice by the court clerk because certain individuals who can request a hearing may not be able to provide effective notice. Although an attorney or social worker may be well versed on how to provide notice, others—such as a self-represented parent, foster child, or youth, or the person responsible for making mental health decisions on behalf of the child—may not be.

In addition, subdivision (b)(3) requires that the person requesting the hearing also inform the placing agency of that request within seven days of being informed of the placing agency's determination on the application of a waiver to presumptive transfer by providing the placing agency with a copy of form JV-214 requesting a hearing. This requirement was included in the rule to ensure that the administrative process of presumptive transfer does not take place before

⁶ Department of Health Care Services.

⁷ Section 14717.1(d)(2).

⁸ “‘Child and family team’ means 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 or her family, and to help achieve positive outcomes for safety, permanency, and well-being.” (Section 16501(a)(4).)

the court ruling on the request for a hearing or the application of a waiver to presumptive transfer. By being aware of a request for a hearing, the placing agency can ensure that presumptive transfer does not occur before the resolution of the request for a hearing.

Report from the social worker or probation officer. Proposed rule 5.647 requires that the social worker or probation officer prepare a report for the hearing, if one is granted. The committee wanted to ensure that the court had important information available to make an informed decision on how the presumptive transfer determination will affect the child’s or nonminor’s best interests. Subdivision (d) of the proposed rule provides a list of items that must be discussed or documented in the report. These items include a discussion of the placing agency’s rationale for its determination on the request for waiver and the reporting requirements of section 14717.1(d)(7).⁹ In addition, the rule requires that the report document that the child or nonminor, his or her parents if applicable, the child and family team, and others who serve the child or nonminor as appropriate—such as the therapist, mental health care decision maker for the child or nonminor if one has been appointed under section 361(a)(1), and Court Appointed Special Advocate volunteer—were consulted regarding the waiver determination. The rule also requires that the placing agency report that notice on the presumptive transfer determination was provided to the person or agency that requested waiver and all parties to the case.

These items give the court important information it needs to make a best-interests determination on the presumptive transfer and help to provide oversight of the placing agency’s responsibilities during the presumptive transfer process. This information and oversight will help ensure that a well-informed, team-based decision is made on presumptive transfer and that those who are entitled to challenge the placing agency’s determination are given the opportunity to request a hearing.

Ruling on presumptive transfer. Section 14717.1(d)(4) requires that if the court sets the matter for hearing, it may confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child. This point is stated in subdivision (e)(2) of proposed rule 5.647 and in item 9 of proposed form JV-215. Subdivision (e)(3) further requires that the person or agency that requested the waiver of presumptive transfer bear the burden to show that an exception to presumptive transfer is in the best interests of the child or nonminor by a preponderance of the evidence.

Under section 14717.1(d)(6), a waiver based on an exception to a presumptive transfer must be contingent on demonstration by the mental health plan in the county of original jurisdiction of an

⁹ Section 14717.1(d)(7) requires that a request for waiver, the exceptions claimed as the basis for the request, a determination whether a waiver is determined to be appropriate under section 14717.1, and any other objections to the determination be documented in the foster child’s case plan under section 16501.1. The case plan must also document that a waiver processed based on an exception be contingent on demonstration that the mental health plan in the county of original jurisdiction has an existing contract with a specialty mental health care provider, or can enter into a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services (§ 14717.1(d)(6)). Because these reporting requirements apply when a hearing is not granted under this rule, they were not incorporated into the proposed rule as well.

existing contract with a specialty mental health care provider, or the ability to enter into a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child. The court will have to make this determination if it determines that an exception to waiver applies. Information related to the ability of the county of original jurisdiction to contract with a specialty mental health care provider is required by the rule (in subdivision (d)(4)) to be in the report that is provided for the hearing. This finding is also included in proposed form JV-215, item 9.

New Juvenile forms. Four new forms are proposed to facilitate the court process:

Request for Hearing on Waiver of Presumptive Transfer (form JV-214). This form is the application for a hearing to review the placing agency's determination on the presumptive transfer determination. It asks for the requisite information needed by the court to determine whether to grant a hearing, including the placing agency's determination on the request for waiver of presumptive transfer and the reason the person requesting a hearing believes that it would be in the child's or nonminor's best interests to depart from the placing agency's determination. It also includes the applicant's contact information, unless it is confidential, in which case the petitioner would use form JV-287 to provide his or her contact information confidentially.

Notice of and Order on Request for Hearing on Waiver of Presumptive Transfer (form JV-214(A)). This form provides for the court's order granting or denying a hearing. In addition, it can also be used as the notice form by the clerk when a hearing is granted. The form gives the court the option to grant or deny the hearing. When the court is denying the hearing, the form provides a checklist for the court to indicate the reason for the denial.

Instructions for Requesting a Hearing to Review Waiver of Presumptive Transfer of Specialty Mental Health Services (form JV-214-INFO). The committee elected to include an information sheet to accompany the JV form requesting a hearing on presumptive transfer. The information sheet explains presumptive transfer and its exceptions, as well as how to request a hearing.

Order After Hearing on Waiver of Presumptive Transfer (form JV-215). This form is to be used for the court's order on the presumptive transfer determination if a hearing is granted. This form provides the court with the requisite orders needed to confirm or deny the placing agency's presumptive transfer determination. Under section 14717.1(d)(4), the court may confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child.

The committee recommends renumbering *Application to Review Decision by Social Worker Not to Commence Proceedings* (form JV-215) from JV-215 to JV-212. Doing so will ensure that the forms related to this proposal will be in sequential order with forms related mental health treatment such as the administration of a foster child's psychotropic medications.

Policy implications

Before circulating the rules for public comment, the committee determined that to have a meaningful hearing, the court should review the placing agency's responsibilities during the presumptive transfer process to ensure that all who are entitled to request a hearing were given an opportunity to do so. The proposed rules therefore incorporated the administrative requirements as found in the policy guidance issued in All County Letter (ACL) 17-77.¹⁰

The Department of Health Care Services (DHCS) and the California Department of Social Services (CDSS) are responsible for implementing and administering the changes made by AB 1299. Under section 14717.1, they are required to provide policy guidance on the implementation of AB 1299.¹¹ They may implement and administer the changes through all-county letters, information notices, or similar written instructions until regulations are adopted. ACL 17-77 was published in July 2017. It provides a framework for the presumptive transfer process and for the responsibilities of the placing agency during that process. It also includes timelines and notice requirements that the placing agency is required to follow.

After the public comment period, the committee elected to not include a review of these administrative functions in the rule for reasons addressed in the next section.

Comments

Twenty-one comments were received from a variety of commenters. The commenters raised several significant issues, provided feedback on the request for specific comment, and suggested technical revisions.

A large portion of the comments received addressed the inclusion in the rule of a review of the administrative functions of the placing agency during the presumptive transfer process as discussed above. A request for specific comment on this issue was included in the invitation to comment. The request asked whether the rule should include the requirements of the placing agency's responsibilities during the presumptive transfer individualized exception determination, as provided in section 14717.1 and ACL 17-77, and if the court should review these efforts. Eleven comments were received in response. Seven commenters responded that these requirements should be included and three said that they should not be included.

Although many commenters agreed with including this review in the rule, including the Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, several raised concerns. Notably, CDSS stated that the inclusion of these administrative functions creates a separation-of-powers issue because these

¹⁰ See www.cdss.ca.gov/Portals/9/ACL/2017/17-77.pdf?ver=2017-07-17-110909-783.

¹¹ Section 14717.1(g) requires that the DHCS and CDSS adopt regulations to implement section 14717.1 by July 1, 2019. Section 14717.1(d)(2) further requires that a request for waiver be in a manner established by DHCS. Section 14717.1(d)(3) further requires that DHCS define who may request a waiver for those who owe a legal duty to the child.

functions are required by law to be created and implemented by CDSS and DHCS.¹² CDSS noted that administrative procedures are still being developed and are subject to change. Including them in the rule would prevent CDSS and DHCS from making changes to the process, creating a separation-of-powers issue. If these administrative responsibilities were included in the rule, the policy guidance and regulations required by section 14717.1(b) and (g) to be developed by CDSS and DHCS would have to follow the rule of court.

The committee agreed with these concerns and elected to remove the administrative responsibilities from the rule. The removal of these requirements created a more simplified rule. Proposed rule 5.648, which addressed youth who were placed in an out-of-county placement after June 30, 2017 and who continue to reside in the out-of-county placement as of December 31, 2017, was no longer necessary because it was largely superfluous.¹³ Without including the administrative responsibilities of the placing agency in the rule, rule 5.648 was almost identical to rule 5.647.¹⁴

In addition, the rule no longer addresses the elaborate requirements of ACL 17-77 during the presumptive transfer process, which resulted in several proposed subdivisions being removed from the rule. These subdivisions addressed the placing agency's notice requirements during presumptive transfer process and the timelines for a request for waiver of presumptive transfer. In addition, former subdivision (d)(5) (now (d)(3)) no longer requires that the notice be within three court days of the placing agency's determination on the request for waiver to the person who requested waiver. The subdivision still requires that the placing agency confirm that it has provided notice of its determination on the request for waiver to the individual or agency that requested the waiver and all parties to the case in the report required for the hearing. This is a

¹² See § 14717.1(b)(1–2) and (g).

¹³ Section 14717.1(c)(2) addresses the presumptive transfer of SMHS jurisdiction for all foster children who were placed outside their county of original jurisdiction before July 1, 2017, and continue to reside out of county as of December 31, 2017. For these children, the SMHS jurisdiction is to transfer either if the foster child requests the transfer (which begins the transfer process), or if the foster child continues to reside outside the county of original jurisdiction after December 31, 2017 (§ 14717.1(c)(2)). SMHS jurisdiction shall transfer no later than the child's first regularly scheduled status review hearing, conducted under section 366 in the 2018 calendar year, unless an exception to waiver as described under section 14717.1(d)(5) applies.

The committee considered whether to address this category of youth in this proposal given that the proposed rule will become effective *after* the presumptive transfer determination should be made. The committee elected, however, to include these youth in a separate rule that will sunset. The committee reasoned that this was necessary because it is feasible that there will be cases in which the presumptive transfer determination will not be made before the first section 366 hearing of 2018.

¹⁴ The only difference in the rules is in subdivision (a), which addresses the applicability of the rule. Subdivision (a) in proposed rule 5.648 specified that the rule applies to “any child or nonminor that resides outside their county of original jurisdiction as of December 31, 2017.” Whereas subdivision (a) of proposed rule 5.467 applies to “presumptive transfer following any change of placement within California for a child or nonminor to a placement that is outside the county of original jurisdiction.” The committee elected to create a new subdivision (f) in rule 5.647 that will sunset. The subdivision specifies that the rule applies to those youth who resided in a county other than the county of original jurisdiction after June 30, 2017, and who continue to reside outside their county of original jurisdiction after December 31, 2017, and have not had a presumptive transfer determination as required under Welfare and Institutions Code section 14717.1(c)(2).

requirement of section 14717.1(d)(3). The requirement that it be within three court days of the decision was removed because this is an administrative function that is the responsibility of CDSS and DHCS to determine.

There were however portions of the rule where the administrative responsibilities of the placing agency and an essential element related to the conduct of the hearing intersected, including the timeline for when a hearing may be requested and the definition of who may request a hearing. The committee elected not to include a timeline for when a hearing may be requested to avoid requiring that the rule mirror the policy guidance and regulations of DHCS and CDSS, which are subject to change. Presumptive transfer is on hold until the court rules on the request for a hearing or gives a ruling at the hearing. Therefore, the timelines to request a hearing should mirror the administrative timeline so that the administrative process of presumptive transfer does not proceed before someone entitled to a hearing has the chance to request a hearing or to have the hearing reach completion if one is granted. If the rule and policy guidance aren't coordinated, the presumptive transfer process could proceed before the court addresses the request for a hearing or holds a hearing. ACL 17-77 indicated that a person will have three days to request a hearing, but in its comment, DHCS indicated that the timeline will be changed to seven days. The committee elected to avoid having the rule address this administrative function, which is the responsibility of DHCS and CDSS to implement.

Similarly, the committee elected to avoid attempting to define who is entitled to request a hearing by specifying who may request a waiver of presumptive transfer under section 14717.1(d)(2). Although it would benefit courts to specify in the rule who may request a hearing, doing so requires the rule to mirror the policy guidance and regulations of DHCS and CDSS, which are subject to change. Section 14717.1(d)(4) allows the person or agency that requested the waiver or any party to the case to request a hearing. Section 14717.1(d)(2) lists who may request a waiver, including “any other interested party who owes a legal duty to the child involving the child’s health or welfare, *as defined by the department*” (italics added). The committee considered including the individuals that DHCS has listed in ACL 17-77 and in its comment related to the proposal in the rule to provide clarity to the court on who may request a hearing. However, the committee decided that the rule should not address items that directly relate to the policy guidance and regulations. The committee instead elected to have the rule mirror the language of section 14717.1(d)(2) in terms of who may request a waiver and thus a hearing. The advisory committee comment indicates that to determine who owes a legal duty to the child, readers should consult the policy guidance and regulations of DHCS and CDSS.

In addition, several items were raised by commenters and addressed by the committee.

Burden. A commenter noted that subdivision (d)(1)(A)–(C) appears to shift the burden to show that the presumptive transfer waiver determination is in the child’s or nonminor’s best interests from the petitioner to the placing agency. Although a burden was not originally addressed in the rule, the committee elected to indicate in the rule that the person or agency that is requesting an exception or waiver to presumptive transfer should bear the burden to show that the waiver is in the child’s or nonminor’s best interests. This decision was made because the transfer of the

responsibility for providing specialty mental health services is a presumption. The person requesting that the presumption should be rebutted should carry the burden at the hearing. The placing agency would carry the burden when it is indicating that a waiver applies to presumptive transfer. The committee also decided to indicate that the standard of proof for this determination would be the preponderance of evidence. Although section 14717.1(d)(4) does not specify an evidentiary standard, when not provided, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

Factors the court may consider when determining the child’s or nonminor’s best interests.

Many comments were received on subdivision (e)(4) [now subdivision (e)(5)], on the factors the court may consider when determining the child’s or nonminor’s best interests in the determination of whether presumptive transfer should be waived. A majority of commenters agreed that the list was sufficient and should be included. Hence, the committee has included five factors that the court may consider.

However, one commenter noted that subdivision (e)(5) should clarify that the list of factors that can be considered is not exclusive. In response, subdivision (e)(5) now says that “the court may consider the following *in addition to any other factors the court deems relevant*” (italics added).

Also, subparagraph (E) was added to (e)(5) in response to comments to read:

The ability to maintain specialty mental health services in the county of original jurisdiction or to arrange for specialty mental health services in the county of residence after the child or nonminor changes placements.

(Proposed Cal. Rules of Court, rule 5.647(e)(5)(E).)

The committee elected to include this subdivision to encourage the court to compare the anticipated provision of services in the county of original jurisdiction with that in the county of residence.

When notice is required. Several commenters were confused by the notice requirements for the setting of a hearing. As written, whether the referenced time frame in (c)(2) of five court days after the form was filed referred to when the court must set a hearing or when the clerk must provide notice was unclear. The language mirrored similar language in rule 5.651(e) and was intended to reference when the hearing will occur. Rule 5.651(e) addresses the hearing to review a child’s change of school placement. Because both hearings are triggered by a change in placement and both require a prompt hearing that could potentially be heard at the same time, rule 5.647 mirrored many of the elements related to the holding of the hearing in rule 5.651(e).

The committee, however, agreed that the language would benefit from further clarification and amended it, moving “no later than five court days after the request for a hearing was filed” from subdivision (c)(2) to (c)(1). This change reflects that the court has the option to grant a hearing to occur no later than five court days after the form was filed. The requirement for notice is addressed in (c)(2).

One commenter also recommended that the rule specify when the clerk must provide notice of the hearing. Like rule 5.651(e), the proposed rule does not specify when notice must be provided because the court clerk must provide notice quickly (within five days).

The contents and timing of the report. Several commenters addressed both the timeline required for the filing of the report and its contents, with some noting that the more that the placing agency is required to report on, the more time is needed to produce a report. Many of the commenters expressed concern that the rule's requirement of providing a report no later than two days after the hearing is set is unrealistic because two days is not enough time.

With the removal of subdivisions (d)(1), (d)(3), and portions of (d)(5), the reporting requirements are somewhat lessened. Information in section 14717.1 related to the presumptive transfer process is, however, required to be documented in the report and is, therefore, addressed in the rule. These reporting requirements are meant to ensure that the placing agency has met these responsibilities and ensures a more meaningful review. The items in subdivision (d) that are requirements of section 14717.1 include consulting with the child, parents, child and family team, and other professionals who serve the child (§ 14717.1(d)(3)); providing notice of the determination on the request for waiver to the person who requested the exception and all parties to the case (*ibid.*); and indicating whether services can be delivered in the county of original jurisdiction (§ 14717.1(d)(6)).

The timeline for the report is the same for the hearing to review a child's change of school placement in rule 5.651(e). Both hearings are triggered by a change in placement and both require a prompt hearing. Both issues could be heard at the same time; the timelines of rule 5.651(e) were used to create those in rule 5.467. In addition, the court may set the hearing at any time within five days of the filing of the request for hearing. Theoretically, the hearing could occur a day or two after it is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered.

Alignment with section 361.2(h). Several commenters recommended that the timelines for a hearing to review a waiver of presumptive transfer be coordinated with the timelines for a hearing under section 361.2(h). Although a court can hold a hearing under section 361.2(h) and a hearing on presumptive transfer at the same time, the rule does not appear to be able to coordinate these two hearings because the timelines of the administrative processes differ. Nothing in the rule, however, prohibits these hearings from being held at the same time.

Section 361.2(h) requires that the court set a hearing if the parent objects to the child's being moved to an out-of-county placement. Notice to the parent of the placement is to occur 14 days before the placement, and the parent has 7 days to object and request a hearing. If the parent objects, a hearing must be set within 5 days of the parent's objection.

ACL 17-77 attempted to mirror this timeline in terms of notice (14 days before the placement change) and a request for a waiver (7 days after notice). But unlike section 361.2(h), ACL 17-77 requires further steps before someone can request a hearing. According to ACL 17-77, the

placing agency must consult the CFT, make a determination on the request for a waiver, and then inform parties to the case and the person who requested waiver. Afterward, a request for hearing can be made within 3 days.

Because the rule does not include review of the administrative timelines, it is not inconsistent with the timelines of section 361.2(h). Rather, the rule mirrors the timelines of section 361.2(h) in that a hearing must be held within five days of the request for a hearing. If the presumptive transfer process can be completed within the same timeline as required for a hearing under section 361.2(h), then the timelines could be synchronized. However, this coordination would need to be addressed by the policy guidance and regulation mentioned above.

Length of hearing. To ensure that goal of AB 1299 of ensuring timely access to specialty mental health services, proposed rule 5.647 requires that a hearing on presumptive transfer must conclude within five court days of the initial hearing, unless a showing of good cause consistent with section 352 supports a continuance (subdivision (e)(3)). The committee reasoned that a limit on how long a court may take to resolve the hearing on presumptive transfer would ensure that the hearing process does not create a lengthy delay of a resolution of presumptive transfer determination, while allowing for flexibility where good cause is found. The committee reasoned that many courts would not always be in a position to be able to complete the hearing within five days.

CDSS recommended that the rule go a step further and require that “in no event shall a hearing pursuant to this rule be continued more than 15 days beyond the initial hearing date.” CDSS argued that this limit was necessary to ensure timely access to specialty mental health services. The committee believes that placing a time limit on the length of the hearing will create an unrealistic expectation for many courts. In addition, section 352 provides an appropriate safeguard: In no event should the hearing be continued if it is contrary to the child’s welfare. This provision would include those situations where services could be affected during the presumptive transfer hearing.¹⁵ If the concern is that the courts won’t honor the parameters of section 352, then there is no guarantee they will honor a 15-day time limit. The committee believes section 352 offers the best approach to address the child’s best interests while taking into account other factors that may require a continuance beyond 5 days.

Comments related to removed administrative responsibilities. A large portion of the comments received related to the elements of the rules that deal with the administrative requirements of ACL 17-77. The committee’s determination to remove these elements from the rule has resolved the issues raised by the commenters. These comments, however, will be forwarded to CDSS and DHCS as those agencies continue to develop and implement the administrative process for presumptive transfer. A summary of some of the issues is provided in the comments chart at pages 142–188.

¹⁵ Services will also still be provided by the county of original jurisdiction until transfer occurs.

In addition, a number of comments of a technical nature were incorporated into the rule. A summary of these comments is in the comments chart at pages 27–141.

Alternatives considered

The committee considered not proceeding with the proposal until the policy guidance and regulations mentioned above are complete and finalized. However, the committee elected instead to remove from the proposal items in the rule that addressed the administrative responsibilities of the placing agency during the presumptive transfer process. The committee elected to proceed with the proposal without addressing the administrative responsibilities of the placing agency in the rule. The committee determined that the rule should not conflict with the policy guidance and regulations that are evolving and incomplete. The committee chose not to delay the implementation of the rule because of the need for procedural clarity for these hearings, which have been authorized by section 14717.1, effective January 1, 2017.

Fiscal and Operational Impacts

The committee anticipates that there will be additional costs to the courts when a hearing on presumptive transfer is held, including the training of court staff on the conduct of the hearing. However, this burden has more to do with the implementation of AB 1299 than with the creation of the rule of court. The rule of court will provide greater clarity on the conduct of the hearing, which may provide cost savings because the court will need to spend less time determining the various requirements for a hearing under section 14717.1.

Attachments and Links

1. Cal. Rules of Court, rule 5.647, at pages 14–18
2. Forms JV-214, JV-214(A), JV-214-INFO, and JV-215, at pages 19–26
3. Comments chart, at pages 27–188

1 **Rule 5.647. Medi-Cal: Presumptive Transfer of Specialty Mental Health Services**

2
3 **(a) Applicability**

4
5 This rule applies to the court’s review under Welfare and Institutions Code section
6 14717.1 of the presumptive transfer of responsibility to arrange and provide for a
7 child’s or nonminor’s specialty mental health services to the child’s or nonminor’s
8 county of residence. The rule applies to presumptive transfer following any change
9 of placement within California for a child or nonminor to a placement that is
10 outside the county of original jurisdiction, including the initial placement. Nothing
11 in this rule relieves the placing agency of the reporting requirements and duties
12 under section 14717.1 when no hearing under this rule is held.

13
14 **(b) Requesting a hearing to review the request for waiver of presumptive transfer**
15 **(§ 14717.1)**

16
17 (1) The following persons or agencies may make a request to the placing agency
18 that presumptive transfer be waived and that the responsibility for providing
19 specialty mental health services remain in the child’s or nonminor’s county of
20 original jurisdiction:

21
22 (A) The foster child or nonminor;

23
24 (B) The person or agency that is responsible for making mental health care
25 decisions on behalf of the foster child or nonminor;

26
27 (C) The child welfare services agency or the probation agency with
28 responsibility for the care and placement of the child or nonminor; and

29
30 (D) Any other interested party who owes a legal duty to the child or
31 nonminor involving the child’s or nonminor’s health or welfare, as
32 defined by the department.

33
34 (2) The person or agency who requested the waiver, or any other party to the
35 case who disagrees with the placing agency’s determination on the request
36 for the waiver of presumptive transfer, may request a judicial review of the
37 placing agency’s determination.

38
39 (3) A request for a hearing must be made by filing a *Request for Hearing on*
40 *Waiver of Presumptive Transfer* (form JV-214). If a hearing is requested,
41 form JV-214 must be provided to the placing agency within seven court days
42 of the petitioner’s being noticed of the placing agency’s determination on the
43 request for waiver of presumptive transfer.

1
2 (4) When a hearing is requested in (b)(3), the transfer of the responsibility for
3 providing specialty mental health services cannot occur until the court makes
4 a ruling as required in (c)(1).

5
6 **(c) Setting of a hearing (§ 14717.1)**

7
8 (1) The court on its own motion may direct the clerk to set a hearing no later than
9 five court days after the request for a hearing was filed, or may deny the
10 request for a hearing without ruling on the transfer of jurisdiction.

11
12 (2) If the court sets a hearing, the clerk must provide notice of the hearing date
13 to:

14
15 (A) The parents—unless parental rights have been terminated—or
16 guardians of the child;

17
18 (B) The petitioner;

19
20 (C) The social worker or probation officer;

21
22 (D) The mental health care decision maker for the child or nonminor, if one
23 has been appointed under section 361(a)(1);

24
25 (E) The Indian child’s tribe, if applicable, as defined in rule 5.502;

26
27 (F) The child—if 10 years of age or older—or nonminor; and

28
29 (G) All other persons entitled to notice under section 293 or section
30 727.4(a).

31
32 (3) If the court grants a hearing under (c)(1), responsibility for providing
33 specialty mental health services cannot be transferred until the court makes a
34 ruling as required in (e)(2) and section 14717.1(d)(4).

35
36 **(d) Reports**

37
38 When a hearing is granted under (c)(1), the social worker or probation officer must
39 provide a report including discussion or documentation of the following:

40
41 (1) The placing agency’s rationale for its decision on the request for a waiver of
42 presumptive transfer, including:

- 1 (A) Any requests for waiver, and the exceptions claimed as the basis for
2 those requests;
3
4 (B) The placing agency’s determination of whether waiver of presumptive
5 transfer is appropriate under section 14717.1(d)(5)(A)–(D);
6
7 (C) Any objections to the placing agency’s determination in (B); and
8
9 (D) The ways that the child’s or nonminor’s best interests will be promoted
10 by the placing agency’s presumptive transfer determination.

11
12 (2) That the child or nonminor, his or her parents if applicable, the child and
13 family team, and others who serve the child or nonminor as appropriate—
14 such as the therapist, mental health care decision maker for the child or
15 nonminor if one has been appointed under section 361(a)(1), and Court
16 Appointed Special Advocate volunteer—were consulted regarding the waiver
17 determination.

18
19 (3) That notice of the placing agency’s determination of whether to waive
20 presumptive transfer was provided to the individual who requested waiver of
21 presumptive transfer, along with all parties to the case.

22
23 (4) Whether the mental health plan in the county of original jurisdiction
24 demonstrates an existing contract with a specialty mental health care
25 provider, or the ability to enter into a contract with a specialty mental health
26 care provider within 30 days of the waiver decision, and the ability to deliver
27 timely specialty mental health services directly to the foster child or
28 nonminor.

29
30 (5) The child’s or nonminor’s current provision of specialty mental health
31 services, and how those services will be affected by the placing agency’s
32 presumptive transfer determination.

33
34 **(e) Conduct at the hearing**

35
36 (1) The social worker or probation officer must provide the report in (d) to the
37 court, all parties to the case, and the person or agency that requested the
38 waiver no later than two court days after the hearing is set under (c)(1).

39
40 (2) At the hearing, the court may confirm or deny the transfer of jurisdiction or
41 application of an exception based on the best interests of the child or
42 nonminor. A waiver of presumptive transfer is contingent on the mental
43 health plan in the county of original jurisdiction demonstrating an existing

1 contract with a specialty mental health care provider, or the ability to enter
2 into such a contract within 30 days of the waiver decision, and the ability to
3 deliver timely specialty mental health services directly to the child or
4 nonminor.

5
6 (3) The person or agency that requested the waiver of presumptive transfer bears
7 the burden to show that an exception to presumptive transfer is in the best
8 interests of the child or nonminor by a preponderance of the evidence.

9
10 (4) The hearing must conclude within five court days of the initial hearing date,
11 unless a showing of good cause consistent with section 352 or section 682
12 supports a continuance of the hearing beyond five days.

13
14 (5) When considering whether it is in the child's or nonminor's best interests to
15 confirm or deny the request for a waiver of presumptive transfer, the court
16 may consider the following in addition to any other factors the court deems
17 relevant:

18
19 (A) The child's or nonminor's access to specialty mental health services,
20 the current provision of specialty mental health services to the child or
21 nonminor, and whether any important service relationships will be
22 affected by the transfer of jurisdiction or a waiver of presumptive
23 transfer;

24
25 (B) If reunification services are being provided, the impact that the transfer
26 of jurisdiction would have on reunification services;

27
28 (C) The anticipated length of stay in the child's or nonminor's new
29 placement;

30
31 (D) The position of the child or nonminor, or of the child's or nonminor's
32 attorney, on presumptive transfer; and

33
34 (E) The ability to maintain specialty mental health services in the county of
35 original jurisdiction or to arrange for specialty mental health services in
36 the county of residence after the child or nonminor changes placements.

37
38 (6) Findings and orders must be made on *Order after Hearing on Waiver of*
39 *Presumptive Transfer* (form JV-215).

40

1 **(f) Existing out-of-county placement**

2
3 This rule applies to presumptive transfer for any child or nonminor who resided in
4 a county other than the county of original jurisdiction after June 30, 2017, and who
5 continues to reside outside his or her county of original jurisdiction after December
6 31, 2017, and has not had a presumptive transfer determination as required under
7 Welfare and Institutions Code section 14717.1(c)(2). Unless amended by Judicial
8 Council action effective after the effective date of this rule, this subdivision will be
9 repealed effective January 1, 2020.

10
11 **Advisory Committee Comment**

12
13 The exceptions to the presumptive transfer of the responsibility to provide for and arrange for
14 specialty mental health services to the county of the child’s or nonminor’s out-of-county
15 residence are found in Welfare and Institutions Code section 14717.1(d)(5)(A–D). A court review
16 hearing under this rule may not necessarily be common, but under section 14717.1(d)(7), for all
17 cases, a request for waiver, the exceptions claimed as the basis for the request, a determination
18 whether a waiver is appropriate under Welfare and Institutions Code section 14717.1, and any
19 objections to the determination must be documented in the child’s or nonminor’s case plan under
20 Welfare and Institutions Code section 16501.1. The Department of Health Care Services and
21 California Department of Social Services are responsible for providing policy guidance and
22 regulations to implement Assembly Bill 1299 (Ridley-Thomas; Stats. 2016, ch. 603). The policy
23 guidance and regulations should be used during the administrative process related to presumptive
24 transfer. This would include determining who is entitled to make a request for waiver under
25 (b)(1)(D) of the rule and section 14717.1(d)(2), where “department” refers to the Department of
26 Health Care Services. In the policy guidance and regulations, the Department of Health Care
27 Services and California Department of Social Services will determine who owes a legal duty to
28 the child or nonminor and thus may request a waiver of presumptive transfer. In addition, the
29 policy guidance and regulations will address the timelines for the period to request a hearing.
30 Presumptive transfer cannot occur until the court has made a ruling on the request for a hearing,
31 and if a hearing is granted, makes a ruling as required in (c)(3). In accordance with the policy
32 guidance issued by the Department of Health Care Services and California Department of Social
33 Services, the delivery of existing specialty mental health services to the child or nonminor must
34 however continue without interruption, and be provided or arranged for, and paid for by the
35 Mental Health Plan in the county of original jurisdiction until the court makes a ruling on the
36 request for a hearing or makes a ruling as required in (c)(3) if a hearing is granted.

JV-214

Request for Hearing on Waiver of Presumptive Transfer

Clerk stamps date here when form is filed.

Use this form to request a court hearing to challenge the decision made by the placing agency on the request for waiver of presumptive transfer of the responsibility for specialty mental health services. (Read form JV-214-INFO, *Instructions for Requesting a Hearing to Review Waiver of Presumptive Transfer of Specialty Mental Health Services*).

- 1 My relationship to the child or nonminor:
 - a. Self
 - b. Person or agency responsible for making mental health decisions on behalf of the child or nonminor
 - c. The child's or nonminor's attorney
 - d. Parent or legal guardian
 - e. Other: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

- 2 My contact information (*if confidential, use form JV-287*):
 - a. Name: _____
 - b. Street Address: _____
 - c. City/State/Zip: _____
 - d. Telephone Number: _____
 - e. E-mail Address: _____

- 3 The child or nonminor is placed or will be placed in a county that is not the county of original jurisdiction (home county). The out-of-county placement is in (*name county*): _____ county.

- 4 A request was made to the agency making this placement that the responsibility for providing specialty mental health services to the child or nonminor should be waived and not transferred to the new county. That request was made on (*date*) _____ by (*name*): _____.

- 5 On (*date*): _____, the agency making the placement informed me:
 - a. That an exception or waiver applies to the rule that the responsibility for providing specialty mental health services be transferred to the county where the child or nonminor lives or will live, and the responsibility should remain with the child's or nonminor's home county.
 - b. That the request for the waiver of the responsibility for the child's or nonminor's specialty mental health services is denied and the responsibility for those services should be transferred to the new county of residence.

- 6 I disagree with the agency's decision about transferring the responsibility for specialty mental health services to the new county, as follows:
 - a. The responsibility for the child's or nonminor's specialty mental health services should transfer to the county where the child or nonminor lives or will live.



Child's/Nonminor's name:

Case Number:

- 6 b. The following exception to presumptive transfer should be applied and the responsibility for providing or arranging specialty mental health services should remain with the child's or nonminor's home county:
- (1) The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child's or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.

7 My request in 6 is in the child's or nonminor's best interests because *(explain the best interest to the child or nonminor and provide a brief factual description of the exception to presumptive transfer selected in item 6b)*:

8 I am requesting that the court grant a hearing on this matter.

9 On *(date)*: _____ I informed the placing agency that I was requesting a court hearing to review the decision on presumptive transfer by providing the placing agency with a copy of this form.

Date: _____

Type or print your name

▶ _____
Sign your name

Clerk stamps date here when form is filed.

**DRAFT
Not approved by
the Judicial Council**

The Court Finds and Orders:

① The request for a hearing to review the request for waiver of presumptive transfer of the child’s or nonminor’s specialty mental health services filed on: _____, is granted and will be held as follows:

- a. Date: _____ Time: _____
 Dept.: _____ Div.: _____
 Room: _____
- b. Address of court: _____

Fill in court name and street address:

Superior Court of California, County of

② The court has denied the request for a hearing to review presumptive transfer of the responsibility for specialty mental health services to the county of the child’s or nonminor’s residence. Unless a separate request was made for the court to review the waiver of presumptive transfer, the county placing agency is responsible for determining the outcome to the request for a waiver. Reason for denial:

- Request is not in the child’s or nonminor’s best interest.
- A valid exception to presumptive transfer is not indicated.
- Person or agency making the request does not have standing to request a hearing.
- Other: _____

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

Date: _____

▶ _____

Judge (or Judicial Officer)

③ **Notice to:**

- a. Social worker Probation officer Attorney
 Name: _____ Name: _____
- b. Mother Father Legal guardian Attorney
 Name: _____ Name: _____
- c. Mother Father Legal guardian Attorney
 Name: _____ Name: _____

Child's/Nonminor's name:

Case Number: _____

- 3 d. Mother Father Legal guardian Attorney
Name: _____ Name: _____
- e. Petitioner Attorney
Name: _____ Name: _____
- f. Child, if 10 years of age or older, or nonminor Attorney
Name: _____ Name: _____
- g. Legal guardian or guardians of the child
Name: _____
- h. The Indian child's tribe, if applicable, as defined in rule 5.502
Name: _____
- i. Mental health care decision maker for the child or nonminor, if one has been appointed under section 361(a)(1)
Name: _____
- j. Child's caregiver
Name: _____
- k. Known dependent siblings of the child or nonminor
Name: _____

- l. Other : _____
Name: _____

Date: _____

Type or your print name

▲ _____
Sign your name

Instructions for Requesting a Hearing to Review Waiver of Presumptive Transfer of Specialty Mental Health Services

1 What is presumptive transfer?

Most foster children are eligible for specialty mental health services, such as therapy to address emotional, behavioral, and developmental problems. When a child is removed from his or her parent's or guardian's home, the county where the child lived (the "home county" or "county of original jurisdiction") is responsible for arranging, paying for, and providing these services. When a child or nonminor is placed outside his or her home county, the responsibility for providing these services must transfer to the county where the child lives, unless certain exceptions apply. This process is called "presumptive transfer." The purpose of presumptive transfer is to ensure that foster children who are placed outside of their home county receive access to these services without delay, based on their individual strengths and needs.

2 What are the exceptions to the presumptive transfer of responsibility of specialty mental health services?

There are four exceptions to presumptive transfer:

- The transfer would disrupt the continuity of care or delay access to services for the child or nonminor. In other words, the services would be interrupted or delayed in some way by the presumptive transfer.
- The transfer would interfere with family reunification efforts documented in the individual case plan.
- The placement in a county other than the home county is expected to last less than six months.
- The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the home county.

3 How does the presumptive transfer process begin?

When a decision is made to place the child or nonminor outside the home county, the social worker or probation officer must inform certain individuals of the presumptive transfer requirements and a

description of exceptions, the option to request a waiver of presumptive transfer if an exception exists, and the way to make such a request to the placing agency. These individuals include:

- the child or nonminor,
- the attorney for the child or nonminor,
- and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor (the parent or guardian, unless the court has made an order appointing someone else).

4 Requesting a waiver of presumptive transfer

You may believe it would better if the child's or nonminor's home county remained responsible for his or her mental health services. Maybe you think so because the child or nonminor would lose an important relationship with a service provider, or reunification efforts would be affected. The child or nonminor, his or her attorney, and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor can request that the placing agency consider waiving presumptive transfer based on an exception listed in (2), keeping the responsibility for mental health services in the home county.

The placing agency must inform the person or agency who requested the waiver and any party to the case of its decision on the request for waiver of presumptive transfer. The person who requested the waiver and any party to the case can ask the court to review the placing agency's decision.

If you are entitled to request a waiver of presumptive transfer, the social worker or probation officer should inform you how and when a request for waiver must be made.

5 How is a decision on a request for waiver made?

The social worker or probation officer will decide whether there is an exception to presumptive transfer. This decision must be communicated in writing or orally to the individual who requested waiver of presumptive transfer, along with all parties to the case.



6 How do I request a hearing?

The person who requested the waiver or any other party to the case may request a court hearing to review the placing agency's decision on the waiver request.

To request a hearing, you must file a request for hearing on form JV-214 with the clerk in the superior court where the child's or nonminor's case is being heard. This request must be filed within seven court days of the social workers or probation officers telling you of the decision on the request for waiver.

On form JV-214, you will need to explain to the court why it would be better for the child or nonminor to have the home county maintain responsibility for mental health treatment, or to have that responsibility moved to the new county of residence. The person requesting a hearing also must inform the placing agency that they are requesting a hearing. To do so, give a copy of form JV-214 to the social worker or probation officer within seven days of being informed of the placing agency's decision on the request for the waiver of presumptive transfer.

7 explain to the judge why you believe it is in the child's or nonminor's best interests to keep the responsibility for mental health treatment in the home county or to move it to the new county of residence.

7 What happens before and during the hearing?

The court will read the request for a hearing and decide whether to grant a hearing based on the information provided on form JV-214. If no hearing is granted, the placing agency's decision will become final. If a hearing is granted, presumptive transfer will be on hold until the court makes a ruling on the request for a waiver. Services to the child or nonminor will continue to be provided by the child's or nonminor's home county until the court either denies the request for a hearing, or makes a ruling at the hearing that presumptive transfer should or should not occur. If no hearing is granted, the placing agency's determination on the request for waiver will be final. If a hearing is granted, the clerk of the court will contact you by phone or letter informing you of the hearing time, date, and location.

At the hearing, the judge will want to know why presumptive transfer should or should not be waived. The court will make its decision based on the best interests of the child or nonminor. Be prepared to

JV-215

Order After Hearing on Waiver of Presumptive Transfer

Clerk stamps date here when form is filed.

- 1 a. Hearing date: _____ Time: _____
 Dept.: _____ Room: _____
- b. Judicial officer: _____
- c. Party (name): Present
- (1) Child: _____
 Attorney: _____
- (2) Mother: _____
 Attorney: _____
- (3) Father-presumed: _____
 Attorney: _____
- (4) Father-biological: _____
 Attorney: _____
- (5) Father-alleged: _____
 Attorney: _____
- (6) Legal guardian: _____
 Attorney: _____
- (7) Indian custodian: _____
 Attorney: _____
- (8) De facto parent: _____
 Attorney: _____
- (9) County agency social worker: _____
 Attorney: _____
- (10) Tribal representative: _____
 Attorney: _____
- (11) Other (specify): _____
 Attorney: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in child's name and date of birth:

Child's/Nonminor's Name:

Date of Birth:

Court fills in case number when form is filed.

Case Number:

The Court Finds and Orders

- 2 The social worker / probation officer provided a report no later than two days after a hearing was granted. The report included the information as required by rule 5.647(d) of the California Rules of Court.
- 3 The court has read and considered the report.
- 4 The child or nonminor:
- a. Is being placed in a county outside the county of original jurisdiction on (date): _____.
- b. Was placed in a county outside the county of original jurisdiction on (date): _____.
- 5 A request for a waiver to presumptive transfer was made to the placing agency by: _____.




Child's/Nonminor's name:

Case Number:

- 6 a. The placing agency has determined an exception to the presumptive transfer of the responsibility to provide for and arrange for the child's or nonminor's specialty mental health services:
- (1) The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor.
 - (2) The transfer would interfere with family reunification efforts documented in the individual case plan.
 - (3) The child's or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.
 - (4) The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.
- b. The placing agency has determined that no exception applies to the presumptive transfer.
- 7 a. The placing agency consulted the child and family team and others who serve the child or nonminor as appropriate regarding the waiver determination.
- b. The placing agency's decision on the request for waiver of presumptive transfer was communicated by the placing agency to the child and family team on (date): _____ .
- 8 Notice of the placing agency's determination on the request to waive presumptive transfer of specialty mental health services was provided to the individual who requested waiver of presumptive transfer, and to all parties to the case.
- 9 a. After having considered the basis for the request for a hearing, the report provided for the hearing, and any other evidence presented at the hearing, the court finds that
- waiver of presumptive transfer presumptive transfer is in the child's or nonminor's best interests.
 - If waiver applies, the mental health plan in the county of original jurisdiction has an existing contract with a specialty mental health care provider, or has demonstrated the ability to enter into a contract within 30 days of the waiver decision and to deliver timely specialty mental health services directly to the child or nonminor.

Date: _____

 _____
Judge (or Judicial Officer)

W18-07

Juvenile Law: Presumptive Transfer of Specialty Mental Health Services (Adopt Cal. Rules of Court, rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commenters	Position	Comment	Committee Response
1.	Christina Beck, M.A., Policy Analyst CWS, Policy and Program Support County of San Diego Health & Human Services Agency		<ul style="list-style-type: none"> Rules should include placing agency’s responsibility to consult CFT. Placing agency should provide report to court that includes documentation of procedural efforts. On JV-214, could petitioner have the option to put legal representative’s contact info for line 2 if their own contact information is confidential? Consider expanding language on JV-214A under 4(b) that includes possible reasons for court to deny setting a hearing such as: an exception does not apply or the party seeking judicial review is not a legal party in this matter. 	<p>This is included in the rule as subdivision (d)(2).</p> <p>This is required in subdivision (d).</p> <p>Yes. The JV-214 form has been amended to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p> <p>Language has been added to form JV-214(A) to indicate some typical reasons for the court to deny the hearing.</p>
2.	California Department of Social Services By Mary Sheppard, LCSW, Chief, Child Protection and Family Support Branch Children and Family Services Division		This letter provides comments from the California Department of Social Services (CDSS) on the Judicial Council's proposed rules 5.647 and 5.648 of the California Rules of Court regarding the presumptive transfer of specialty mental health services (SMHS) for children and youth in foster care. We also wish to extend our appreciation for the Judicial Council's ongoing work with State staff, and efforts to align the proposed rules with policy guidance issued in July 2017 through All County Letter 17-77/Mental Health Substance Use Disorder	

W18-07

Juvenile Law: Presumptive Transfer of Specialty Mental Health Services (Adopt Cal. Rules of Court, rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commenters	Position	Comment	Committee Response
		<p>Services Information Notice 17-032 (<u>ACL 17-77/MHSUDS 17-032</u>).</p> <p>Review of the proposed rules raised several questions with respect to the process of setting and conducting a hearing on the matter. For example, subdivision (c)(3) of Proposed Rule 5.467 provides that, in the event the court sets a hearing, the transfer of responsibility for SMHS cannot be transferred until the court's decision is final. Juvenile court rulings are normally final only after the 60-day period for filing a notice of appeal has elapsed. If there is an appeal or if a decision is made by a referee, it may be even longer before a decision is considered final. Given that the intent of <u>WIC Section 14717.1</u> is to facilitate access to and delivery of timely services to children and youth placed outside of their county of jurisdiction, we hope the court will draft this section to limit the time within which this transfer cannot occur, thus not creating any delays in delivery of mental health services to children and youth.</p> <p>The Department identified subdivision (d) of the proposed rules as being particularly problematic.</p> <ul style="list-style-type: none"> • This subdivision requires social workers or probation officers to provide the court with a detailed 	<p>The language of subdivision (c)(3) has been amended as follows: “(3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court makes a ruling as required in (e)(2) and section 14717.1(d)(4).” This will clarify that for the purpose of presumptive transfer, it is no longer on hold when the court makes its ruling. Unless a stay is granted by the juvenile court pending an appeal, there does not appear to be any reason that the court’s determination of waiver of presumptive transfer would be on hold after this.</p> <p>The committee has removed many of the requirements for the report for the reasons indicated above, this should reduce some of the workload required for the creation of a report.</p>

W18-07

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		<p>report. This will impose a cost and workload on county agencies that they are not currently performing. As an alternative, the department requests the court consider developing a form that placing agencies could complete. The level of detail proposed for this report is likewise problematic.</p> <ul style="list-style-type: none"> Subdivision (d)(2) requires the report include documentation of the placing agency's rationale for the presumptive transfer decision. Presumptive transfer is not a decision point, making the court's interest unclear. When a child or youth is placed in a county other than his or her county of jurisdiction, the responsibility for SMHS is presumptively transferred to the child or youth's new county of residence. The decision that placing agencies are responsible to make, and that seems likely to be of interest to the court, is in response to requests to waive presumptive transfer. 	<p>Given the timelines and procedures required to create a new JV form, and the fact that policy guidance on AB 1299 is the responsibility of DHCS and CDSS, the committee believes that it would be more appropriate for CDSS and DHCS to create a report template. Many of the reporting requirements in subdivision (d) of the proposed rule are also required by section 14717.1(d)(7), which applies even when a hearing under section 14717.1(d)(4) is not held.</p> <p>The language of subdivision (d)(2) (now (d)(1)) has been amended to reflect that the placing agency address the “rationale for its decision on the request for a waiver of presumptive transfer.”</p>

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		<p>On the pages below, we have included a table with our comments to specific subdivisions of Proposed Rule 5.467. We hold these same concerns for the corresponding provisions of Proposed Rule 5.468. We hope you find our input helpful, and appreciate the opportunity to participate in the public comment process. Please be assured that we are available to you to answer any questions that arise. You can reach us at CWSCoordination@dss.ca.gov.</p> <p><u>Citation:</u> Rule 5.467(b)(4) A request for a hearing may be made by filing a Request for a Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health' Services (form JV-214), or by the filing of substantially similar information. This document must be filed with the court and provided to the placing agency within three court days of being informed of the placing agency's determination on the application of a waiver of presumptive transfer.</p> <p><u>Comment:</u> The request for hearing should not be on the determination of presumptive transfer but rather on the agency's determination regarding a request for a waiver of presumptive transfer.</p>	<p>The form's name has been changed to "<i>Request for Hearing on Waiver of Presumptive Transfer.</i>" Because the hearing will always address a waiver</p>

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		<p>Presumptive transfer itself is automatic absent a request for a waiver. We recommend the form's name be changed to reflect this.</p> <p>Additionally, the sample form reflects that it is for mandatory use, but this rule permits some other method of bringing substantially similar information to the court's attention. Making the form mandatory is preferred. This would require striking the phrase "or by the filing of substantially similar information."</p> <p><u>Citation:</u> Rule 5.647(b)(5) The transfer of the responsibility for providing specialty mental health services cannot occur until the court makes a ruling on the application in (4).</p> <p><u>Comment:</u> This provision appears to conflict with subdivision (c)(1) which permits the court to deny the request for a hearing without a ruling on the application for review of the agency's determination regarding a waiver. It also appears unnecessary because subdivision (c)(3) precludes transfer until the court's ruling after granting a hearing is final. CDSS recommends this provision be stricken or replaced with a cross-reference to subdivision (c)(3).</p> <p><u>Citation:</u> Rule 5.647 (c) Setting of a hearing. (§14717.1)</p>	<p>of presumptive transfer, this seemed to be a concise and appropriate title.</p> <p>The form has been made mandatory and the reference in the rule to “substantially similar information” has been deleted. The committee agrees that this will promote conformity in the requests for hearings.</p> <p>Subdivision (b)(5) [now (b)(4)] prevents presumptive from occurring while the court is considering the request for a hearing. If the court grants a hearing, then (c)(3) becomes controlling. There will be a period of time prior the court ruling on the request for a hearing when presumptive transfer should not occur. The subdivision has been amended to reference the court’s determination in (c)(1) to grant or deny a hearing.</p>

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		<p>(1) The court on its own motion may direct the clerk to set a hearing, or deny the request for a hearing without a ruling on the application of a waiver of presumptive transfer.</p> <p><u>Comment:</u> CDSS suggests the court consider different wording to gain clarity and avoid confusion:</p> <p>Upon receipt of a request for hearing on the application of a waiver of presumptive transfer, the court clerk shall immediately forward the request to the juvenile court to which the specific child's or nonminor dependent's case is assigned. The court must immediately review the request for hearing and:</p> <p>(A) Direct the clerk to set a hearing no later than five days from the date the application was received by the court;</p> <p>(B) Deny the request for a hearing.</p> <p><u>Citation:</u> Rule 5.467 (c)(2) If the court sets a hearing, the clerk must provide notice of the hearing date no later than five court days after the form was filed. Notice must be provided to:</p> <p>(A) The parents unless parental rights have been terminated, or guardians of the child;</p> <p>(B) The petitioner;</p> <p>(C) The social worker or probation officer;</p> <p>(D) The developmental rights holder or surrogate parent;</p>	<p>The committee agrees that the language in subdivision (c)(1) could be confusing. The language in (c)(1) has been amended to remove the reference to “application.” Section (c)(1) will read as follows:</p> <p>(c)(1): The court on its own motion may direct the clerk to set a hearing no later than five court days after the request for a hearing was filed, or may deny the request for a hearing without ruling on the transfer of jurisdiction.</p> <p>The committee does not believe the other suggested additions are necessary as the court will have five days to set a hearing, and further admonitions on considering the request for a hearing immediately appear unnecessary.</p>

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		<p>(E) The child or nonminor if the child is 10 years of age or older; and (F) All other persons entitled to notice under section 293.</p> <p><u>Comment:</u> The meaning of the first paragraph of this provision is unclear. Does the clerk provide notice no more than five days after the application is filed or must the hearing date be no more than five days after the application is filed? CDSS believes the rule's meaning is to provide the latter. CDSS requests the court consider language stating that the clerk will provide notice of the hearing date set pursuant to (c)(1) no later than the next business day after the court grants a request for a hearing. If language other than what is suggested above for (c)(1) is used, the provision here should specify that the hearing shall be no more than five days after the application for hearing was filed.</p> <p>Subdivision (c)(2)(B) should refer to the "applicant" rather than "petitioner." Because the hearing here is triggered by an application for a hearing rather than a petition, use of the term "petitioner" could be confusing.</p> <p>Subdivision (c)(2)(D) is unclear. There are no surrogate parents in dependency or delinquency proceedings. The CDSS is unsure why the developmental rights holder would be noticed of</p>	<p>The commentator is correct that the language in (c)(1) references the setting of the hearing. The committee however agrees that the language is confusing and has amended (c)(1) as follows: (c)(1) The court on its own motion may direct the clerk to set a hearing no later than five court days after the request for a hearing was filed, or may deny the request for a hearing without ruling on the transfer of jurisdiction. Notice of the hearing will be addressed in (c)(2).</p> <p>The committee agrees with this suggestion and the revision has been made.</p> <p>This language was taken from rule 5.651(e)(1)(A)(ii), which addressed notice to “the educational rights holder or surrogate parent.” Surrogate parent may make more sense in the</p>

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		<p>the hearing. CDSS thinks it makes more sense to refer to the person responsible for making mental health care decisions on behalf of the foster child or nonminor.</p>	<p>context of a hearing related to the child’s education. The committee therefore agrees the language should be changed. The court’s authority to limit a parent’s or guardian’s ability to make mental health decisions is derived from section 361(a)(1). Section 361(a)(1) refers to the child’s “developmental decision maker.” However, the committee agrees that this language might create confusion because developmental decision making does not necessary denote decisions on mental health care. The language therefore has been changed to “(D) The mental health care decision maker for the child or nonminor if one has been appointed under section 361(a)(1);” The reference to “surrogate parent” has also been removed. Although consent laws allow for consent for mental health care decisions in certain situations to be made by licensed caregivers (Cal. Health & Saf. Code section 1530.6) or relative caregivers (section 366.27(a)), the reference to surrogate parents may not be clear enough to reference these individuals. In addition, it appears unnecessary as caregivers are required to be noticed under subdivision (c)(2)(G) of the proposed rule.</p>
		<p>It is unclear why all persons entitled to notice of dependency review hearings under WIC Section 293 would receive notice of this hearing. That provision includes siblings, whose positions regarding an exception to presumptive transfer would not necessarily be relevant.</p>	<p>A sibling has a fundamental interest in their relationship with their siblings. A hearing on the waiver of presumptive transfer addresses the status and well-being of the child or nonminor, like a status review hearing in which siblings are entitled to notice. The committee believes that</p>

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		<p>Additionally, WIC Section 293 does not apply to delinquency proceedings, but presumptive transfer does apply to wards placed in foster care pursuant to delinquency court orders. The CDSS recommends that this cross-reference to WIC Section 293 be deleted and that the specific individuals and entities to be noticed be identified. A catch-all for other persons deemed relevant by the court could be added.</p> <p><u>Citation:</u> (c)(3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court's determination is final</p> <p><u>Comment:</u> This provision is problematic. In dependency proceedings, the dispositional judgment and all subsequent orders are appealable unless expressly made reviewable subject to writ proceedings. A ruling on an application for hearing on a determination regarding an exception to presumptive transfer would presumably be appealable. The court's determination would therefore not be final until the 60-day period for filing a notice of appeal has elapsed or, in the case where an appeal has been taken, the appeal is final. Such a result is</p>	<p>treating notice akin to a status review hearing is appropriate for a hearing on waiver of presumptive transfer.</p> <p>Subdivision (c)(2)(G) has been amended to add a reference to parallel notice statute for wards: section 727.4(a).</p> <p>The language has been amended to ensure the transfer will occur when the juvenile court's order is final:</p> <p>(c)(3) If the court grants a hearing under (c)(1), responsibility for providing specialty mental health services cannot be transferred until the court's determination is final makes a ruling as required in (e)(2) and section 14717.1(d)(4).</p>

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		<p>contrary to the purpose of presumptive transfer, which is to facilitate uninterrupted provision of specialty mental health services to children and nonminors placed out of county.</p> <p>Additionally, all juvenile court rulings made by referees are subject to rehearing. The timelines for rehearing are not as lengthy as the timeline for an appeal, but again cause unwarranted delay of presumptive transfer in the event the court does not overturn the decisions.</p> <p>CDSS recommends that this provision be revised to reflect that the responsibility for providing specialty mental health services cannot be transferred until the court has either denied the application for hearing on the determination of waiver to presumptive transfer or has issued a ruling after a hearing.</p> <p><u>Citation:</u> (d) Reports When a hearing is granted under (c)(1), the social worker or probation officer must provide a report including discussion or documentation of the following:</p> <p><u>Comment:</u> Requiring court reports raises funding issues under realignment (Prop. 30). While requiring a response from the placing agency is appropriate and necessary, CDSS recommends the JCC create a form for agency</p>	<p>This should address those situations where the decision is appealed or when there is a rehearing for an order by a referee.</p> <p>The committee understands that there is an additional workload for social workers and probation officers when they are required to provide a report for the hearing. To have a meaningful hearing, the court will however have to rely on information from the placing agency.</p>

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		<p>response to facilitate this process. Creating a form would simplify the response process for the placing agency. The form could use check boxes to identify who received notice of the right to request a waiver of presumptive transfer and who made such a request. The form also could allow for narrative, similar to the JV-180 form used for WIC Section 388 petitions. This would emphasize that the information regarding who participated in the decision regarding a waiver and the rationale for the placing agency's decision is the most critical information to present to the court.</p> <p><u>Citation:</u> (d)(2) The placing agency's rationale for the presumptive transfer decision, including: (A) Any request for waiver, and the exceptions claimed as the basis for that request; (B) A determination whether a waiver is determined to be appropriate under section 14717.1(d)(5)(A-D); (C) Any objections to the placing agency's determination; and (D) How the child's or nonminor's best interests will be promoted by the placing agency's presumptive transfer determination.</p> <p><u>Comment:</u> Under WIC Section 14717.1, the placing agency does not make a decision on presumptive transfer. Transfer occurs</p>	<p>The reporting requirements were lessened when subdivisions (d)(1) and (d)(3) were removed (these addressed notice of presumptive transfer requirements and the subsequent notice of the placing agency's determination on the request for waiver). In addition, the reporting requirements of former subdivision (b)(2) [now (b)(1)], includes reporting requirements under section 14717.1(d)(7) that are required when a hearing is not granted. In addition, subdivision (d) is clear in terms of what information is needed, and it doesn't appear that a separate template would be needed to address this. In addition, at the request of several counties, CDSS has indicated their intent to develop a template addressing the various requirements of the placing agency that can be used by placing agencies to document their responsibilities during the presumptive transfer process. For these reasons, the committee does not believe that a template created by the Judicial Council is necessary.</p> <p>The language in subdivision (b)(2) [now (b)(1)] has been changed to address "The placing agency's rationale for their determination on the request for a waiver of presumptive transfer"</p>

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		<p>automatically under the statute. The placing agency is responsible to determine, on a case by case basis, if any exceptions to presumptive transfer exist and whether a waiver of presumptive transfer is appropriate. It is this latter decision that is subject to judicial review under Section 14717.1(d)(4). The rule should therefore require the placing agency to provide its rationale for its decision on a request for a waiver, rather than its decision regarding presumptive transfer.</p> <p>Subdivision (d)(2)(A)-(C) appears to shift the burden from the applicant for a hearing on the decision on a waiver to the placing agency. The applicant for the hearing should be required to provide this information and then present his or her reasons why the decision is contrary to the child's or nonminor's best interests. Only if the placing agency has different or more information regarding these items should it be required to address it to the court.</p>	<p>The committee elected to indicate in the rule that the person or agency who is requesting an exception or waiver to presumptive transfer should bear the burden to show that waiver is in the child or nonminor's best interests. This decision was made because the transfer of the responsibility for providing specialty mental health services is a presumption. The person requesting that the presumption should be rebutted should carry the burden at the hearing. The placing agency would carry the burden when they are indicating that a waiver applies to presumptive transfer. The committee also decided to indicate that the standard of proof for this determination would be the preponderance of evidence. Although section 14717.1(d)(4) does not specify an evidentiary standard, when not provided, the burden of proof requires proof by a preponderance of the evidence. (Evidence Code section 115)</p>

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		<p>Subdivision (d)(2)(D) is the critical issue. WIC Section 14717.1(d)(4) permits the court to "confirm or deny the transfer of jurisdiction or application of an exception based on the best interests of the child." The best interests determination is therefore the only issue before the court under the statute. CDSS recommends that this be the focus of a narrative and that it include who was involved in the decision-making process regarding application of an exception and a request for a waiver and what their positions were.</p> <p><u>Citation:</u> (d)(4) That the Child and Family Team, and others who serve the child or nonminor as appropriate, such as the therapist, developmental decision maker, and Court Appointed Special Advocate volunteer, were consulted regarding the waiver determination.</p> <p><u>Comment:</u> CDSS believes this should be addressed in the discussion of the rationale for the decision on the request for a waiver. That rationale should include who were consulted, their positions, and how those positions were considered in the ultimate decision.</p>	<p>As mentioned above, the reporting requirements of (d)(2)(A-C) [now (d)(1)] are required under section 14717.1(d)(7) regardless of whether a hearing on presumptive transfer is held.</p> <p>While the best interest analysis is the key issue before the court, the committee also wants to provide judicial oversight of the process of requesting presumptive transfer and the resolution of the request for waiver. The rule does include those involved in the decision-making process in subdivision (d)(2). The items in subdivision (d) are requirements of section 14717.1, including consulting with the child, parents, the Child and Family Team and other professionals who serve the child (section 14717.1(d)(3)), providing notice of the determination on the request for waiver to the person requested the exception and all parties to the case (<i>id.</i>) and whether services can be delivered in county of original jurisdiction (section 14717.1(d)(6)).</p> <p>The committee wants to ensure that the placing agency has meet the requirements of section 14717.1(d)(3).</p>

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		<p><u>Citation:</u> (d)(5) That notice of the placing agency's determination of whether to waive presumptive transfer was provided to the individual who requested waiver of presumptive transfer, along with all parties to the case, within three court days of the placing agency's decision on the application of waiver to presumptive transfer.</p> <p><u>Comment:</u> CDSS believes this should only be an issue if this is raised by the applicant for a hearing as a reason for a hearing to review the placing agency's decision on a request for a waiver. Additionally, it incorporates timelines created by the joint guidance, which remain subject to change and subject to the regulatory process. Incorporating those timelines into a court rule will limit the DHCS and CDSS in executing their regulatory functions.</p> <p><u>Citation:</u> (e) Conduct of the hearing. (1) The social worker or probation officer must provide a report no later than two court days after the hearing is set under (c)(1) that includes the information required in (d).</p> <p><u>Comment:</u> This creates an unrealistic timeline for a court report. If the social worker or probation officer does not receive notice immediately after the court sets a hearing, it is unlikely a report will be able to be produced two court days after the hearing is set. Creation of a</p>	<p>The committee has removed the requirement in subdivision (d)(5) [now (d)(3)] that the notice be provided within three days, as this is a timeline for the CDSS and DHCS to determine in their policy guidance and regulations. The committee has however elected to keep this requirement in the rule to ensure that the placing agency has meet its obligation to provide notice of their determination on the request for waiver as required by section 14717.1(d)(3).</p> <p>The requirement to provide a report no later than two days after the hearing is set is taken from a similar rule involving placement changes, rule 5.651(e)(4), which addresses hearings related to change of placement affecting the child's education stability. Because these hearings are</p>

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		<p>responsive form, as discussed above, could alleviate that problem.</p> <p>There should be a requirement, as suggested above, that the court clerk immediately notify the parties of a hearing being set. The report or responsive form should be due no later than two court days after the clerk notifies the placing agency of the hearing date.</p> <p><u>Citation:</u> (e)(3) The hearing must conclude within five court days of the initial hearing date, unless a showing of good cause consistent with section 352 supports a continuance of the hearing beyond five days.</p>	<p>both based on a change of placements and the provision of important time sensitive services, the timeframe for the social worker’s report was adopted from rule 5.651(e)(4). Rule 5.651(e) also includes the same timeframes as the proposed rules in terms of the setting of a hearing. These hearings could potentially be heard at the same time.</p> <p>In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered.</p> <p>Like rule 5.651(e), the proposed rule does not specify when notice must be provided, due to the fact that the court clerk must provide notice on a short timeframe (within five days).</p>

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		<p><u>Comment:</u> WIC Section 352 sets no outside limits for continuances. Given the purpose of the presumptive transfer process and the requirement that presumptive transfer be on hold until the court denies an application for hearing or rules on the merits, there should be an outside limit on how long a continuance may be. COSS suggests adding a sentence that states "In no event shall a hearing pursuant to this rule be continued more than 15 days beyond the initial hearing date."</p> <p>Additionally, Section 352 applies only in dependency proceedings. It may be confusing to probation officers to cross-reference a dependency statute.</p> <p><u>Citation:</u> (e)(5) The court may make its findings and orders on Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services 23 (form JV-215).</p> <p><u>Comment:</u> This provision makes it permissive to use the form, but the form is identified as mandatory. CDSS supports making the form mandatory.</p>	<p>The committee believes that placing a time limit on the length of the hearing will create an unrealistic expectation for many courts. In addition, section 352 provides an appropriate safeguard. In no event should the hearing be continued if it is contrary to the child’s welfare. This would include those situations where services could be impacted during the presumptive transfer hearing. If the concern is that the courts won’t honor the parameters of section 352, then there is no guarantee they will honor a fifteen-day time limit. Section 352 offers the best approach to address the child’s best interests while taking into account other factors that may require a continuance beyond five days.</p> <p>The rule has been amended to add references to parallel statutes for wards, including section 682 for continuances in subdivision (e)(4) and section 727.4(a) for notice in subdivision (c)(2)(F).</p> <p>The committee agrees and the form has been made mandatory.</p>

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		<p>Additionally, there should be a provision for the clerk to provide notice of the court's ruling to the placing agency and the parties and that a copy of the notice should be served within a certain time frame. Because of the purpose of the presumptive transfer process, CDSS suggests that the clerk should serve a copy of the court's ruling on the hearing on the placing agency and all persons who received notice of the hearing no later than two court days after the hearing has concluded.</p>	<p>The committee does not believe that this requirement should be added to the rule because the placing agency will be present in court, either the social worker or county counsel. This will ensure that the placing agency will be aware of the court's order when it is made and a copy of the order can be requested at the hearing. The committee does not want to require this notice as it puts an extra burden on court clerks.</p>
<p>3. Chua Chao Program Manager Marin County Children and Family Services San Rafael, CA</p>		<p>Thank you for the opportunity to comment on the proposed rules and forms on AB1299. Below are my comments:</p> <p>1) I have a couple of comments regarding JV-214 (Request for a hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services). 1) I think the placing agency's reasons for denying the presumptive transfer waiver request should be available to the court in order to assist the court in deciding whether or not to hold a hearing. This could be accomplished by adding another line to the form or attaching the waiver denial response which would have all the reasons why presumptive transfer waiver is not in the child's best interest.</p>	<p>Placing the burden on the petitioner to explain the placing agency's reasoning could create an unfair burden on the petitioner. While the committee agrees that this could be helpful to the court, the petitioner may not be in a position to provide this information. The committee believes the court can adequately resolve the request for a hearing based on the information the petitioner provides on how their request furthers the child's best interests in item 7.</p>

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		<p>In most cases, the reason for denying a waiver request is due to the inability of the jurisdiction county’s mental health plan to provide services or establish contracts with providers within 30 days as required even if one of the exceptions exist, which would be very helpful information for the court to have. 2) Maybe it’s just me but the language in question 6A seems a bit confusing. I’m assuming this box is for when someone disagrees with the placing agency’s approval of a waiver request and they want services to transfer to the county of residence but it’s not very clear.</p> <p>2) I don’t like the idea of having to prepare a report for the hearing but I’m not sure it’s avoidable based on the findings the court is required to make on JV-215. I am also concerned that the two day timeline for submitting a report to the court after a hearing is set does not provide placing agencies sufficient time to prepare and file a report. This timeline does not account for mail delivery so parties will not likely get the report before the hearing.</p>	<p>The commentator is correct that 6A addresses those situations where the applicant requests a hearing to review the placing agency’s determination that a waiver apply to presumptive transfer. The committee has amended the language to provide more clarity.</p> <p>The timeline for the report is the same for the hearing to review a child’s change of school placement in rule 5.651(e). Both hearings are triggered by a change in placement and both require a prompt hearing. Both issues could be heard at the same time, so the timelines of rule 5.651(e) were used to create the rules that are the subject of this proposal. In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered.</p>

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4.	Department of Health Care Services Erika Castro Branch Chief (Staff Services Manager III) Sacramento, CA	A	<p>The Department of Health Care Services (DHCS) appreciates the opportunity to provide public comment on the proposed Family and Juvenile Law Advisory Committee California Rules of Court 5.647 and 5.648 and forms JV-214, JV-214(A), JV-214-INFO, and JV-215. As indicated in the Invitation to Comment, proposed rules 5.647 and 5.648 address the timelines, notice requirements, and request for a hearing to review the presumptive transfer determinations and the application of exceptions. Rule 5.647 will apply to any placement change to an out-of-county placement after the rule becomes effective September 1, 2018. Rule 5.648 will apply to those children and nonminors who are placed out-of-county as of December 31, 2017 and continue to reside in an out-of-county placement.</p> <p>While we marked "agree with proposed changes" on the online form, please note that many of the changes do not directly impact areas that DHCS oversees and in many cases we defer to the California Department of Social Services (CDSS) in our responses.</p> <p>Please see DHCS' responses below to the questions posed in the Invitation to Comment W18-07 ("Request for Specific Comments" – page 10).</p>	

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		<ul style="list-style-type: none"> Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule? <p>DHCS defers to CDSS.</p>	No response required, see comment from CDSS above.
		<ul style="list-style-type: none"> Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer? <p>DHCS defers to CDSS.</p>	No response required, see comment from CDSS.
		<ul style="list-style-type: none"> Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing? <p>DHCS has no concerns regarding the applicant providing their contact information on the JV form requesting a hearing.</p>	The form has been amended to indicate that if the individuals contact information is confidential, to submit form JV-287.
		<ul style="list-style-type: none"> Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process? 	

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		<p>DHCS believes the forms are clear and include the essential information, and do not have any comments regarding the forms.</p> <p>The advisory committee also seeks</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? If so, please quantify. 	No response required.
		<p>N/A</p> <ul style="list-style-type: none"> • 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. 	No response required.
		<p>N/A</p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? 	No response required.
		<p>DHCS defers to CDSS.</p> <ul style="list-style-type: none"> • How well would this proposal work in courts of different sizes? 	No response required, see comment from CDSS.

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Commenters	Position	Comment	Committee Response
		N/A	No response required.
5. Executive Committee of the Family Law Section of the California Association Andrew Cain San Francisco, CA	AM	<p>Dear Judge Borack and Judge Juhas:</p> <p>The Executive Committee of the Family Law Section of the California Lawyers Association (“FLEXCOM”) submits the following comments concerning the above-referenced Invitation to Comment. FLEXCOM agrees with the proposal, with changes. We believe the proposal is generally sound. It establishes timelines for when certain actions related to the presumptive transfer process are to take place and requirements for information provided to the court. The changes we recommend build upon a sound proposal framework. They are as follows:</p> <p>1. Rule 5.647(a) and Rule 5.648(a) – These subdivisions outline the applicability of each rule. It is clear that the rule applies following any change of placement outside the county of original jurisdiction. This should include changes from the original county to another county, as well as between differing non-jurisdiction counties. It is not unusual for a dependent to be moved between two counties outside the county of jurisdiction. We believe the language can be strengthened to clarify it applies in this latter instance. We recommend inserting the following language prior to the final sentence: “This includes changes in</p>	<p>The committee agrees that subdivision (a) should provide more clarity on the rules application to situations where the child moves from one out of county placement to another. However, in the interest of brevity and the simplicity, the committee recommends that the sentence at issue read as follows: The rule applies to presumptive transfer following any change of placement within California for a child or nonminor to a placement <i>that is</i> outside the county of original jurisdiction, including the initial placement. By inserting “that is” in front of “outside the county of jurisdiction” the rule should reflect that the rule’s application is to any change of placement including between</p>

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		<p>placement between two counties that are outside the county of jurisdiction.”</p> <p>4. Rule 5.647(c)(1) and Rule 5.648(c)(1) – This provision would give the court the ability to either deny the request for judicial review or set it for a hearing. We recommend adding language that allows the court to grant the motion upon all parties’ agreement. This language would align with the Rule of Court governing requests to modify prior court orders.</p> <p>5. Rule 5.647(c) and Rule 5.648(c) – The proposal sets timelines for requesting judicial review; the filing of the social worker’s report; the court concluding the hearing after it has started; and a variety of other things. The proposal does not appear to provide a timeline for the initial setting of the hearing. We believe this to be an oversight. We recommend the following language added to subdivision (c)(1): “A hearing set pursuant to this subdivision shall take place no later than the seventh court day after filing of the request for a hearing.”</p>	<p>two out of county placements. The suggestion does not appear to be applicable to rule 5.648(a), as the language is different in that rule in that it only states that the rule applies to “any child or nonminor that resides outside their county of original jurisdiction as of December 31, 2017.”</p> <p>Section 14717.1(d)(4) gives the court the option to “set the matter for hearing and may confirm or deny the transfer of jurisdiction...” The statute does not state that the application may be granted without a hearing. In addition, it does not seem likely that all parties will be in agreement when a hearing is requested. If all parties agree, then the placing agency can make the presumptive transfer determination that aligns with the agreement, making the court’s involvement unnecessary. Therefore, this recommendation was not incorporated into the rule.</p> <p>The committee agrees that language in the rule related to the timing of the setting of a hearing could be clearer. The language of subdivision (c)(2) was intended to require a hearing date to be set within five days of the filing of the request for a hearing. The committee agrees that it is difficult to distinguish whether the five-day timeline applies to notice or the setting of the hearing. The committee has revised subdivision (c)(2) (now (c)(1)) to include the language as follows: “If the court sets a hearing, the clerk must provide notice</p>

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		<p>6. Rule 5.647(c)(2) and 5.648(c)(2) – The proposal requires the clerk of the court to provide notice of the hearing date no later than five court days after the request for hearing was filed. Based on our recommendation above for the timing of the hearing, we recommend changing the timeline for notice. We believe it should be two court days.</p> <p>9. Rule 5.647(d) and Rule 5.648(d) – These subdivisions have various subparagraphs outlining what the social worker must include in the court report prepared for this hearing. There are six subparagraphs. We recommend adding a seventh subparagraph that requires the social worker to include information concerning any current mental health services currently provided to the minor. It makes sense for the court to know the extent of those services when determining whether transfer of responsibility to the county of residence is in the child’s best interest. The language we propose is as follows: “Information as to current mental health services provided, including the types of services and the length of time the child or nonminor has utilized the service.”</p> <p>10. Rule 5.647(e)(1) and Rule 5.648(e)(1) – This subdivision sets forth a timeline for the</p>	<p>of the hearing date <i>which will be</i> no later than five court days after the form was filed.”</p> <p>Like rule 5.651(e), the proposed rule does not specify when notice must be provided, due to the fact that the court clerk must provide notice on a short timeframe (within five days).</p> <p>The committee agrees that this information warrants inclusion into subdivision (d). The rule has been amended to include the following language as a new (d)(5):</p> <p>“The child’s or nonminor’s current provision of specialty mental health services and how these services will be impacted by the placing agency’s presumptive transfer determination.”</p> <p>The requirement to provide a report no later than two days after the hearing is set is taken from a</p>

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		<p>social worker’s report discussed above. It must be provided no later than two days after the hearing is set. Given the proposal’s timeline for providing notice of the hearing date, as well as our recommended timelines, this would need to be changed. We recommend the report be required no later than “two court days before the hearing.” This would create the following sample timeline: Court Day 1 – court sets a hearing date. Court Day 3 – latest by which the clerk can distribute notice of hearing date. Court Day 5 – social worker’s report is due. Court Day 7 – hearing.</p> <p>12. Rule 5.648(a) – Most youth who were placed out of county prior to September 1, 2018 will already have undergone the entire presumptive transfer process. There would be no need for this rule to apply in those instances. Thus, language should be added that clarifies this rule applies only when the presumptive transfer process has not been applied. We recommend the following language be added to subdivision (a). “This rule shall apply only if a determination on transfer has not been made.”</p>	<p>similar rule involving placement changes, rule 5.651(e)(4), which addresses hearings related to change of placement affecting the child’s education stability. Because these hearings are both based on a change of placements and the provision of important time sensitive services, the timeframe for the social worker’s report was adopted from rule 5.651(e)(4). Rule 5.651(e) also includes the same timeframes as the proposed rules in terms of the setting of a hearing. In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered. Therefore, the committee believes that these timelines are appropriate.</p> <p>The committee agrees with adding this clarification to subdivision (a) of rule 5.647 and has added clarifying language. Rule 5.648 has been removed but the language has been added to rule 5.647.</p>

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		15. Proposed JV-214(A) – The proposed form is to be used by the court upon receiving the request for a hearing. The current draft only allows for the court to deny the request or set the request for a hearing. For the reasons mentioned above, we believe the form should allow the court to grant the application, if all parties agree. Thus, we would add an option for the court to make such an order.	See comment above related to subdivision (c)(1).
6. Kern County Department of Human Services Terrie Martinez, MSW Program Specialist, Assistant Director’s Office	NI	Managers from the Kern County Department of Human Services have reviewed Juvenile Law: Presumptive Transfer of Specialty Mental Health Services . Thank you for your time and consideration. Request for specific comments: <ul style="list-style-type: none"> Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule? Yes – relationship with current mental health provider. Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer? 	The committee believes that this will fall under proposed subdivision (e)(5)(A): “The child’s or nonminor’s access to specialty mental health services, the current provision of specialty mental health services to the child or nonminor, and whether any important service relationships will be impacted by the transfer of jurisdiction or a waiver of presumptive transfer;”

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		<p>Yes.</p> <ul style="list-style-type: none"> Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing? <p>No.</p> <ul style="list-style-type: none"> Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process? <p>No.</p>	<p>The committee agrees and the rule requires that a report be submitted when a hearing is granted.</p> <p>No response required.</p> <p>No response required.</p>	
7.	Los Angeles County Department of Children and Family Services By Ruena Borja, LCSW Children Services Administrator I DCFS Policy Section Norwalk, CA	NI	<p>LA DCFS’ Response to the Request for Specific Comments Regarding AB 1299</p> <ul style="list-style-type: none"> If there is a request for a judicial review thereafter, the Court shall schedule the hearing within 5 calendar days and the decision is not made final until the court has made the necessary orders. Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of 	<p>These findings are found in the rule in subdivision (c)(1) and (c)(3).</p>

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		<p>jurisdiction? If so, what factors should be included in the rule?</p> <p>In the past, case law has determined that “It has been said that the best interest of the child is an “elusive guideline that belies rigid definition”. (See State Dept. of Social Services v Superior Court (2008) 162 Cal. App. 4th. 273, 286) .So if the rule outlines specific factors that should be considered this would be consistent with other dependency statutes that set forth specific standards - see WIC 319, 361 (c), 366.21 (e). As indicated in Siser Section 2.11.(4): When such specific standards are followed, the interest of the child is inherently served in the manner the legislature has determined is best. As such, providing the specific factors to follow would result in the court making a decision that would be in the child’s best interest.</p> <p>However, the current proposed rule 5.647(e)(4), under ‘Conduct of Hearing’ section: it states that “When considering whether it is in the child’s best interests to confirm or deny the request for a waiver to presumptive transfer, the court may consider the following: (A)The access to mental health services and the child’s current provision of specialty mental health services, and whether <i>any important service relationships will be impacted;</i></p>	<p>As the comment indicates, guidance when determining the child’s or nonminor’s best interest can help facilitate the court making a best interest determination. The standard provided by statute when the court is making a determination on confirming or denying transfer of jurisdiction is the child’s best interests. The factors listed in subdivision (e)(5) are some factors that the court may consider, but they are not intended to be the only factors that the court may consider. In response to comments received, language has been added to subdivision (e)(5) to clarify that “the court may consider the following <i>in addition to any other factors the court deems relevant.</i>” The language cited by the commentator is a statutory ground for a waiver to presumptive transfer.</p> <p>As the comment indicates, the best interest standard cannot always be rigidly defined. The committee believes however that the current language can help to focus the court attention on one very important factor when making a decision on the transfer of the responsibility for mental health services: the child’s or nonminor’s service relationships. While the language is different than what is listed in the statute, the committee believes that phrased this way, the rule will help insure that the court considers these important</p>

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		<p>The above is a different threshold/standard than the one set by WIC section 14717.1(d)(5) which is that “the transfer would disrupt continuity of care or delay access to services provided to the foster child”.</p> <p>We suggest that the rule be consistent with the WIC language.</p> <ul style="list-style-type: none"> • Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer? <p>Yes, the requirement of a report would ensure the Court has all relevant information needed to make the appropriate determination in accord with the “factors” outlined above for the Court to consider.</p> <p>However rather than setting the date of receipt of the report two days from when the court set the hearing as currently proposed, it should instead set the date of receipt of the report certain number of days <i>prior</i> to the court hearing date.</p>	<p>relationships when determining the child’s or nonminor’s best interests.</p> <p>In addition, in response to comments, a new subdivision (e)(5)(E) is being added as an additional factor: “The ability to maintain specialty mental health services in the county of original jurisdiction or to arrange for specialty mental health services in the county of residence after the child changes placements.” Both these factors relate to the continuity of care. Because disruption to the continuity of the care is a basis to waiver presumptive transfer, the committee believes that the topic will sufficiently covered.</p> <p>The timeline for the filing of the placing agency’s report mirrors the timeline from a similar rule involving placement changes, rule 5.651(e)(4), which addresses hearings related to change of placement affecting the child’s education stability. Because these hearings are both based on a change of placements and the provision of important time sensitive services and could potentially be heard in conjuncture, the timeline for the filing of the report was adopted from rule 5.651(e)(4). Many of the reporting requirements of the rules as originally proposed have been</p>

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		<p>Similarly, the current proposed rule for the court clerk to provide notice of the hearing date (including to the social worker) no later than five court days <i>after the form was filed</i>, should be changed to instead set the time of when notice is to be provided by a certain number of days <i>prior to the hearing</i>, to ensure that the social worker has sufficient and reasonable time to prepare the report.</p> <ul style="list-style-type: none"> • Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing? <p>Due to WIC 827 confidentiality requirements, release of contact information would remain confidential so there shouldn't be a concern with the release the applicant's contact information.</p> <ul style="list-style-type: none"> • Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process? 	<p>removed when the committee removed elements in the rule that relate to administrative functions.</p> <p>This language was intended to apply the date the hearing must be set. As such, subdivision (c)(1) has been amended to reflect this: "The court on its own motion may direct the clerk to set a hearing <i>no later than five court days after the form was filed</i>, or deny the request for a hearing without making a ruling on the application of a waiver of presumptive transfer."</p> <p>While section 827 should protect the confidentiality of the juvenile case file, the committee still elected to amend the JV-214 form to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p>

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		<p>It is unclear how the JV forms are going to be disseminated. It seems that the JV 214-INFO is made available only at the point that the party is filing for a judicial review. It would be ideal that the information on the form JV 214-INFO is sent prior to or upon notification of the presumptive transfer. Can these forms be integrated with a written notice template that CDSS indicated they will develop and provide for counties' use?</p> <p>We also suggest that the forms provided to the public also be available in Spanish to address limited-English-proficiency court users. Please note that the Judicial Council established two new rules of court (Rule 2.850 and 2.851), both effective January 1, 2018 which in pertinent part, require the each superior court to designate a Language Access Representative (LAR), and establish a language access services complaint form and process by December 31, 2018.. See also link: http://www.courts.ca.gov/lap-toolkit-courts.htm</p> <p><u>In addition, please note, HIPAA requires Covered Entities to ensure meaningful access for individuals with limited English Proficiency and states " In each state, covered entities are required to post taglines in the top 15 languages spoken by individuals with limited English proficiency in that state that indicate the availability of language assistance." (see Section</u></p>	<p>CDSS and DHCS have prepared and are expected to release forms related to notice of presumptive transfer requirements and exceptions, a request for waiver, and notice of the placing agency's presumptive transfer determination. Circulation of these forms and the JV-214 INFO form can occur in any number of ways and counties have the option to determine when and how forms should be used to inform individuals of the presumptive transfer process (consistent with the policy guidance required by section 14717.1).</p> <p>The JV-214 INFO form will be translated into Spanish. The rule will not be addressing the administrative process of presumptive transfer, but only the setting and conduct of the hearing. The Judicial Council and the courts are not covered entities under section 1557 of the ACA. As such, the Judicial Council is not in a position to advise DCFS how to comply with HIPAA and ACA regulations during the administrative presumptive transfer process. This would more appropriately be addressed by the CDSS and DHCS, who are responsible for creating policy guidance and regulations for the presumptive transfer process.</p>

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		<p><u>1557 of the Affordable Care Act of 2010). However, DCFS is not a covered entity so the above provisions apply to Department of Mental Health. However, since ACL 17-77 references compliance with HIPAA, it would be worth noting DCFS is aware of the concern to ensure access by limited English proficiency families and is seeking guidance from the Judicial Council to determine how best to comply with the new Local rules and ACL 17-77 requirement to ensure compliance with HIPAA.</u></p>	
8. Kim Narvaez, MFT Children’s Mental Health Program Manager Yolo County Health and Human Services Agency, Child and Family Branch	NI	<p>Request for Specific Comments</p> <ul style="list-style-type: none"> • Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule? <p>Prescribing Psychiatrist’s recommendation, they’re usually not in CFTs but the court should ask them.</p> <ul style="list-style-type: none"> • Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer? <p>Yes</p>	<p>The committee believes that the opinion of the prescribing psychiatrist can be important to determining the child’s best interests, but considers it to be too case specific to be included in this subdivision of the rule.</p> <p>No response required.</p>

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		<ul style="list-style-type: none"> • Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing? <p>No</p> <ul style="list-style-type: none"> • Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process? <p>5b is confusing “exception to the rule” could be changed to a non-legal jargon.</p>	<p>No response required.</p> <p>The committee agrees that the language in 5b could be simplified and has revised the language.</p>
9.	Office of County Counsel County of Santa Clara By James R. Williams & Michaela L. Lewis San Jose, CA	<p>4. Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer?</p> <p>Yes. The social worker and the placing agency are likely to have much of the relevant information that will inform the court's consideration of whether the waiver is appropriate.</p> <p>5. Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?</p>	<p>No response required.</p>

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		<p>A party may need to keep their address confidential (e.g., a domestic violence survivor, or confidential placement). The form at least should include an option for a party to keep his or her contact information confidential.</p> <p>7. Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process?</p> <p>The forms and instructions refer to the "home county," which could be confused with county of residence. Instead of using the term "home county," it would be clearer to use "sending county," and "receiving." The form and rules use the term "biological" in relation to parent or father. Because biological parents are not necessarily involved with all dependency proceedings, not necessarily entitled to reunification services, and not necessarily able to make legal decisions for their children, it would be more accurate to use the term "parent or legal guardian."</p>	<p>The JV-214 form has been amended to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p> <p>Referring to the child’s home county references the child’s county of original jurisdiction. The use of the term home county is intended clearly define where the child comes and to identify the county of original jurisdiction. The form explains that “When a child is removed from their parent's or guardian's home, the child's home county where the child lived is responsible for arranging, paying, and providing these services.” Referring to the sending and receiving county may create confusion in those situations when a child or nonminor moves from one out-of-county placement to another out-of-county placement. In those situations, it would not be clear that the “sending county” is the child’s county of original jurisdiction, as required. References to “biological parents” have been removed from the forms and rules, as this language was taken from ACL17-77 to refer to those individuals who should be noticed of the initial presumptive transfer determination.</p>

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10. Orange County Bar Association Nikki P. Miliband, President Newport Beach, CA	AM	<p>Comment: 12 for consistency within the Rules and within the practice of dependency court.</p> <ul style="list-style-type: none"> Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule? <p>Comment: The Rules are acceptable as written.</p> <ul style="list-style-type: none"> Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer? <p>Comment: Yes.</p> <ul style="list-style-type: none"> Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing? <p>Comment: No, because these files are already confidential.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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		<ul style="list-style-type: none"> Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process? <p>Comment: No, they are accurate and straight forward.</p> <ul style="list-style-type: none"> Note: There could be Medi-Cal coverage issues when the child changes residence from county to county. 	<p>No response required.</p> <p>The committee acknowledges that there may be issues with Medi-Cal coverage when a child changes placements for other services provided under Medi-Cal. However, the scope of this proposal is limited to the implementation of AB 1299 which addresses only access to Specialty Mental Health Services under Medi-Cal.</p>
11. Orange County Social Services Agency By Alix Kaainoa-Thomas		<p>3. Proposed rule of court: 5.648(e)(1)-2 (e) Conduct of the hearing</p> <p>3 4 (1) The social worker or probation officer must provide a report no later than two 5 court days after the hearing is set under (c)(1) that includes the information 6 required in (d).</p> <p>Orange County Comment to proposed rule of court 5.648 (e)(1)- Proposed Rule 5.648 (e)(1) indicates that the social worker or probation officer must provide a report addressing a number of items indicated in Rule 5.648 (d) within two court days after the hearing is set. There is concern that two court</p>	<p>The timeline for the report is the same for the hearing to review a child’s change of school placement in rule 5.651(e). Both hearings are triggered by a change in placement and both require a prompt hearing. Both issues could be</p>

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		days may not be enough time for social workers/probation officers to obtain the information (especially as it is related to information that is requested from the Mental Health Plan that the social worker or probation officer would need to contact and obtain from them), write the report, and file it. Perhaps the timeline could read “at least one court day before the date of the hearing” in order to provide a more appropriate amount of time.	<p>heard at the same time, so the timelines of rule 5.651(e) were used to create the rules that are the subject of this proposal. In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered.</p> <p>The committee is also removing from the rule reporting requirements that address the placing agency’s responsibilities during the presumptive transfer process found in ACL 17-77 because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change. This should help to reduce the burden on the placing agency’s report.</p>
12. Sacramento County Department of Health and Human Services Sacramento County Office of the County Counsel By Robyn Truitt Drivon County Counsel & Traci Lee Assistant County Counsel Sacramento, CA	NI	By and through counsel, Sacramento County Department of Health and Human Services (DHHS) provides the comments below pertaining to Presumptive Transfer of Specialty Mental Health Services (SMHS) proposed Rules of Court and Judicial Counsel (JV) forms in response to the Invitation to Comment (IC) W18-07. Sacramento County Child Protective Services, Behavioral Health and Probation departments have been diligently working to develop and implement policies and procedures to ensure compliance with the legislation. Through this work it has become evident that	

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		<p>the legislation effectuating the Presumptive Transfer of SMHS is complicated involving systems with differing terminology and practices that will need to coordinate closely at both a State and County level to ensure the goals of the legislation are met.</p> <p>Comment 2: It appears the intention of the legislation and of the proposed Rules of Court is to allow for judicial review of the placing agency’s determination on presumptive transfer which would include whether to waive presumptive transfer (assuming an exception applies) or to transfer (irrespective if there is an applicable exception.) This is not easily discernable from the current legislation and proposed Rules of Court and it would be recommended that these options be more clearly identified.</p> <p>Comment 3: The clear goal of AB1299 was to ensure prompt access to SMHS for children irrespective of their county of original jurisdiction and county of placement. It is the concern of Sacramento County DHHS that the current legislation and proposed Rules of Court have the potential to delay such access. The majority of Sacramento youth that are placed out-of-county are placed on an immediate need thus the 14 day notice period prior to any placement is not applicable. The youth requiring immediate placement is</p>	<p>Subdivision (b)(3) (now subdivision (b)(2)) has been amended to clarify that a hearing can be requested when the applicant disagrees with the placing agency’s determination on the request of a waiver of presumptive transfer. This would include both when the placing agency determines a waiver applies to presumptive transfer or when the placing agency determines that a waiver does not apply.</p> <p>The committee very much appreciates the issues raised in this comment, however, they are directed at issues that the committee is unable to address and can only be addressed either by the legislature or the policy guidance and regulations that are being created by DHCS and CDSS. Section 147171.1(d)(3) requires that the individual who requested the exception to presumptive transfer or any other party to the case may request a judicial review <i>prior to the county’s determination</i></p>

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		<p>also likely in need of access to SMHS on an expedited basis as contemplated by AB1299. However, if the initial determination by the placing agency that presumptive transfer is appropriate cannot be communicated to the out-of-county mental health plan (MHP) until the determination is final, that youth is without necessary SMHS. Depending on whether there is a hearing requested, that could vary from 7 days to 25 or more. Additionally, the MHP in the county of placement now has a youth that is placed in their county, in need of SMHS, but not receiving said services potentially creating liability for that county’s mental health agency. It appears that the desire to give those involved in the child’s case the opportunity to seek judicial intervention at this stage may actually result in further delays at a time the youth is most in need of the SMHS. Clearly having services stop and start in different counties is not preferable, but it is the recommendation of Sacramento County DHHS that the initial determination of the placing agency, after consultation with the Child and Family Team (CFT) be implemented immediately. It is unlikely there is a juvenile court in the State that is not overburdened and will be able to receive timely reports from the child welfare or probation departments, get hearings scheduled and heard without delay, and ensure all parties are informed and prepared to address the complicated issues of SMHS. Better to start the</p>	<p><i>becoming final.</i> The Rule of Court cannot supersede the statute in the way recommended. The comment will however be forwarded to CDSS and DHCS as they implement regulations to implement AB 1299.</p>

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		<p>services in the out-of-county placement, or maintain the services of the county of origin if waiver is recommended, than to have no services in place until a final determination is made.</p> <p>Comment 5: Proposed Rule of Court 5.647(e)(1) – given the timelines involved, the time for filing of the report should be two days before the hearing to give the placing agency more time to gather the necessary information required.</p> <p>Comment 6: To be consistent, in the Advisory Committee Comment in the second to last sentence (pg. 17 of IC) should read “A waiver to the presumptive transfer...” instead of “An exception to the presumptive transfer...”</p> <p>Comment 7: Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs/ACINs?</p>	<p>The timeline for the report is the same for the hearing to review a child’s change of school placement in rule 5.651(e). Both hearings are triggered by a change in placement and could be heard at the same time, so the timelines of rule 5.651(e) were used to create the rules that are the subject of this proposal. There will be a reduction in the report requirements than the original proposal because the committee has elected to remove the requirement that the placing agency report on administrative responsibilities as found in ACL 17-77.</p> <p>The committee agrees with this suggested revision and has updated the Advisory Comment accordingly.</p>

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		<p>Yes, but please review Sacramento County’s recommendation in comment 3 above.</p> <p>Comment 11: Though the placing agencies are already overburdened with mandates, given the specific findings the court must consider when it is evaluating the evidence on the presumptive transfer decision, it would be wise to have a succinct report addressing only those required elements to avoid confusion and delay and assist the court in making and informed and timely ruling.</p> <p>Comment 12: Is there any concern with requiring the applicant requesting the hearing to provide their contact information on the JV form requesting the hearing?</p> <p>No, but there should be a mechanism for the applicant to request information remain confidential if necessary.</p> <p>Comment 14:</p>	<p>See the response above related to the removal of administrative requirements from the rule.</p> <p>Many of the reporting requirements related to the administrative process of presumptive transfer of the rule as originally proposed have been removed. Doing so lessens the burden on the placing agency’s reporting requirements. As mentioned above however has elected to require in subdivision (d) that the report address requirements found in section 14717.1 related to the presumptive transfer process. In addition, at the request of several counties, CDSS has indicated their intent to develop a template addressing the various requirements of the placing agency that can be used by placing agencies to document their responsibilities during the presumptive transfer process.</p> <p>The JV-214 form has been amended to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p>

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		<p>Do you have any suggested changes to make JV-214 or JV-214-INFO easier for lay person to understand?</p> <p>A layperson is going to have a difficult time understanding any of this as a team of attorneys, mental health professionals, child welfare and probation professionals are still struggling to understand the legislation, the rules, the forms as well as the attendant implications. We are not sure how you would simplify further a very complex law.</p>	<p>The committee recognizes that this process is complex and strove to make it as clear as possible. An information sheet has been created as part of this proposal to help participants in understanding the presumptive transfer process.</p>
13.	San Bernardino County Program Development Division By Robert Silva Supervising Program Specialist Program Development Division County of San Bernardino San Bernardino, CA	<p>NI</p> <p>Comment Request: Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs?</p> <p>The rule further proposes a hearing be set within five court days and the hearing should be resolved within five days of the initial hearing.</p> <p>Notes: It is anticipated that the timeline to request hearing will be extended from three court days to seven court days.</p> <p>The goal is to ensure the hearing process does not create a lengthy delay, while allowing for flexibility where good cause is found.</p> <p>County Comment:</p>	

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		<p>Given the kinds of services that may be needed, court may wish to have the option to rule if services should be provided while awaiting the hearing.</p> <p>Comment Request: Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>Notes: The responsibilities include determining if the Mental Health Plan (MHP) in the County of Jurisdiction (COJ) has Specialty Mental Health Services (SMHS) available or can contract for such services with 30 days.</p> <p>County Comment: Yes, the placing agencies should have a clear plan for service through the MHP in the COJ.</p>	<p>DHCS does not anticipate that services will be on hold during the presumptive transfer process when the responsibility for providing mental health services remains with the county of original jurisdiction. If the commentator is suggesting that presumptive transfer proceed prior to the hearing being completed, this suggestion would need to be addressed by the legislature, as section 14717.1(d)(4) states that judicial review may be requested prior to the county’s determination becoming final.</p> <p>The committee agrees that the placing agency must have a plan for services through the MHP in the county of jurisdiction. The committee</p>

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		<p>This may even allow for the use of Service Authorization Requests.</p> <p>The court should allow, to some extent, comparison of services in the County of Residence (COR). That is, if there is an objection to a waiver, the party objecting must also clearly demonstrate services are available through the MHP in the COR. For example, some counties do not have services – including the ability to assess for medical necessity for SMHS - for some age groups; others have limited services in certain areas.</p> <p>Comment Request: Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?</p> <p>County Comment: It should be the strong presumption that completing the reunification plan is in the child’s best interests. A primary purpose of therapeutic services is to facilitate reunification;</p>	<p>however cannot address whether Service Authorization Requests (SOR) can be incorporated into the rule. However, they could be relevant to the how the placing agency, CFT, and the court make a determination on a waiver to presumptive transfer.</p> <p>The committee agrees that this is an important analysis when the court is determining the best interest of the child as it applies to presumptive transfer. The committee has amended subdivision (e)(5)(E) of the proposed rules to reflect that court may consider the ability to maintain specialty mental health services in the county of original jurisdiction AND the county residence after the child changes placement.</p> <p>The committee agrees that these are very important aspect of therapeutic services. The committee believes that facilitating reunification services is sufficient addressed in the rule by its</p>

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		<p>and therapeutic services should facilitate placement, not the other way around. Services should demonstrate that they enhance Placement Stability, Permanent caring relationships, integration into the community, and connection with siblings.</p> <p>Therapeutic services need to be seen as one aspect in the milieu of services. Practical and logistical considerations that interfere with other services – education, physical health, even extracurricular activities – should be evaluated on a case by case basis. The desires and preferences of the youth and the family need to be considered in the CFT and should be reviewed by the court.</p> <p>Comment Request: Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer?</p> <p>Notes: The suggested court report information included:</p> <ul style="list-style-type: none"> • The rationale for the SW determination on the waiver request, and • How and when the SW fulfilled their responsibilities during the presumptive 	<p>inclusion in subdivision (e)(5)(B) and that it is one of the statutorily bases for the application of a waiver to presumptive transfer.</p> <p>The committee further believes that the desire and preference of the youth is sufficiently covered by subdivision (e)(5)(D), which specifically lists the child or nonminor’s position on presumptive transfer.</p> <p>The committee agrees that these are factors that the court should consider when making a determination on the child’s or nonminor’s best interests. However, the committee elected not to expand the list to include these suggestions to promote brevity in the rule and because it believes that these issues can fall into the categories that are already listed.</p> <p>No response required.</p>

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		<p>transfer process, including how and when the following were performed:</p> <ul style="list-style-type: none"> ○ Notice of a description of presumptive waiver and exceptions and how to request a waiver of presumptive transfer, ○ Informing certain individuals and the CFT of the initial determination on presumptive transfer, ○ Consulting the CFT and other professionals as appropriate on the presumptive transfer determination, and ○ Notice to the individual who requested waiver and any party to the case of the determination of the application of a waiver. <p>Comment Request: Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?</p> <p>County Comment: If the entire CFT is informed and the JV form is used as part of that informing, then contact information may need to be redacted.</p>	<p>Because form JV-214 is a form that is filed with the court and is a part of the juvenile court case file, it should not be disseminated beyond what section 827 permits. As such, members of the CFT should not have access to the document and should not be informed by receiving a copy of the</p>

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		<p>Comment Request: Do you have any suggested changes to make JV-214 or JV 214 INFO easier for a lay person to understand? Can any items be removed to simplify of clarify the form and process?</p> <p>Notes: Forms are pictured below.</p>	<p>JV-214. However, the committee has amended the form to indicate that if the preparer of the JV-214's contact information is confidential, to file a JV-287 along with the JV-214.</p> <p>No comments were included with the attached forms.</p>
14. Santa Clara County Department of Family and Children Services By Francesca LeRue, Director San Jose, CA	AM	<p>Proposal W18-07 is issued for public comment relating to Juvenile Law: Presumptive Transfer of Specialty Mental Health Services. The proposal has been reviewed by Santa Clara County Department of Family and Children's Services (DFCS) who is in agreement with the proposal if it is modified. Our comments are below:</p> <ol style="list-style-type: none"> 1. Recommend that CDSS/State coordinates/maintains a website to include all 58 counties' Specialty Mental Health Plan contact information. 2. When someone requests a waiver or any party requests a judicial review, clarify how long it 	<p>Points of contact for presumptive transfer can be found at the following webpage, maintained by CDSS: http://www.cdss.ca.gov/county-offices</p> <p>The rule does require that the hearing be concluded within five days.</p>

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		<p>will take for court to review and make a final decision. Current referrals timeline to the Mental Health Plan is four business days. The proposed rules of court (subdivision (e)(3)) say that if a hearing is set, it must conclude “within five court days of the initial hearing date.”</p> <p>5. Should the rule include factors that the court may consider when making its determination as laid out in section 14717.1 and ACL 17-77?</p> <ul style="list-style-type: none"> • Yes, the description of factors the court may consider is a useful guide for the county agency when reporting to the court upon a hearing being requested. <p>6. Should the rule require the social worker or placing agency prepare a report for a hearing on presumptive transfer?</p> <ul style="list-style-type: none"> • While we understand the desire for a report from the social worker when a hearing is set, if it is determined a report is necessary then we recommend the list in subdivision (d) of the proposed rules be pared down to require the report to include only the information listed in (d)(2), and a more general statement that the required notice was provided. The social workers are signing their reports under penalty of perjury, and an attestation that proper notice 	<p>No response required.</p> <p>Due to the reasons stated above related to policy guidance, the committee has elected to remove subdivisions (d)(1), (d)(3) and (d)(5) from the rule. The committee however has elected to include the remaining portions of the subdivision (d) to ensure a more meaningful review of the presumptive transfer determination.</p>

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		<p>was provided should suffice for purposes of the court making its findings.</p> <p>7. Do you have any suggested changes to make to JV-214?</p> <ul style="list-style-type: none"> The order of subdivisions (a) and (b) on #6 should be switched to be consistent with the order of information in #5. The form may be a little more user-friendly if the reason for disagreeing with the agency decision in 6(a), for example, matches the placement decision described in 5(a). The placement agency decision listed in 5(a) is that “the agency thinks that it is best to transfer the responsibility...to the new county” and in (b) is “there is an exception...and the responsibility should remain with the child or nonminor’s home county.” However, in #6, where the requestor has to select a reason why they disagree, the reason for disagreeing described in (a) does not coincide with the decision listed in (a) in #5. Switching (a) and (b) in #6 may eliminate confusion. As to form JV-214(A), we recommend adding the following language to #4b: “The decision of the county agency is final.” 	<p>The committee agrees with this revision and the revision to the form has been made. The reason for disagreeing with the placing agency can be addressed in the item 7 where the petitioner explains why it is in the child’s best interest to depart from the placing agency’s recommendation.</p> <p>The committee agrees that this will help to clarify that once the court denies the request for a hearing, the placing agency’s determination on the request for a waiver of presumptive transfer is final. The underlined language has been added to</p>

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		<ul style="list-style-type: none"> Use of JV-214 form/subdivision (b)(4): The language in subdivision (b)(4) includes two options for requesting a hearing – utilization of form JV-214, or “by the filing of substantially similar information.” There is no further description of what the “substantially similar information” should include, and unless it is more specifically defined in the rule, the court will receive requests in various formats and likely missing key information, including a statement about why the request for hearing to reconsider the presumptive transfer decision is in the child’s best interest. Form JV-214 is fairly straightforward, and includes important information not only for the court but also to inform the county agency of the basis for the request for hearing. This is especially important given that the proposed rules include a requirement that the county agency prepare a report to the court addressing not only the 	<p>the form in item 4b as follows: 4b. The court has denied the request for a hearing to review presumptive transfer of the responsibility for specialty mental health services to the county of the child's or nonminor's residence. <u>Unless a different request was made for the court to review the waiver of presumptive transfer, the county placing agency is responsible for determining the outcome to the request for a waiver.</u></p> <p>The committee has removed this language from the rule and has made the JV-214 mandatory. The JV-214 form will not will now be required when requesting a hearing on presumptive transfer. The committee reasoned that making the form mandatory will provide clarity when someone is requesting a hearing, and avoid the situation mentioned in the comment.</p>

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		<p>objection but also providing a best interests analysis. We recommend the form be mandatory and that the “substantially similar information” language be eliminated from the proposed rules. If it is not eliminated, then the inclusion of specific information should be required and described by the rule.</p> <ul style="list-style-type: none"> Possible Inconsistency between proposed rules and WIC 14717.1? Under subdivision (c)(1) of both proposed Rules of Court, the language reads, “The court on its own motion may direct the clerk to set a hearing, or deny the request for a hearing without a ruling on the application of a waiver of presumptive transfer.” This language differs slightly from WIC 14717.7(d)(4), which reads: “The court may set the matter for hearing <i>and</i> may confirm or deny the transfer of jurisdiction or application of an exception based on the best interest of the child.” (Emphasis added.) The WIC language does not explicitly authorize the court to deny a hearing based solely on the paperwork, but we support the court having the ability to do so. The WIC language reads as though only if the court decides to set for a hearing can it then “confirm or deny the transfer of jurisdiction or application of the exception,” whereas the Rule of Court reads as though 	<p>The language in the rule is intended to give the court the option to deny the hearing without ruling on the presumptive transfer determination as found in section 14717.1(d)(4). If the court denies a hearing, the placing agency’s determination would become final. The commentator is correct that section 14717.1(d)(4) does not give the option to deny the request for the hearing. The committee however seeks to provide clarity for when it is considering an application for a hearing on presumptive transfer. Subdivision (c)(1) provides the court with the option to deny the request for a hearing without ruling on whether a waiver applies to presumptive transfer. Section 14717.1(d)(4) indicates that the court <i>may</i> set a hearing. The committee believed that it was important to clarify in the rule that not setting a hearing does not require the court to make a determination on waiver to presumptive transfer. The language only addresses the setting of a hearing or the denying of a hearing. It does</p>

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		<p>the court can <i>either</i> set a hearing or deny the request for the hearing without ruling on the county agency’s determination. Subdivision (e)(2) of the proposed rules reads consistent with the WIC language (and inconsistent with (c)(1)). We recommend these inconsistencies be reconciled in both proposed rules. Clarification should also be included that specifies the court may not rule on the application of a waiver of presumptive transfer based solely on the request for hearing paperwork.</p> <ul style="list-style-type: none"> • Subdivision (c) is not clear as to the requirement for when court hearing must be set. We recommend rewording (c)(2) to read: “If the court sets a hearing, the hearing must occur within five court days of the filing of the form. The clerk must provide notice the next court day after receipt of the form, and notice must be provided to:...” • Length of time to submit report under (e)(1): This subdivision could benefit from some clarifying as to the language requiring the social worker to provide a report “...no later than two court days after the hearing is set...” If the hearing is occurring within five court days, and there is no specific requirement as to when the clerk must provide notice, this short timeframe sets up a situation where the agency may not be 	<p>not address making a ruling on waiver to presumptive transfer.</p> <p>The committee agrees with this comment and has moved the language “no later than five court days after the form was filed” from subdivision (c)(2) to (c)(1). This will reflect that the court has the option to grant a hearing to occur no later than five court days after the form was filed.</p> <p>The committee appreciates the concerns raised in this comment, but for consistency with rule 5.651(e), has elected to maintain the timeline for the report in subdivision (e)(1). The requirement to provide a report no later than two days after the hearing is set is taken from a similar rule involving placement changes, rule 5.651(e)(4), which addresses hearings related to change of</p>

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		<p>notified of a hearing date (and subsequent due date for the report) until after the report is due. We recommend the report be required to be submitted one court day in advance of the hearing, especially if the rule is adopted as written.</p>	<p>placement affecting the child’s education stability. Because these hearings are both based on a change of placements and the provision of important time sensitive services, the timeframe for the social worker’s report was adopted from rule 5.651(e)(4). Rule 5.651(e) also includes the same timeframes as the proposed rules in terms of the setting of a hearing. These hearings could potentially be heard at the same time.</p> <p>In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to have the report required two days after the hearing is ordered.</p>	
15.	Solano County Counsel’s Office By Clarisa P. Sudarma Deputy County Counsel Fairfield, CA	NI	<p>General Comments:</p> <ul style="list-style-type: none"> - P 9 of the proposal indicates the committee anticipates there will be additional costs to courts when a hearing under the rule is granted, but does not address anticipated costs to the Department in terms of generating reports and/or potentially testifying in court. We would propose the committee consider generating a fillable form report for CWS to complete, one that could be brought and/or filled out during CFTs to lessen potential redundancies in work 	<p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. This should help to somewhat reduce the burden on the placing agency when they must provide a report. CDSS has received requests for a template that addresses the presumptive transfer process and is in the process of creating such a template that can be used by counties.</p>

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		<ul style="list-style-type: none"> - P 9 acknowledges that hearings are anticipated to be rare. We agree. This process focusses on appropriate procedures if there is a dispute between parties who owe a duty to the health of welfare to the child with the Department’s determination regarding presumptive transfer, which has not been a large area of contention in our County that has caused delay in meeting children MH needs. Instead, delays have more frequently been caused by inconsistent release of information requirements between counties, inconsistent order requirements between counties, etc. We would encourage the committee to consider those areas as ripe for procedural clarification. - If the rule requires the court to review CWS’s compliance, it seems like CWS would need more time to generate reports 	<p>The committee appreciates this comment, however issues related to releases of information are not within the scope of this proposal. This proposal addresses the setting and holding of a hearing under section 14717.1(d)(4). The committee however notes the issue may require procedural clarity and will consider addressing the issue in future proposals. The comment will also be forwarded to CDSS and DHCS as they implement policy guidance and regulations related to the administrative process of presumptive transfer.</p> <p>The timeline for the report is the same for the hearing to review a child’s change of school placement in rule 5.651(e). Both hearings are triggered by a change in placement and both require a prompt hearing. Both issues could be heard at the same time, the timelines of rule 5.651(e) were used to create the rules that are the subject of this proposal. In addition, the court may set the hearing at any time within five days of the request for hearing being filed. Theoretically, this could occur a day or two after the hearing is requested. Under this scenario, it makes sense to</p>

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			<ul style="list-style-type: none"> - The factors the court considers when making its best interest determination should coincide with the same listed for CWS to consider - No concern regarding the contact information requirement as a JV 287 can be completed if necessary - We would encourage the committee to consider whether or not lay people would even need to fill out the form, see Specific Comment number 3 above. Making the forms too simple may encourage persons who are not entitled to request a hearing to request one. 	<p>have the report required two days after the hearing is ordered.</p> <p>Factors related to how the child or nonminor’s best interest will be promoted by the placing agency’s decision will coincide with many of the factors that the court may consider.</p> <p>The committee has added this clarifying information to the form.</p> <p>While the committee doesn’t want to create a situation where those that are not entitled to apply for a hearing do so, there will be individuals who are entitled to request a hearing who will be lay people, such as the person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor, and parents, guardians and children who are not represented by attorneys. For this reason, the committee wants to ensure that the forms are understandable for laypersons.</p>
16.	Kim Suderman, LCSW California County Behavioral Health Directors Association Sacramento, CA	NI	<p>We have the following comments, and have listed them by page, with our feedback/comments in <i>Italics</i>:</p> <p>Page 3: The individual who requested the waiver, or any party to the case, may request a</p>	

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		<p>judicial review of the placing agency’s determination prior to the county’s determination becoming final. This would include the situation where the placing agency’s initial determination was that an exception to presumptive transfer applies and no waiver request was made. This is Under section 14717.1(d)(4), the court may set the matter for hearing and confirm or deny the transfer of SMHS jurisdiction or application of an exception based on the best interests of the child.</p> <p><i>Is the Judicial Council recommending that the Court may set a hearing, even if one was not requested, and overturn the placing agency’s decision to not waive presumptive transfer??</i></p>	<p>Section 14717.1(d)(2) lists the county probation agency or the child welfare services agency with responsibility for care and placement of the child as one of the individuals who may request waiver of presumptive transfer. Because the placing agency and the social worker/probation officer often appear to be synonymous, the committee believes that there may be situations in which it may be confusing to other parties to the case who made a waiver request when it was the social worker or the probation officer. A hearing would only be granted under this scenario if the placing agency determined that an exception to presumptive transfer applied and it was unclear that the social worker or probation officer actually made a request for waiver. A hearing can still only be requested by the individual who requested the waiver or a party to the case.</p>

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		<p>Page 4: Is Rule 5.647 only about a 7 day timeline which isn't in place yet? Is that why there is a September 2018 effective date? How'd they pick that date?</p> <p><i>Both the MHP of jurisdiction and the receiving MHP need to know when responsibility shifts. It would be a major problem if the pending ACL is not released in sync with this document.</i></p> <p><i>There are concerns that the judicial review process could delay the provision of SMHS. It is inappropriate to begin services with one provider, and then change providers due to</i></p>	<p>The proposed rule however shouldn't create this confusion, as it states the person or agency who requested waiver or any party to the case may request a hearing.</p> <p>The September 2018 effective date is the soonest date that the proposal can be approved by the Judicial Council giving the normal process required for the adoption of a Rule of Court and Judicial Council forms. It is not related to the seven-day timeline mentioned.</p> <p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. The rule will only reflect that presumptive transfer is on hold when a hearing is requested until the court either denies the request for a hearing or concludes the presumptive transfer hearing, which is required by section 14717.1(d)(4). Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement policy guidance and regulations to implement AB 1299.</p> <p>The committee agrees with this concern and is seeking to minimize delays in the provision of SMHS as much as possible. Section 14717.1(d)(4) does however allow an individual to request a</p>

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		<i>presumptive transfer waived or not waived, because the court changed the placing agency's decision.</i>	judicial review of the presumptive transfer determination <i>prior to the determination becoming final</i> . The committee believes that the timeline created for the hearing provides for an as expedited hearing as possible while giving the parties enough time to request a hearing, prepare a report and accommodate the court's schedule.
17. Superior Court of Riverside County By Susan D. Ryan Chief Deputy of Legal Services	A	<p>5. Should the rule include factors that the court may consider when making its determination of the child's best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?</p> <p>It seems that these are clearly defined in WIC 1417.1(d)(5), however including them in the rule could provide clarification.</p> <p>6. Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer?</p> <p>Yes.</p> <p>7. Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?</p> <p>It could be an issue if the applicant's address is the same as the minor's placement. The court will need the address this, but an option for the</p>	<p>No response required.</p> <p>No response required.</p> <p>The JV-214 form has been amended to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p>

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		<p>applicant to designate their address as confidential could also address this concern. .</p> <p>9. Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process?</p> <p>No changes to the JV214 or JV214 INFO. For clarity and consistency with other forms the JV-215 should be retitled “Order after Hearing on the Determination of Presumptive Transfer of the Responsibility for Mental Health Services”</p> <p>10. Would the proposal provide cost savings?</p> <p>No. Depending on the number of petitions that need to be processed and heard there could be cost increases.</p> <p>11. What would the implementation requirements be for courts?</p> <p>Clerk’s office and courtroom staff would need to be trained on how to process these types of requests (approximately 1 hour). Procedures would need to be created for filing the petitions, setting the hearings and completing minute</p>	<p>The committee agrees and form JV-215 has been renamed to: “<i>Order After Hearing on Waiver of Presumptive Transfer.</i>”</p> <p>The committee understands that the implementation of AB 1299 may result in cost increases to court. The rules however are anticipated to assist courts in providing a procedural framework for hearings on presumptive transfer that have already been statutorily created.</p> <p>The committee understands that the implementation of AB 1299 may result in increased workloads for the courts and staff. The rules however are anticipated to assist courts in providing a procedural framework for hearings on</p>

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		<p>entries. Codes would need to be created in the case management system for processing the documents and hearings. Coordination with agencies with also need to occur regarding timelines for filing reports.</p> <p>12. Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Given that the court would have to coordinate with other agencies implementation may take as long as six month.</p> <p>13. How well would this proposal work in courts of different sizes?</p> <p>No difference.</p>	<p>presumptive transfer that have already been statutorily created.</p> <p>Because this proposal creates a framework for a hearing that is already required by statute, the committee believes that the proposal should proceed with an effective date of January 1, 2019.</p> <p>No response required.</p>	
18.	Superior Court of San Diego By Mike Roddy, Executive Officer San Diego, CA	AI	<p>Comments:</p> <p>4. Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>It appears the court will receive information on whether the agency has met its responsibilities</p>	<p>The committee has elected to remove items in the rule related to the policy guidance required by</p>

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		<p>because that information is required in the report to the court. (See rules 5.647(d) & 5.648(d).) However, that report is required only if the court grants a hearing. Note also that the proposed rules and form JV-214(A) do not include a finding that the court has considered evidence (other than the information provided on the request for hearing) before making its decision to grant or deny a hearing.</p> <p>As a result, the court could deny a hearing without knowing whether the placing agency has met its responsibilities in making the waiver decision. It is therefore suggested that subd. (d) be revised as follows: “When a hearing is granted under (e)(1) requested under (b)(4), the social worker or probation officer must provide a report” It is likely such a revision will be resisted, however, due to the potential impact on SW/PO workloads.</p> <p>5. Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?</p> <p>Yes. The factors which are listed in subdivision (e)(4)(A)-(E).</p>	<p>section 14717.1(b)(1-2) and (g) because these are administrative functions that are the responsibility of CDSS and DHCS to be developed and implemented.</p> <p>The committee appreciates with this suggestion but believes requiring a report in this situation would be an extra burden on the placing agency that may not be necessary. The reporting requirements in section 14717.1 (d)(7) address presumptive transfer issues when a hearing is not granted. These issues can be addressed at a status review hearing under section 366.</p> <p>No response required.</p>

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		<p>6. Should the rule require that the social worker or placing agency prepare a report for a hearing on presumptive transfer?</p> <p>Yes, isn't such a requirement already proposed in rules 5.647(d) & 5.648(d)? (Or does this question ask about preparing a report for the agency's decision on waiver?)</p> <p>7. Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?</p> <p>Yes. The applicant should have an opportunity to keep his or her address and/or phone number confidential if necessary for safety reasons.</p> <p>9. Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay person to understand? Can any items be removed to simplify or clarify the form and process?</p> <p>Please see comments below.</p> <p style="text-align: center;"><u>CRC 5.647</u></p> <p><u>Subd. (a): For consistency --</u></p> <p>This rule applies to the court's review under Welfare and Institutions Code section 14717.1 of the presumptive transfer of the responsibility</p>	<p>The proposal does include the reporting requirement in subdivision (d). The committee sought feedback on whether the rule should include this requirement.</p> <p>The JV-214 form has been amended to reflect that if the applicant requests their information remain confidential, to file form JV-287.</p> <p>The revision has been made.</p>

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		<p>to arrange and provide for the child's or nonminor's specialty mental health services to the child's or nonminor's county of residence.</p> <p>...</p> <p><u>Subd. (b)(1): For consistency and brevity --</u></p> <p>The following individuals persons or agencies may request that ask the placing agency to consider the application of a request for a waiver to the of presumptive transfer of the responsibility for providing specialty mental health services to the child's or nonminor's county of residence:</p> <p><u>Subd. (b)(1)(C):</u></p> <p><i>Does it make sense to include in subd. (b)(1) the agency "with responsibility for the care and placement of the child" as an agency that "may request that the placing agency consider [a request for waiver]"? Isn't this the equivalent of the placing agency requesting that the (same) placing agency consider a request for waiver?</i></p> <p><i>For consistency –</i></p> <p>The child welfare services agency or the probation agency with responsibility for the care and placement of the child or nonminor; or</p>	<p>The following revisions have been made to be consistent with the language in section 14717.1(d): "(b)(1) The following persons or agencies may make a request to the placing agency that presumptive transfer be waived and that the responsibility for providing specialty mental health services to the child's or nonminor's county of residence:"</p> <p>The committee agrees with this assessment; however, the committee believes the rule should be consistent in this regard with section 14717.1(d)(2).</p> <p>The revision has been made.</p>

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		<p>Subd. (b)(3): <i>For consistency and clarity --</i></p> <p>The individual person or agency who requested the waiver, or any other party to the case who disagrees with the placing agency’s determination decision on the application of an exception to request for waiver of presumptive transfer, may request a judicial review of the placing agency’s determination decision.</p> <p>Subd. (b)(4): <i>For consistency and clarity --</i></p> <p>A request for a hearing may be made by filing a <i>Request for a Hearing on the Determination of Presumptive Transfer Decision Regarding the Responsibility for Specialty Mental Health Services</i> (form JV-214), or by the filing of substantially similar information. This document must be filed with the court and provided to the placing agency within three court days of being informed of the placing agency’s determination decision on the application of a request for waiver of presumptive transfer.</p> <p>Subd. (c): <i>Delete period; insert space after section symbol.</i></p> <p>Setting of a hearing: (§ 14717.1)</p>	<p>Because “determination” is used in section 14717.1(d)(4), the committee has elected to keep that language in the rule. The subdivision has been amended as follows: “The person or agency who requested the waiver, or any other party to the case who disagrees with the placing agency’s determination on the request for the waiver of presumptive transfer, may request a judicial review of the placing agency’s determination.”</p> <p>For the reason stated above, the committee has elected to keep the language “Determination.” The other revisions have been made. In addition, the committee has elected to amend the subdivision to remove the option to submit “substantially similar information,” as this could lead to confusion. The committee proposes making JV-214 a mandatory form.</p> <p>The revision has been made.</p>

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		<p><u>Subd. (c)(1): For clarity --</u></p> <p>The court on its own motion may direct the clerk to set a hearing, or may deny the request for a hearing without a ruling on the application of a request for waiver of presumptive transfer.</p> <p><u>Subd. (c)(2): For clarity --</u></p> <p>If the court sets a hearing, the clerk must provide notice of the hearing date no later than five court days after the form request for hearing was filed. Notice must be provided to:</p> <p><u>Subd. (c)(2)(D): For consistency with WIC § 361(a)(1) --</u></p> <p>The developmental services rights holder or surrogate parent;</p> <p><u>Subd. (c)(2)(E): For clarity --</u></p> <p>The child, if 10 years of age or older, or nonminor if the child is 10 years of age or older; and</p> <p><u>Subd. (d)(2)(B): For consistency and to correct citation style --</u></p>	<p>The revisions have been made, but the instead of referring to an application or request for waiver, the rule will mirror section 14717.1(d)(4) and will refer to the “transfer of jurisdiction.”</p> <p>The revision has been made, in addition this language has been moved to (c)(1) for clarity.</p> <p>In response to other comments related to the need to specify the mental health care decision maker, the language has been changed to: The mental health care decision maker for the child or nonminor if one has been appointed under section 361(a)(1).</p> <p>The revision has been made.</p>

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		<p>A <u>determination decision</u> whether a waiver is determined to be appropriate under section 14717.1(d)(5)(A)-(D);</p> <p><u>Subd. (d)(2)(C): For consistency --</u></p> <p>Any objections to the placing agency’s <u>determination decision</u>; and</p> <p><u>Subd. (d)(2)(D): For consistency --</u></p> <p>How the child’s or nonminor’s best interests will be promoted by the placing agency’s presumptive transfer <u>determination decision</u>.</p> <p><u>Subd. (d)(4): For consistency and brevity --</u></p> <p>That the Child and Family Team, and others who serve the child or nonminor as appropriate, such as the therapist, developmental <u>services</u> decision maker, and 6 Court Appointed Special Advocate volunteer, were consulted regarding the waiver <u>determination decision</u>.</p> <p>transfer.</p> <p><u>Subd. (d)(6): Per language in WIC § 14717.1(d)(6) --</u></p> <p>Whether the mental health <u>provider plan</u> in the county of original jurisdiction <u>demonstrates has demonstrated</u> an existing contract with a</p>	<p>Subdivision (d)(1) has been amended as follows: (B) The placing agency’s determination whether waiver of presumptive transfer is appropriate under section 14717.1(d)(5)(A)-(D);</p> <p>The committee prefers “determination” because this is language used in section 14717.1.</p> <p>See comment above.</p> <p>For the reasons stated above, the committee has chosen not to make this revision.</p> <p>Revisions have been made or not made to reflect the language in section 14717.1(d)(6) and consistency with the rest of the rule.</p>

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		<p>specialty mental health services care provider, or the ability to enter into such a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the foster child or youth nonminor.</p> <p><i>Subd. (e): Delete period.</i></p> <p><i>Subd. (e)(1): For clarity --</i></p> <p>The social worker or probation officer must provide a report to the court no later than two court days after the hearing is set under (c)(1) that includes the information required in (d).</p> <p><i>Shouldn't copies of the report be provided to all parties entitled to notice of the hearing?</i></p> <p>The social worker or probation officer must provide a report to the court, and copies of the report to all parties entitled to notice of the hearing, no later than two court days after the hearing is set under (c)(1) that includes the information required in (d).</p> <p><i>Subd. (e)(2): Per the language of WIC § 14717.1(d)(6) and for consistency and brevity --</i></p> <p>At the hearing, the court must confirm or deny prohibit the transfer of the responsibility to arrange and provide for the child's or</p>	<p>The revision has been made.</p> <p>The revision has been made.</p> <p>The revision has been made to read as follows: (e)(1): The social worker or probation officer must provide a report to the court, all parties to the case and the person or agency that requested waiver no later than two court days after the hearing is set under (c)(1) that includes the information required in (d).</p> <p>The language of subdivision (e)(2) has been revised to more closely reflect the language of section 14717.1(d)(4):</p>

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		<p>nonminor’s specialty mental health services to <u>the county of placement</u> or the application of an exception to presumptive transfer based on the best interests of the child or nonminor. A waiver of presumptive transfer is contingent on the mental health <u>provider plan</u> in the county of original jurisdiction demonstrating an existing contract with a specialty mental health <u>services care</u> provider, or the ability to enter into <u>such a contract with a specialty mental health services provider</u> within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.</p> <p><u>Subd. (e)(4):</u> <i>For consistency and to correct grammar --</i></p> <p>When considering whether it is in the child’s <u>or nonminor’s</u> best interests to <u>confirm grant</u> or deny the request for a waiver to of presumptive transfer, the court may consider the following:</p> <p><u>Subd. (e)(4)(A):</u> <i>For consistency and clarity --</i></p> <p>The <u>child’s or nonminor’s</u> access to <u>specialty mental health services</u>, <u>and the child’s</u> current provision of specialty mental health services <u>to the child or nonminor</u>, and whether any important service relationships will be impacted;</p> <p><u>Subd. (e)(4)(D):</u> <i>For clarity and brevity --</i></p>	<p>(e)(2): At the hearing, the court may confirm or deny the transfer of jurisdiction or application of an exception based on the best interests of the child or nonminor. A waiver of presumptive transfer is contingent on the mental health plan in the county of original jurisdiction demonstrating an existing contract with a specialty mental health care provider, or the ability to enter into such a contract within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.</p> <p>To be consistent with section 14717.1(d)(4) and previous subdivisions, confirm is preferable to grant. The other suggested revisions have been made.</p> <p>The suggested revisions have been made.</p>

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		<p>The child's or nonminor's position of the child or nonminor, or of the child's or nonminor's attorney, on presumptive transfer, or the child's or nonminor's attorney's position on transfer; and</p> <p>Subd. (e)(4)(E): <i>For consistency and clarity --</i></p> <p>The ability of the county of original jurisdiction to maintain deliver specialty mental health services in the county of original jurisdiction to the child or nonminor after the child or nonminor changes placements is placed in another county.</p> <p>Subd. (e)(5): <i>For consistency and brevity --</i></p> <p>The court may make its findings and orders on Orders After Hearing on the Determination of Presumptive Transfer of the Responsibility for Specialty Mental Health Services (form JV-215).</p> <p><i>Advisory Committee Comment: For clarity and to correct citation style --</i></p> <p>This rule describes the process for presumptive transfer of the responsibility for specialty mental health services when a child or nonminor</p>	<p>The suggested revisions have been made.</p> <p>Based on previous suggested revisions, this subdivision was revised to include whether services can be arranged in both the county of original jurisdiction and the county of residence. Because the suggested revision here would limit this inquiry to only the ability of the county of original jurisdiction to arrange for services, the committee has elected to not make the suggested revision.</p> <p>The forms name has been updated.</p> <p>This sentence has been removed from the advisory comment because it relates to</p>

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		<p>is placed in another a California county other than the county of original jurisdiction. ... The exceptions to the presumptive transfer of the responsibility to provide for and arrange for specialty mental health services to the county of the child’s or nonminor’s out of county residence are found in Welfare and Institutions Code section 14717.1(d)(5)(A)–(D). ...</p> <p style="text-align: center;">FORM JV-214</p> <p><u>Title and center footers:</u> <i>Suggested changes for consistency with other Judicial Council forms (e.g., JV-539) and for brevity.</i></p> <p>Request for a Hearing on the Determination of Decision Regarding Presumptive Transfer of the Responsibility for <u>Specialty</u> Mental Health Services</p> <p><u>Item 1.b.:</u> <i>For brevity --</i></p> <p>Person or agency that is responsible for making mental health decisions on behalf of the child or nonminor</p> <p><u>Item 4:</u> <i>For consistency, clarity, and brevity --</i></p> <p>A request was made to the agency that is making this placement asking that the responsibility for</p>	<p>administrative responsibilities which are no longer addressed in the rule.</p> <p>The form was created in plain language format because it will be used by individuals who are not experienced in providing information to courts.</p> <p>To reflect that the hearing relates to the review of a request for waiver of presumptive transfer, the title of the JV-214 form has been changed to: <i>“Request for Hearing on Waiver of Presumptive Transfer.”</i></p> <p>The suggested revision has been made.</p> <p>The suggested revisions have been made.</p>

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		<p>providing the specialty mental health services for to the child or nonminor not be transferred to the new county. That request was made on:</p> <p><i>Item 5: For consistency, clarity, and brevity --</i></p> <p>On (date): _____, the agency that is making the placement informed me:</p> <p>a. That the agency It thinks that it is best to transfer the responsibility for the child's or nonminor's specialty mental health care services should be transferred to the new county.</p> <p>b. That the agency It agrees that there is an exception to the rule that presumptive transfer of the responsibility for providing specialty mental health care services be transferred to the county where the child or non-minor nonminor lives or is being moved to will live, and that the responsibility should remain with the child's or nonminor's home county.</p> <p><i>Item 6: For consistency, clarity, and brevity --</i></p> <p>I disagree with the agency's decision about transferring the responsibility for specialty mental health care services to the new county, as follows:</p>	<p>The suggested revision has been made.</p> <p>The item has been amended as follows: “That the responsibility for the child’s or nonminor’s specialty mental health services should be transferred to the new county of residence and denied the request for waiver.”</p> <p>The item has been amended as follows: “That an exception or waiver applies to the rule that the responsibility for providing specialty mental health services be transferred to the county where the child or nonminor lives or will live, and the responsibility should remain with the child’s or nonminor's home county.”</p> <p>The suggested revisions have been made.</p>

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		<p>a. The responsibility for providing or arranging for the child's or nonminor's specialty mental health services should transfer to the county where the child's or nonminor's lives or is being moved to <u>will live</u>.</p> <p>b. The following exception to presumptive transfer should be applied and the responsibility for providing or arranging <u>specialty</u> mental health services should remain with the child's or nonminor's home county:</p> <p><i>N.B. I suggest switching "a." and "b." so that the petitioner's argument is consistent with the decision in Items 5.a. or 5.b.</i></p> <p style="text-align: center;"><u>FORM JV-214(A)</u></p> <p><u>Title and center footers:</u> <i>Suggested changes for consistency with other Judicial Council forms (e.g., JV-573) and for brevity.</i></p> <p>Order on the Request and Notice of Hearing to Review Presumptive Transfer of the on <u>Decision Regarding</u> Responsibility for Specialty Mental Health Services</p> <p><u>Paragraph re Notice:</u> <i>For clarity and brevity --</i></p>	<p>The suggested revisions have been made.</p> <p>The suggested revisions have been made.</p> <p>The suggested revision has been made.</p> <p>See comment above.</p> <p>To reflect that the hearing relates to the review of a request for waiver of presumptive transfer, the title of the JV-214(A) form has been changed to: "Notice of and Order on Request of Hearing on Waiver of Presumptive Transfer."</p>

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		<p>The court must provide notice to the parents unless parental rights have been terminated, or guardians of the child; the petitioner; the social worker or probation officer; the developmental services rights holder or surrogate parent; the child, if 10 years of age or older, or nonminor if the child is 10 years of age or older; and all other persons entitled to notice under <u>Welfare and Institutions Code</u> section 293.</p> <p><i>Change font to match “The court finds and orders:” – i.e., boldface Arial in same font size.</i></p> <p>Notice to (name and address):</p> <p><u>Item 4:</u> For clarity and brevity --</p> <p>a. The court has granted a hearing on the above date to review the presumptive transfer of the responsibility for providing specialty responsibility to provide for mental health services to the county of the child's/ or nonminor's residence.</p> <p>b. The court has denied the request for a hearing to review the presumptive transfer of the responsibility for providing specialty mental health services to the county of the child's/ or nonminor's residence has been denied.</p> <p style="text-align: center;"><u>FORM JV-214-INFO</u></p>	<p>The suggested revisions have been made, except that “services” has not been added after “developmental” for the reasons discussed above.</p> <p>The suggested revision has been made.</p> <p>The suggested revisions have been made.</p> <p>The suggested revisions have been made.</p>

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		<p>Title and center footers: <i>N.B. Title on page 1 differs from title on page 2 and footers. Suggested changes for consistency with other Judicial Council forms (e.g., JV-290-INFO) and for brevity.</i></p> <p>Instructions Sheet for Requesting a Hearing to Review the of Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services</p> <p><i>Alternative revision (see JV-464-INFO):</i></p> <p>Instruction Sheet for Requesting How to Request a Hearing to Review the of Transfer of the Responsibility for Arranging and Providing for Specialty Mental Health Services</p> <p><u>Item 1:</u></p> <p>Most foster children are eligible for specialty mental health services, which consist of services such as therapy to address emotional, behavioral, and developmental problems. When a child is removed from their his or her parent's or guardian's home, the child's home county where the child lived ("home county") is responsible for arranging, paying for, and providing these services. When a child or nonminor changes placement and is placed outside their home county, the responsibility for providing these services is required to <u>must</u></p>	<p>The form has been revised to be consistent on page 1 and page 2.</p> <p>The title of the form has been changed to: <i>"Instructions for Requesting a Hearing to Review Waiver of Presumptive Transfer of Specialty Mental Health Services."</i></p> <p>See comment above.</p> <p>The revisions have been made, except that "their" has been kept in front of "home county" so as to specify that it is the child's or nonminor's home county that is being referenced.</p>

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		<p>transfer to the county where the child lives, unless certain exceptions apply. This process is called <i>[close up space]</i> "presumptive transfer." The purpose of presumptive transfer is to ensure that foster children who are placed outside of the ir home county receive access to these services without any delay, based upon their individual strengths and needs.</p> <p><u>Item 2:</u></p> <p>What are the exceptions to the presumptive transfer of the responsibility for arranging of specialty mental health services?</p> <p>There are four exceptions to presumptive transfer:</p> <p>a. The transfer would disrupt continuity of care or delay access to services provided to for the child or nonminor. In other words, the child's services would be interrupted in some way by the presumptive transfer.</p> <p>b. The transfer would interfere with family reunification efforts documented in the individual case plan.</p> <p>c. The child or nonminor's placement in a county other than the home county is expected to last less than six months.</p> <p>d. The child's s or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the home county of original jurisdiction.</p>	<p>The suggested revisions have been made.</p>

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		<p><u>Item 3:</u></p> <p>Who is noticed notified of the decision?</p> <p>When a decision is made to move place the child or nonminor to a placement outside the home county, the social worker or probation officer must inform certain individuals persons of the presumptive transfer, and a description of exceptions, and the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency.</p> <p>These individuals persons include the following:</p> <ul style="list-style-type: none"> • the child (if 12 10 years old of age or older) or nonminor,¹ • the attorney of for the child or nonminor, • and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor (the parent or guardian unless the court has made an order appointed ing someone else). 	<p>The title of item 3 has been amended to read: “How does the presumptive transfer process begin?”</p> <p>These revisions have been made.</p> <p>The suggested revision of replacing individuals with persons was not made because it does not provide greater clarity for the form. The reference to the child’s age has been removed because this is an administrative determination that policy guidance from CDSS and DHCS must address.</p> <p>The revision has not been made because the committee would like to be clear that only when the court makes a specific order will a parent or legal guardian lose their ability to make mental health decision for the child.</p>

¹ See WIC § 361.2(h); ACL 17-77, p. 4.

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		<p><u>Item 4:</u></p> <p>Requesting that a waiver be applied to of presumptive transfer</p> <p>You may believe it would better if the child's or nonminor's home county remained responsible for the child's or nonminor's <u>his or her</u> mental health services. Maybe this is because the child or nonminor would lose an important service relationship, with a service provider or reunification services might would be impacted. The child or nonminor, the <u>his or her</u> attorney of the child or nonminor, and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor can request that <u>ask</u> the placing agency consider applying an exception to waive presumptive transfer and keep the responsibility for mental health services in the home county. The placing agency is required to <u>must</u> inform the person that who requested the waiver and any party to the case of their <u>its</u> decision. The person that who requested the waiver and any party to the case can ask the court to review the placing agency's decision.</p>	<p>Unless otherwise indicated, the suggested revisions to item 4 have been made.</p> <p>“Request” as opposed to “ask” was maintained as the language because it is more specific and more closely identifies the language used for procedures required for presumptive transfer. In addition, “consider applying an exception to presumptive transfer” was amended as follows, to indicate that an exception is found in item 2 of the form: “The child or nonminor, his or her attorney, and the person or agency responsible for making mental health care decisions on behalf of the child or nonminor can request that the placing agency consider waiving presumptive transfer based on an exception listed in item 2 above, keeping the</p>

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		<p>A request for waiver must be made to the placing agency within seven calendar days of the <u>determination decision</u> that the child or nonminor will be <u>moved to a placement placed</u> outside the home county. The social worker or probation officer should inform you of the best way to <u>make the request for a</u> waiver.</p> <p><u>Item 5:</u></p> <p>How is a <u>determination decision</u> on <u>a request for</u> waiver made?</p> <p>The social worker or probation officer will <u>make a determination of decide</u> whether <u>or not</u> there is an exception to presumptive transfer. This decision must be communicated <u>in writing or orally, within three business days of the decision,</u> to the <u>individual person</u> who requested waiver of presumptive transfer, <u>along with and</u> all parties to the case, <u>within three business days of the placing agency's decision.</u> This could be <u>communicated in writing or orally.</u></p> <p><u>Item 6:</u></p>	<p>responsibility for mental health services in the home county.”</p> <p>The last paragraph of item 4 was amended to remove the specific timeline required for the request for waiver because this is an administrative function that is subject to change as discussed above. The paragraph has been amended as follows: “If you are entitled to request a waiver of presumptive transfer, the social worker or probation officer should inform you how and when a request for waiver must be made.”</p> <p>The suggested revisions to item 5 have been made unless otherwise indicated.</p> <p>The reference to “three days” has been removed because this is an administrative function that is subject to change as discussed above. In addition, the reference to the decision being communicated in writing or orally has not been changed, as this is an administrative function that is subject to change.</p>

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		<p>The person who requested the waiver or any other party to the case may request a court hearing ask the court to review the placing agency's decision on the waiver request. If you want to ask the court to review that decision, you must To do this, file a request for hearing on form JV-214 with the Clerk in the Superior Court where the child's or nonminor's case is being heard. This request must be filed with the clerk within three court days of the agency telling you their its decision.</p> <p>To request a hearing, you will need to file On form JV-214. The form requires certain information. You will need to explain to the court why it would be better for the child or nonminor to continue to have having the home county maintain responsibility for mental health treatment services; or if to have that responsibility should be moved to the new county. The person requesting a hearing is also required to must inform the placing agency that they are he or she is requesting a hearing.</p> <p>To do this, you will need to give a copy of the JV-214 form to the social worker or probation officer within three days of being informed of the placing agency's determination of the request for the decision on waiver.</p> <p>Item 7:</p>	<p>The suggested revisions to item 6 have been made unless otherwise indicated.</p> <p>The suggested revisions to the first sentence were not made because the committee wants the form to specify that the request for a court hearing, not just a review of the decision.</p> <p>The beginning of the sentence has been amended as follows: "To request a hearing..."</p> <p>"You will need.." was kept in the form so as to provide more specific instructions for the person requesting the hearing.</p> <p>The last sentence is to read as follows: "To do this, give a copy of the JV-214 form to the social worker or probation officer within three days of being informed of the placing agency's decision on the request for the waiver of presumptive transfer."</p>

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

List of All Commentators, Overall Positions on the Proposal, and General Comments			
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		<p>The court will read the request for a hearing and make a decision on <u>decide</u> whether to grant a hearing based on the information that was provided <u>in on</u> the JV-214 form. If no hearing is granted, the placing agency's decision will become final. If a hearing is granted, presumptive transfer will be on hold until the court <u>makes a ruling rules</u> on the request for a waiver. The clerk of the court will contact you either by phone or letter informing you of the court hearing time, date, and location.</p> <p>At the court date <u>hearing</u>, the judge will want to know why presumptive transfer should <u>or should not</u> be waived or not. The court will makes its decision based on the best interests of the child or nonminor. <u>Therefore,</u> be prepared to explain to the judge why you believe that it is in the child's or nonminor's best interests to keep the responsibility for mental health treatment in the home county or to move it to the <u>child's</u> new county <u>of residence.</u></p> <p style="text-align: center;"><u>FORM JV-215</u></p> <p><i>Title and center footers: Note: The title on page 1 differs from the title on page 2 and in the footers. Suggested changes for consistency with other Judicial Council forms (e.g., JV-573) and for brevity.</i></p>	<p>The suggested revisions to item 7 were made unless otherwise indicated.</p> <p>“Makes a ruling..” was kept as the language in the form because it makes it clearer for the reader that the court must make a ruling on the waiver request.</p> <p>On the form that circulated for comment, a title was not included at the top of page two. The title in the footer matches the title on the first page. The title of the form however is being amended to</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
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		<p>Orders After Hearing on the Determination of Presumptive Transfer of the Responsibility for Specialty Mental Health Services</p> <p><u>Orders After Hearing on the Determination of Presumptive Transfer of the Responsibility for Specialty Mental Health Services</u></p> <p><u>Item 1.c.: For clarity --</u></p> <p>(3) Father pPresumed <u>father</u>:</p> <p>(4) Father bBiological <u>father</u>:</p> <p>(5) Father aAlleged <u>father</u>:</p> <p><u>Item 5: To correct grammar --</u></p> <p>The placing agency provided notice as <u>required described</u> in rule 5.647(d)(1) or 5.648(d)(1) of the requirement of presumptive transfer, <u>and</u> a description of exceptions, <u>and</u> the option to request a waiver of presumptive transfer, <u>and</u> <u>how to make such a request to the placing agency.</u></p> <p><u>Item 6: For consistency --</u></p> <p>A request <u>to apply for</u> a waiver to presumptive transfer was made to the placing agency on (date):</p> <p><u>Item 7.b.: For consistency --</u></p>	<p>the following: “<i>Order After Hearing on Waiver of Presumptive Transfer.</i>”</p> <p>The suggested revision is not made because the format is used in other Judicial Council forms, such as JV-405, and the committee would like to be consistent with other forms if possible.</p> <p>Item 5 has been removed because it references a portion of the rule that was removed because it addressed administrative responsibilities that are being developed by CDSS and DHCS.</p> <p>The suggested revision has been made.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commenters	Position	Comment	Committee Response
		<p>(1) The transfer would disrupt continuity of care or delay access to services provided to the foster child or nonminor.</p> <p>(2) The transfer would interfere with family reunification efforts documented in the individual case plan.</p> <p>(3) The child's or nonminor's placement in a county other than the county of original jurisdiction is expected to last less than six months.</p> <p>(4) The child's or nonminor's residence is within 30 minutes of travel time to his or her established specialty mental health care provider in the county of original jurisdiction.</p> <p><u>Item 9:</u> <i>For consistency, clarity, and brevity --</i></p> <p>Notice of the placing agency's determination of whether to waive decision on waiver of presumptive transfer was provided within three court days of the decision to the individual person who requested waiver of presumptive transfer, along with and all parties to the case, within three court days of the placing agency's determination.</p> <p><u>Item 10:</u> <i>For consistency --</i></p>	<p>The suggested revisions have been made.</p> <p>The requirement that the notice be within three days of the placing agency's determination has been removed from the rule because it references an administrative function that is the responsibility of CDSS and DHCS to create and implement.</p> <p>The suggested revisions were made except replacing "determination" with "decision" and "individual" with "person" so as to be consistent with the rest of the form.</p>

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		<p>After having considered the basis for the application request for the a hearing, the report provided for the hearing,</p> <p><u>Item 10.a.</u>: <i>Per language in WIC § 14717.1(d)(6) --</i></p> <p>If waiver applies, the mental health provider plan in the county of original jurisdiction has demonstrated an existing contract with a specialty mental health services care provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.</p>	<p>The suggested revisions have been made.</p> <p>The suggested revisions have been made.</p>
19. Lynn Thull, Ph.D., Mental Health Policy and Practice Improvement Consultant, California Alliance of Child and Family Services Sacramento, CA	NI	<p>Please accept the attached document with comments imbedded. Two major comments:</p> <ol style="list-style-type: none"> 1. There are several places where the document talks about the “mental health provider” needing to demonstrate that it has a contract with a provider in the county of residence. That should be changed to “mental health plan” in the county of original jurisdiction. The individual provider does not have any control over contracting. <p>From Invitation to Comment Report page 2:</p>	<p>The suggested revisions have been made.</p>

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		<p>SMHS jurisdiction must presumptively transfer from the county of original jurisdiction to the county of residence unless an exception applies. and other conditions exist Section 14717.1(d)(5) provides for four possible exceptions:</p> <p>Comment: The presence of an exception does not automatically waive the presumptive transfer. Other conditions must exist (ie: waiver is in the best interest of the youth, the county MHP has an existing contract with a provider in the county where the child will reside, etc).</p> <p>From Attachment 1 Rule 5.647, (b)(3) page 12:</p> <p>(3) The individual who requested the waiver, or any other party to the case who disagrees with the placing agency’s determination on the application of an exception to presumptive transfer, may request a judicial review of the placing agency’s determination.</p> <p>Comment: The only people who can request a judicial review are those listed in (1). It is not open to "any other party to the case"</p> <p>From Attachment 1 Rule 5.647, (c)(2)(D) page 13:</p> <p>(D) The developmental rights holder or surrogate parent;</p>	<p>The committee agrees with this statement. The language in the report could have been phrased differently to incorporate the conditions that must be met to apply a waiver to presumptive transfer.</p> <p>Section 14717.1(d)(3) specifies that “any other party to the case who disagrees with the determination” may request judicial review.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
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		<p>Comment: I don't know what this means, but it should be the mental health rights holder, not developmental.</p> <p>From Attachment 1 Rule 5.647, (c)(2)(F) page 13:</p> <p>(F) All other persons entitled to notice under section 293.</p> <p>Comment: Who are these individuals? It should be the short list provided here.</p> <p>From Attachment 1 Rule 5.647, (d)(6) page 15:</p> <p>(6) Whether the mental health provider in the county of original jurisdiction demonstrates an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental</p>	<p>When the court limits the parent’s ability to make decisions on the child’s mental health care, section 361(a)(1) refers to the child’s “developmental decision maker.” However, the committee agrees that this language might create confusion because developmental decision making does not necessary denote decisions on mental health care. The language therefore has been changed to “(D) <u>The mental health care decision maker for the child or nonminor if one has been appointed under section 361(a)(1);</u>”</p> <p>This is the same list required for notice for a status review hearing and from a similar rule involving placement changes, rule 5.651(e)(4), which addresses hearings related to change of placement affecting the child’s education stability. The individuals listed have the same interest in being noticed of a hearing on presumptive transfer.</p>

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		<p>health services directly to the foster child or youth.</p> <p>Comment: this should be "mental health plan" and not "mental health provider"</p> <p>From Attachment 1 Rule 5.647, (e)(2) page 15:</p> <p>(2) At the hearing, the court must confirm or deny the transfer of the responsibility to arrange and provide for the child or nonminor’s specialty mental health services or the application of an exception to presumptive transfer based on the best interests of the child or nonminor. A waiver of presumptive transfer is contingent on the mental health provider in the county of original jurisdiction demonstrating an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.</p> <p>Comment: Again, this should be "mental health plan" and not "mental health provider"</p> <p>From Attachment 1 Rule 5.648, (c)(2)(D) page 18:</p>	<p>The suggested revision has been made.</p> <p>The suggested revision has been made.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commenters	Position	Comment	Committee Response
		<p>(D) The developmental rights holder or surrogate parent;</p> <p>Comment: This should be "mental health care rights holder" and not "developmental rights holder".</p> <p>From Attachment 1 Rule 5.648, (d)(6) page 20:</p> <p>(6) Whether the mental health provider in the county of original jurisdiction demonstrates an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the foster child or youth.</p> <p>Comment: This should be "mental health plan" and not "mental health provider"</p> <p>From Form JV-214(A) item 4b page 25:</p> <p>b. The request for a hearing to review the presumptive transfer of the responsibility for providing specialty mental health services to the county of the child's/nonminor's residence has been denied.</p>	<p>See comment above. Section 361(a)(1) refers to developmental decision maker but the language has been amended.</p> <p>The suggested revision has been made.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commenters	Position	Comment	Committee Response
		<p>Comment: It would be helpful to all parties if a reason for the denial of the hearing was included on this form.</p> <p>From Form JV-214-INFO item 2a page 26:</p> <p>a. The transfer would disrupt continuity of care or delay access to services provided to the child or nonminor. In other words, the child's services would be interrupted in some way by the presumptive transfer.</p> <p>Comment: interrupted or delayed.</p> <p>From Form JV-214-INFO item 4 page 26:</p> <p>You may believe it would better if the child's or nonminor's home county remained responsible for the child's or nonminor's mental health services.</p> <p>Comment: Since a decision could go either way - the child's MH services stay with the original county (presumptive transfer is waived) or even if an exception exists, the placement worker choses to go ahead and move the responsibility to the county of residency. So the instructions should provide information about both circumstances.</p> <p>From Form JV-215 item 10a page 29:</p>	<p>The committee has amended the form to include a checklist of reasons for why the court denied the request for a hearing.</p> <p>The suggested revision has been made.</p> <p>Since item 4 addresses how to request a waiver to presumptive transfer, the suggestion will be included in item 6, which addresses requesting a hearing. It would be more fitting in item 6 because at this point, someone may object to either waiver of presumptive transfer or the denial of a waiver of presumptive transfer.</p>

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
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		<p>a. If waiver applies, the mental health provider in the county of original jurisdiction demonstrates an existing contract with a specialty mental health services provider, or the ability to enter into a contract with a specialty mental health services provider within 30 days of the waiver decision, and the ability to deliver timely specialty mental health services directly to the child or nonminor.</p> <p>Comment: "mental health PLAN" not "mental health provider"</p>	The suggested revision has been made.
20. Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Sacramento, CA	AM	<p>Recommended JRS Position: Agree with proposed changes if modified.</p> <p><i>Response to Specific Questions</i></p> <p>5. Should the rule include factors that the court may consider when making its determination of the child’s best interests as it relates to transfer of jurisdiction? If so, what factors should be included in the rule?</p> <p>6. Should the rule require that the social worker or placing agency prepare a report?</p> <p>A report should be prepared by the placing agency for the hearing. That is another reason the notice should be 7, not 3, calendar days.</p>	<p>No response required.</p> <p>The committee agrees that a report should be required when a hearing is granted.</p>

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		<p>7. Is there any concern with requiring the applicant requesting a hearing to provide their contact information on the JV form requesting a hearing?</p> <p>9. Do you have any suggested changes to make JV-214 or JV-214-INFO easier for a lay-person to understand? Can any items be removed to simplify or clarify the form and process?</p> <p>It would be helpful to the court that the rule include factors for a court to consider, as long as it is clear that the factors listed are not the only or exclusive factors.</p>	<p>No response required.</p> <p>The committee agrees and has added clarifying language to subdivision (e)(5) of the proposed rules. The language will now read that the court may consider the list of factors “in addition to any other factors the court deems relevant.”</p>

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Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
1.	Christina Beck, M.A., Policy Analyst CWS, Policy and Program Support County of San Diego Health & Human Services Agency		<ul style="list-style-type: none"> Expanding the timeline to request a judicial review hearing from 3 days to 7 days seems reasonable. Agree that CASA, guardian, and tribe should be included as parties to request judicial review. 	<p>The committee elected to not include a timeline for when a hearing may be requested. This is because including a timeline will require that the rule mirror the policy guidance and regulations of DHCS and CDSS that are subject to change. Presumptive transfer is on hold until court rules on the request for a hearing or gives a ruling at the hearing. Therefore, the timelines to request a hearing should mirror the administrative timeline so that the administrative process of presumptive transfer does not proceed before someone entitled to a hearing has the chance to request a hearing or to have the hearing complete itself if one is granted. If the rule and policy guidance aren't coordinated, the presumptive transfer process could proceed before the court addresses the request for a hearing or holds a hearing. ACL 17-77 indicated that a person will have three days to request a hearing, but in their comment, DHCS indicated that the timeline will be changed to seven days. The committee elected to avoid having the rule addressing this administrative function that are responsibility of DHCS and CDSS to implement.</p> <p>The committee elected to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2). While it would benefit courts to</p>

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
			specify in the rule who may request a hearing, doing so requires the rule to mirror the policy guidance and regulations of DHCS and CDSS which are subject to change. Section 14717.1(b)(4) allows the person or agency that requested the waiver or any party to the case to request a hearing. Section 14717.1(d)(2) lists who may request a waiver. Of those who section 14717.1 lists as being able to request a hearing, one requires the policy guidance of DHCS and CDSS, that of “any other interested party who owes a legal duty to the child involving the child’s health or welfare, <i>as defined by the department.</i> ” (italics added) The committee considered including the individuals that DHCS has listed in ACL 17-77 and in their comment related to the proposal in the rule to provide clarity to the court on who may request a hearing. However, the committee decided that the rule should not address items that directly relate to the policy guidance and regulations. The committee instead elected to have the rule mirror the language of section 14717.1(d)(2) in terms of who may request waiver and thus a hearing. The Advisory Committee Comment indicates that to determine who owes a legal duty to the child readers should consult the policy guidance and regulations of DHCS and CDSS.
2.	Diane Boyer Senior Policy Analyst County Welfare Directors Association	NI	With apologies because I just missed the 2/9 deadline, but we need to weigh in on one specific part of this proposal. We have concerns
			For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
Sacramento, CA		<p>with the proposed addition of the Court Appointed Special Advocate (CASA) and suggest a modification to the tribal representative, with respect to those who may request a waiver of presumptive transfer. AB 1299 did not specifically list those individuals CWDA worked with the sponsors of the legislation so that only those who “own a legal duty” to the child may request a waiver. This was intended to identify those who make are a position of legal authority to make such decisions. A CASA owes a duty to the court, and the court rules on the child. The addition of CASA is potentially a conflict of interest. We should point out that nothing prohibits a CASA from providing his or her own opinion to the court, should the presumptive transfer case reach the court for a hearing.</p> <p>With respect to the tribal representative, there should be an established finding that the child is connected to a specific tribe before such authority is granted.</p> <p>Our concern also stems from the fact that for any individual with whom a legal duty is owed, there are additional noticing requirements, which will add workload and cost to county agencies not contemplated nor supported by the Legislature.</p>	Conduct of the Hearing), the committee elected to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).

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Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
3.	California Department of Social Services By Mary Sheppard, LCSW, Chief, Child Protection and Family Support Branch Children and Family Services Division		<p>The proposed rules apply more broadly than is provided for under <u>WIC Section 14717.1</u>, and the scope of the court's review is unclear. For example, the proposal defines individuals and entities that may request a waiver, which occurs prior to any filing with the court. It is unclear why the court proposes to define this and other detailed process requirements that take place before a request for judicial review is filed with the court. The Department welcomes judicial oversight, but is concerned about possible separation of powers issues when our policy guidance is formalized into the Rules of Court.</p> <p><u>Citation:</u> Rule 5.647(b)(1) The following individuals may request that the placing agency consider the application of a waiver to the presumptive transfer of the responsibility for providing specialty mental health services to the child or nonminor's county of residence: (A) The foster child or nonminor; (B) The person or agency that is responsible for making mental health care decisions on behalf of the foster child or nonminor; (C) The child welfare services agency or the probation agency with responsibility for the care and placement of the child; or (D) The attorney of the child or nonminor.</p>	Including the individual or agency who may request waiver is included in the rule because it relates to an important piece of information related to the conduct of the hearing, that being who is entitled to request and be granted a hearing to review the determination on the waiver of presumptive transfer. As section 14717.1(d)(4) indicates, a party to the case or the individual or agency who requested the exception may request a hearing. The committee therefore feels that it is important for the rule to specify who is entitled to request a hearing, as this will easily provide the court with the information it needs to be ascertain who is entitled to a hearing.

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		<p><u>Comment</u>: While the first three persons identified as having the authority to request a waiver are taken directly from WIC Section 14717.1(d)(2), the third individual identified is taken from the <u>joint guidance</u> issued by DHCS and CDSS. That guidance has interpreted the statutory language "or any other interested party who owes a legal duty to the child involving the child's health or welfare, as defined by the department." {WIC Section 14717.1(d)(2)} That definition is currently under further consideration by DHCS and CDSS, with stakeholder input. Putting it in a court rule could limit the DHCS's and CDSS's ability to further exercise their authority to define this term through policy guidance and the regulatory process.</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>
4.	<p>Chua Chao Program Manager Marin County Children and Family Services San Rafael, CA</p>	<p>3) I am in favor of the three court day timeline for requesting a hearing, seven days is too long. I'm assuming this means after a waiver request is denied, the placing agency cannot initiate presumptive transfer for 7 court days even if a hearing is not being requested.</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p>
5.	<p>Department of Health Care Services Erika Castro Branch Chief (Staff Services Manager III)</p>	<p>A</p> <ul style="list-style-type: none"> Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a 	

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
Sacramento, CA		<p>hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days.</p> <p>The proposed rule 5.647 provides timelines for requesting a hearing on the issue of presumptive transfer. DHCS agrees that the rule of court should reflect a timeline for requesting a hearing. The All County Letter (ACL) 17-77 /Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice (IN) NO. 17-032 did not address a timeframe for requesting a hearing. However in current draft guidance DHCS and the California Department of Social Services (CDSS) will provide further guidance on the time frame. Current guidance specifies that upon issuance of a final determination by the placing agency, the individual who requested the waiver or any other party to the case who disagrees with the determination made by the placing agency has seven (7) days from the issuance of the placing agency’s determination to make a formal request to the court for a hearing. While the proposed rule of court 5.647 specifies a three (3) court day timeframe from being noticed, in order ensure timely and prompt access to specialty mental health services (SMHS), DHCS and CDSS have determined that the period of time for an individual to request a hearing be seven (7) calendar days. DHCS and</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p>

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

Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		<p>CDSS opted for seven (7) calendar days, rather than three (3) court days to allow for individuals to have sufficient time to prepare and submit the information required by the court.</p> <p>Additionally, the draft DHCS and CDSS guidance aligns with the proposed rule 5.647, establishing that the court may set the matter for hearing within five (5) court days of receipt of the notification for a request for hearing and may confirm or deny the transfer of the responsibility or application of an exception based on the best interest of the child.</p> <ul style="list-style-type: none"> • Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination? <p>W&I Code 14717.1(d)(2) list those who may request a waiver in a manner established by the department as:</p> <ul style="list-style-type: none"> o The foster child o The person or agency that is responsible for making mental health care decisions on behalf of the foster child; o The county probation agency or the child welfare services agency with responsibility for the care and placement of the child; or 	<p>No response required.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>

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Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
			<p>o Any other interested party who owes a legal duty to the child involving the child’s health or welfare, as defined by the departments.</p> <p>ACL 17-77/MHSUDS IN 17-032 currently defines those individuals responsible for mental health care decisions on behalf of the foster child, as the person or entity who has the legal authority to consent to mental health treatment on behalf of the child. In a foster care case this is usually the parent or legal guardian. In addition, DHCS and CDSS defined any interested party who owes a legal duty to the child, involving the child’s health or welfare to be the child’s guardian or the child’s attorney.</p> <p>DHCS defers to the Judicial Council regarding the following additional individuals being included as interested parties who may owe a legal duty to the child involving the child’s health or welfare: child’s court appointed special advocate (CASA) and tribal representative.</p>	
6.	Kern County Department of Human Services Terrie Martinez, MSW Program Specialist, Assistant Director’s Office		<p>Please see our responses to the Request for Specific Comments attached to this email. In addition to the Specific Comments, we had the following comments on the proposal as a whole and recommend the following modifications:</p> <ul style="list-style-type: none"> As to "Timeliness" addressed on page 4 of the proposal, we recommend that an individual has 3 court days to request a 	For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the

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Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
			<p>hearing after being notified of the placing agencies determination regarding waiver of presumptive transfer.</p> <ul style="list-style-type: none"> • As to "Who may request a judicial review hearing" addressed on pages 6 and 7 of the proposal, we do not think that additional individuals should be added to those already identified as able to request a judicial review. • Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency's determination on the request for waiver will be extended from three court days to seven court days. <p>Yes.</p> <ul style="list-style-type: none"> • Should any other individuals be included as those that may petition the court for review of the placing agency's presumptive transfer individualized exception determination? <p>No.</p>	<p>Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p> <p>See comment above.</p> <p>See comment above.</p>
7.	Los Angeles County Department of Children and Family Services	NI	<ul style="list-style-type: none"> • Should the rule reflect any new timelines for requesting a hearing 	

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
By Ruena Borja, LCSW Children Services Administrator I DCFS Policy Section Norwalk, CA		<p>that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days.</p> <p>Yes, for consistency, the rules should reflect the anticipated updated guidelines from CDSS/DHCS. We also suggest that the rules’ effective date is coordinated with the date of release of the updated ACL/ACIN so counties have uniform guidelines.</p> <p><u>With regards to the timeline, we suggest the following:</u></p> <ul style="list-style-type: none"> - Set the timeline from the date of receipt of notice, rather than the date of the placing county’s <i>determination</i>, as the former would be clearer. • Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination? 	<p>The committee has elected to proceed with the proposal and remove items related to policy guidance and pending regulations.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p>

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Commentator	Position	Comment	Committee Response	
		<p>The current proposed rule language adding the last section ‘any other interested party who owes a legal duty to the child involving the child’s health or welfare, as defined by the department” as one of the parties that can petition, would be vague and therefore must be defined and specified in the rules if it were to be included.</p> <p>We recommend that the guardian may be included as one of the parties, otherwise the other parties mentioned such as CASA and other members of the CFT who are not already able to petition etc. can go through the minor’s attorney or the placing agency to provide input.</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>	
8.	Kim Narvaez, MFT Children’s Mental Health Program Manager Yolo County Health and Human Services Agency, Child and Family Branch	NI	<ul style="list-style-type: none"> • Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? <p>YES.</p> <ul style="list-style-type: none"> • Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination? <p>It already states “or any other interested party who owes a legal duty to the child involving the child’s health or welfare”, that seems broad</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the</p>

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		enough and no need to specify, and it should be included because it will allow for other CFT members who are non-providers to be able to petition	Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).
9.	Office of County Counsel County of Santa Clara By James R. Williams & Michaela L. Lewis San Jose, CA	<p>1. Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs?</p> <p>Yes, the rules, and prior and subsequent ACLs and ACINs should provide clear and consistent timelines for requesting a hearing. Inconsistencies in the existing ACLs and ACINs will result in confusion in practice and implementation of this new process.</p> <p>3. Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination?</p>	For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.

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Commentator	Position	Comment	Committee Response
		<p>The rule should provide greater clarity on what entities may request a waiver of presumptive transfer, including clarifying that a county mental health department receiving a presumptive transfer is entitled to request a waiver of that transfer. The statute states that a waiver may be requested by a "person or agency that is responsible for making mental health care decisions on behalf of the foster child" (Welf. & Inst. Code, 14717.1(d)(2)). It is somewhat ambiguous, however, as to which entities the statute envisions fall under the category of "person[s] or agenc[ies] that [are] responsible for making mental health care decisions on behalf of the foster child." Specifically, while we presume that the statute is intended to cover both the county mental health department and the child welfare agency responsible for the child (including the county mental health department responsible for the child posttransfer), we request that the rule make that more explicit. This clarification would be particularly helpful in light of the fact that some counties, including the County of Santa Clara, structure their operations such that their mental health department and child welfare department are part of two separate county agencies, whereas other counties structure them as part of the same agency. Thus, for counties like ours, it is not entirely clear whether our mental health department is considered part of</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p> <p>A person or entity responsible for making mental health decisions for the child refers to the individual that may consent to treatment for the child. This will be the parent or legal guardian of the child unless the court makes an order under section 361(a)(1) appointing someone else. There are situations where the placing agency may consent for treatment, and the child may consent to treatment in certain situations as well. The juvenile court may even consent for treatment in certain situation. The committee does acknowledge medical consent laws for children in foster are complicated and there are numerous individuals who at different times and in different circumstances may consent for the child's treatment. (see section 305, 366.27(a), 369(a), 369(b), 369(d), Cal Health & Saf. Code section 1530.6)</p> <p>Attempting to provide clarity on this intricate area however would require the rule to take on complications that the committee doesn't believe is warranted at this time. The language at issue is</p>

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		<p>the "agency" responsible for making mental health care decisions on the part of the child, whereas in other counties the mental health department is clearly part of that agency. And in any event, all county mental health departments can and do play a role in making mental health care decisions for the children they serve, particularly because, for Medi-Cal beneficiaries including foster children, they are both the service provider and the entity tasked with managing the mental health component of their Medi-Cal benefit. CITE.</p> <p>To provide further clarity on this point, we request that the rules make clear that the county mental health departments responsible for the minors care pre- and posttransfer, as well as those persons or agency with legal authority to consent to mental health treatment on behalf of the child may request a waiver to the presumptive transfer. The concept of authority to consent to treatment is well established in statute and case law, and provides a clear framework for determining the individuals or entities with standing to request a waiver of presumptive transfer.</p> <p>Further, ensuring that both the mental health department responsible for the child's case pre- and post-transfer have the ability to request a waiver will best effectuate the presumptive transfer statute's intent to ensure children</p>	<p>taken from section 14717.1(d)(2), which the rule must follow. The court will have to determine whether the person or agency has the relationship that is listed in section 14717.1(d)(2) based on the individual circumstances of the case.</p>

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		receive mental health services as quickly as possible when they move between counties. For example, there may be instances when a minor is placed for a short time period with a residential services provider (e.g., a Short Term Residential Treatment Program (STRTP)), with which the local mental health department has no existing contract. In that instance, the county mental health department that has been responsible for the child over the last many years is equally well-situated to contract with the residential facility, and can more efficiently provide information to the residential provider than a county mental health department unfamiliar with the child. In such an instance, the mental health department where the residential facility is located would request a waiver of transfer in order to expedite service provision for the child.	
10. Orange County Bar Association Nikki P. Miliband, President Newport Beach, CA	AM	<ul style="list-style-type: none"> Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days. <p>Comment: Yes.</p>	For the reason stated above in comment number one of this portion of the comment chart

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		<ul style="list-style-type: none"> Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination? <p>Comment: No.</p>	<p>(Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>
11.	Orange County Social Services Agency By Alix Kaainoa-Thomas	<p>1. Proposed rule of court: 5.647(b)(1)(C)-(b) Request for the waiver of presumptive transfer (§ 14717.1)</p> <p>19</p> <p>20 (1) The following individuals may request that the placing agency consider the</p> <p>21 application of a waiver to the presumptive transfer of the responsibility for</p> <p>22 providing specialty mental health services to the child or nonminor’s county</p> <p>23 of residence:</p> <p>24</p> <p>25 (A) The foster child or nonminor;</p> <p>26</p> <p>27 (B) The person or agency that is responsible for making mental health care</p>	

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Administrative Responsibilities that Address the Conduct of the Hearing			
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		<p>28 decisions on behalf of the foster child or nonminor; 29 30 (C) The child welfare services agency or the probation agency with 31 responsibility for the care and placement of the child; or</p> <p>Orange County Comment to proposed rule of court 5.647 (b)(1)(C)- Proposed Rule 5.647 (b)(1)(C) indicates that the social worker or probation officer with responsibility for care/placement of the child has the right to request a waiver of presumptive transfer. However, the placing agency is the one making the determination on the waiver request. This seems like a conflict of interest when the agency requesting a waiver, is the same agency making the determination on the waiver request. Is the availability of the judicial review process an attempt to mitigate this apparent conflict?</p> <p>2. Proposed rule of court: 5.647(b)(4)-23 (b) Request for the waiver of presumptive transfer (§ 14717.1)</p> <p>11 (4) A request for a hearing may be made by filing a Request for a Hearing on the 12 Determination of Presumptive Transfer of the Responsibility for Mental</p>	<p>This requirement is derived from section 14717.1(d)(2). In constructing the rule, the committee could not leave out an individual that is listed in the statute as entitled to request a waiver to presumptive transfer. Essentially, when the placing agency determines a waiver should apply to presumptive transfer, the social worker/probation officer should make the waiver request and then follow the administrative process of the issued policy guidance on presumptive transfer. The committee does however agree with the comment that this could create confusion.</p>

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	Commentator	Position	Comment	Committee Response
			<p>13 Health Services (form JV-214), or by the filing of substantially similar 14 information. This document must be filed with the court and provided to the 15 placing agency within three court days of being informed of the placing 16 agency’s determination on the application of a waiver of presumptive 17 transfer.</p> <p>Orange County Comment to proposed rule of court 5.647 (b)(4)- Proposed Rule 5.647 (b)(4) indicates that the request for hearing must be filed with the court and provided to the placing agency “within three court days of being informed” of thedetermination.....of a waiver”. This timeline should be more specific, it is too vague when you are talking about a person’s right to be heard in court. What does “of being informed” mean? From the date it was mailed? From the date of the postmark? From the date the recipient actually read it (hard to prove)?</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p>
12.	<p>Sacramento County Department of Health and Human Services Sacramento County Office of the County Counsel By Robyn Truitt Drivon County Counsel & Traci Lee Assistant County Counsel Sacramento, CA</p>	NI	<p>Comment 9: Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination?</p>	

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Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		The child’s tribe if the tribe has intervened, legal guardians, as well as the minor’s CASA.	For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).
13.	San Bernardino County Program Development Division By Robert Silva Supervising Program Specialist Program Development Division County of San Bernardino San Bernardino, CA	NI	<p>Comment Request: Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination?</p> <p>Notes: The WIC currently lists: Foster child, Person or agency responsible for making the mental health care decisions on behalf of the foster child, Probation officer, or CFS SW. It then mentions - Any other interested party who owes a legal duty to the child involving the child’s health or welfare, as determined by CFS. CDSS only included the child’s attorney in this last group. Other suggested individuals under this category may include:</p> <ul style="list-style-type: none"> • Child’s legal guardian, • Court Appointed Special Advocate (CASA) volunteer, • Tribal representative.

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		<p>County Comment: Not the biological parents? The Caregiver? Does being in a CFT count as a ‘legal duty’ under this rule? The current therapist?</p> <p>Expanding the list means increasing the noticing and informing requirements.</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>	
14.	Solano County Counsel’s Office By Clarisa P. Sudarma Deputy County Counsel Fairfield, CA	NI	<p>Specific Comments:</p> <ul style="list-style-type: none"> - Currently the proposal is not entirely clear on who may request a hearing. The proposed JV 214 lists child, person or agency that is responsible for MH decision, minor’s attorney, parent or legal guardian, and other. The proposed WIC 14717.1(b)(1) indicates the following individuals are the only ones who may request a presumptive transfer waiver: child, person or agency responsible for making MH decisions for the minor, CWS, attorney’s child. The current 14717.1(d)(1) allows “any other interested party who owes a legal duty to the child involving the child’s health or welfare, as defined by the department.” We would propose the committee limit the parties who may request a hearing, and make it explicit – not have the “other” checkbox – and 	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>

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Commentator	Position	Comment	Committee Response
		limited it to those in the proposed WIC 14717.1(b)(1) listed on p. 12.	
15. Superior Court of Riverside County By Susan D. Ryan Chief Deputy of Legal Services	A	<p>1. Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days.</p> <p>We agree that the timeline should be extended to seven court days, and consequently that the extension should be reflected in the new rule. Any new timelines introduced by ACLs or ACINs should also be added to the rule for consistency.</p> <p>3. Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination?</p> <p>We agree that the minor’s legal guardian, CASA and tribe should be added to the list of individuals that may petition the court for</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the</p>

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Commentator	Position	Comment	Committee Response
		<p>review. There certainly may be others who are interested (adult siblings, grandparents, extended family, etc.) however, it is not clear if they would owe a legal duty so would they may not qualify under Section 14717.1(d)(2). Clarification on this could be useful for court staff when accepting petitions for filing.</p>	<p>Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>
16.	<p>Superior Court of San Diego By Mike Roddy, Executive Officer San Diego, CA</p>	<p>1. Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days.</p> <p>If the timeline is extended to seven court days, the rules should reflect that timeline. (See rules 5.647(b)(4) & 5.648(b)(4).)</p> <p>3. Should any other individuals be included as those [who] may petition the court for review of the placing agency’s [decision on waiver]?</p> <p>As drafted, rules 5.647(b)(3) and 5.648(b)(3) already include “the individual who requested the waiver, or any other party to the case who disagrees with the placing agency’s [decision]” as those who may petition the court for review of the agency’s decision. Those who may request a waiver are listed in subd. (b)(1)(A)-(D): child/nonminor, person/agency responsible</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).</p>

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

Administrative Responsibilities that Address the Conduct of the Hearing			
Commentator	Position	Comment	Committee Response
		<p>for mental health care decisions, placing agency, attorney for child/nonminor. It is strongly suggested that subd. (b)(1)(D) be changed from “The attorney of the child or nonminor” to the language in WIC § 14717.1(d)(2): any other interested party who owes a legal duty to the child or nonminor involving the child’s or nonminor’s health or welfare. As stated in the proposal:</p> <p>“The department currently limits this group to the child’s attorney. The committee requested that the department consider also adding the child’s legal guardian, CASA volunteer, and the child’s tribe to the list of those who can request a waiver and thus a hearing. Staff to the department agreed to include these additional individuals, and it is expected that these individuals will be included as those that may request a waiver of presumptive transfer in a new information notice that is currently under construction.” (Proposal, p. 7.)</p> <p>Using the statutory language (“any other interested party who owes a legal duty ...”) in subd. (b)(1)(D) would effectively include the “additional individuals” suggested by the Advisory Committee, as well as the child’s caregiver. Thus, if the statutory language is</p>	

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Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
			<p>adopted, those who may petition the court for review would include:</p> <ul style="list-style-type: none"> - child/nonminor, - person/agency responsible for mental health care decisions for child/nonminor, - placing agency (child welfare or probation), - interested party who owes a legal duty to the child, i.e.: <ul style="list-style-type: none"> - attorney for child/nonminor - parent or legal guardian of child/nonminor - CASA volunteer - child’s tribe, if any - child’s caregiver <p><u>Subd. (b)(1)(C):</u></p> <p><i>Replace: “The attorney of the child or nonminor.” with language from WIC § 14717.1(d)(2):</i></p> <p>“Any other interested party who owes a legal duty to the child or nonminor involving the child’s or nonminor’s health or welfare.” (See response to question 3, ante.)</p>	
17.	Lynn Thull, Ph.D., Mental Health Policy and Practice Improvement Consultant, California Alliance of Child and Family Services Sacramento, CA	NI	<p>From Invitation to Comment Report page 7:</p> <p>As to this last category, the department currently limits this group to the child’s attorney. The committee requested that the department consider also adding the child’s legal guardian, CASA volunteer, and the child’s</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to include in the rule who is allowed to request</p>

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

Administrative Responsibilities that Address the Conduct of the Hearing				
	Commentator	Position	Comment	Committee Response
			tribe to the list of those who can request a waiver and thus a hearing. Staff to the department agreed to include these additional individuals, and it is expected that these individuals will be included as those that may request a waiver of presumptive transfer in a new information notice that is currently under construction.	waiver, but to avoid attempting to define who owes a legal duty to the child as defined by the department under section 14717.1(d)(2).
18.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Sacramento, CA	AM	<p>1. Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs? It is anticipated that the timeline to request a hearing after being informed of the placing agency’s determination on the request for waiver will be extended from three court days to seven court days.</p> <p>3 court days is too short. DPSS is likely to extend the time in the next ACL. Our recommendation is 7 court days.</p> <p>3. Should any other individuals be included as those that may petition the court for review of the placing agency’s presumptive transfer individualized exception determination?</p>	<p>For the reason stated above in comment number one of this portion of the comment chart (Administrative Responsibilities that Address the Conduct of the Hearing), the committee elected to not include a timeline for when a hearing may be requested.</p> <p>No response required.</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
1.	Christina Beck, M.A., Policy Analyst CWS, Policy and Program Support County of San Diego Health & Human Services Agency		<p>Following initial submission of this comment, the commentator sent this follow-up comment: ...after further consider, I no longer agree with Notification of PT to occur at age 12 for the following reason:</p> <p><i>Notification of Out of County Placement needs to be provided to youth age 10 and up (WIC 361.2(h)). When counties combine notification of Out of County Placement with notification of Presumptive Transfer, the age of the child to be noticed should be consistent or these notices will need to be provided separately with separate procedures established by the counties.</i></p> <ul style="list-style-type: none"> • Notification of PT at age 12 or older seems reasonable. 	<p>The committee has elected to remove subdivision (d)(1) which addresses notice to the child of presumptive transfer requirements because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. The committee appreciates this comment, but the it addresses a portion of the rule that will be removed for reason mentioned above. The comment however be forwarded to representatives at the CDSS and DHCS. who are creating policy guidance and regulations implementing AB 1299.</p> <p>No response required. See comment above.</p>
2.	California Department of Social Services By Mary Sheppard, LCSW, Chief, Child Protection and Family Support Branch Children and Family Services Division		<p>CDSS and the Department of Health Care Services (DHCS) are responsible for implementing <u>Welfare and Institutions Code (WIC), Section 14717.1</u>, and continue to work together with counties, providers, advocates, and others to ensure the mental health needs of children and youth are met in an effective and timely manner. The following comments</p>	<p>The committee is appreciative of the comments from CDSS and from all the commentators on this proposal. Based on this and other comments, the committee has elected to remove from the rule a review of the administrative responsibilities during the presumptive transfer process. As CDSS indicates in this comment, policy guidance on the implementation of AB 1299, required by section</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>describe broad areas of concern or where CDSS thinks clarity is needed. We have also included a table that provides more specific feedback to individual subdivisions of the proposed rules.</p> <p>Our primary concern relates to the applicability of the proposed rules and what is subject to the court's review. Judicial review is provided for in <u>WIC Section 14717.1 (d)(4)</u> as a recourse in the event there is disagreement with a county placing agency's determination about a waiver. With respect to presumptive transfer, CDSS sees the role of the court's review as applying to the placing agency's decision on a request to waive presumptive transfer. This would require the court to review the county placing agency's determination as to whether or not any exceptions to presumptive transfer existed, and also whether the agency consulted with the child or youth, his or her parent, the child and family team, and any other professionals who may serve the child or youth. If the matter is set for a hearing, the court will confirm or deny the agency's decision based on the best interests of the child or youth.</p> <p>Section 14717.1 (g) requires DHCS and CDSS to promulgate regulations implementing the statute. It permits us to provide policy guidance until such regulations are finalized. Providing details of the agency process in a rule of court will limit the flexibility CDSS and DHCS</p>
			<p>14717.1(b)(1-2) and (g), is incomplete and subject to change. While the committee initially elected to include the administrative process in the rule to ensure meaningful review, the committee does not want to create the situation mentioned, that including these requirements in the rule as they currently stand in ACL 17-77 would prevent CDSS and DHCS from amending these requirements, which are currently being considered for revision. As these requirements are the responsibility of CDSS and DHCS, the committee wants to ensure that the rule of court does not prohibit the departments from carrying out their responsibility in this regard.</p> <p>See comment above related to the removal from the rule of the review of administrative functions.</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>statutorily have to make policy and procedure changes in the future. As presumptive transfer policy continues to be implemented and evolve, CDSS and DHCS are finding that changes in policies are needed to ensure best practices. The proposed rules appear to limit our ability to promulgate regulations that differ from the Rules of Court, even if such changes are desired by the stakeholders and the courts. It would certainly mean the applicable rules would need to be updated each time the departments made process and practice changes. This seems altogether avoidable. If specific, detailed information about agency requirements is needed to inform the bench and other parties, it may be more effective to include a reference to our <u>joint guidance</u> and subsequent regulations.</p> <p>It is our position that some of the issues identified below may be addressed, at least in part, if elements of the proposed rules were aligned with the court's existing oversight of out-of-county placements for dependent and delinquent children and youth, pursuant to <u>WIC Section 361.2</u>. For example, aligning notification and hearing timelines and requirements could potentially benefit everyone involved.</p>	<p>The committee believes that the coordinating timelines with section 361.2(h) will need to be addressed in the evolving policy guidance referenced in the comment. Section 361.2(h) requires a hearing shall be set if the parent objects to the child being moved to an out of county placement. The hearing must be within seven days of the receipt of notice. According to ACL 17-77, this timeline is the same for presumptive transfer in terms of notice (14 days prior to the placement change) and a request for a waiver (seven days after notice). But unlike section 361.2(h), ACL 17-77 requires further steps before someone can request a hearing. According to ACL 17-77, the</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>The Department identified subdivision (d) of the proposed rules as being particularly problematic.</p> <ul style="list-style-type: none"> Subdivision (d)(1) requires the report include documentation that notice provided pursuant to <u>WIC Section 361.2(h)</u> is consistent with requirements of presumptive transfer under <u>WIC Section 14717.1</u>. Notification requirements for presumptive transfer are defined in our <u>policy guidance</u>, not in 	<p>placing agency must consult the CFT, make a determination on the request for a waiver, and then inform parties to the case and the person who requested waiver. After this occurs, a request for hearing can be made.</p> <p>Because the rule is not including review of the administrative timelines, the committee does not believe that the rule itself will be inconsistent with the timelines of section 361.2(h). The rule will mirror the timelines of section 361.2(h), in that a request for a hearing must be within seven days of being noticed of the placing agency’s response to the request to waive presumptive transfer. If the rest of the process mentioned above can be completed within the same timeline as a hearing under section 361.2(h), then the hearings could be held at the same time.</p> <p>Subdivision (d)(1) has been removed from the rule for the reason stated above. Former subdivision (d)(1) was reflecting the notice requirements on page four of ACL 17-77, which requires that notice of the presumptive transfer requirements under AB 1299, including a description of exceptions, the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency be included in the notice provided</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>statute, and do not match the notification requirements defined in <u>WIC 361.2(h)</u>. The written notices required by <u>WIC Section 361.2(h)</u> would be impossible to facilitate within the timeframes given by our <u>policy guidance</u>.</p> <p><u>Citation</u>: Rule 5.647 (b) Request for the waiver of presumptive transfer (§ 14717.1)</p> <p><u>Comment</u>: WIC Section 14717.1 expressly places in the DHCS, in consultation with the CDSS, responsibility for creating the guidance on the conditions for and exceptions to presumptive transfer {§ 14717.1(b)(1) and (g)}. It also permits a person requesting a waiver or any other person who disagrees with the determination made by the placing agency on whether a waiver of presumptive transfer is appropriate to request review by the court {§ 14717.1(d)(4)}. Subdivision (b) of the proposed rule addresses the process for requesting a waiver of the placing agency, not the court process. While it incorporates the <u>joint guidance</u> that has already been issued by DHCS and CDSS, that guidance is not final and is subject to revision. Moreover, DHCS and CDSS are required to adopt regulations to implement the process {§ 14717.1(g)}. Including temporary guidance into a rule before the regulations are adopted would bind the DHCS and CDSS to the</p>
			<p>pursuant to section 361.2(h) if such notice is provided for a new out of county placements. The notice requirement is not however going to be addressed in the rule.</p> <p>The rule has been amended to remove the portions of the rule that address the policy guidance and regulations required by section 14717.1(b)(1) and (g). Subdivision (b)(2) has been removed. The other portion of subdivision (b) address the process to request a hearing.</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>process incorporated into the rule and prevent the executive branch from modifying its policies to the extent they may conflict with the existing rule of court. This implicates separation of powers and appears to contradict the express provisions of the statute. If the court is going to issue a rule corresponding to the departments' joint guidance, it should wait to do so until after regulations are issued through the Office of Administrative Law.</p> <p><u>Citation:</u> Rule 5.647(b)(2) A request for waiver must be made to the placing agency within seven calendar days of the determination that the child or nonminor will be in a placement outside the county of original jurisdiction or within two court days of the agency providing notice in subdivision (d)(1)(C).</p> <p><u>Comment:</u> This provision is unclear. Subdivision (d)(1)(C) is one small portion of the broader provision regarding what placing agencies must address in the court report. It does not address notice, This appears to be a mistaken cross-reference.</p> <p><u>Citation:</u> (d)(1) That notice consistent with section 361.2(h) of the presumptive transfer requirements under section 14717.1 was provided. The notice must include a description of exceptions to presumptive transfer, the option to request a waiver of presumptive transfer if an</p>
			<p>Subdivision (b)(2) has been removed from the proposed rule. The commentator is however correct that there was a mistaken cross reference. There was a last-minute modification to the rule's numbering which resulted in the oversight. The correct reference should have been to (d)(1).</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>exception exists, and how to make such a request to the placing agency. The notice must be provided to:</p> <p>(A) The child if aged 12 years old or older, or nonminor;</p> <p>(B) The attorney of the child or nonminor;</p> <p>(C) The person or agency responsible for making mental health care decisions on behalf of the child or nonminor.</p> <p><u>Comment:</u> Prescribing what the placing agency must include in its notice and the process by which that notice must be done is outside the scope of the judicial branch authority.</p> <p>The cross-reference to WIC Section 361.2(h) is inconsistent with the guidance that the departments have already issued. Section 361.2(h) requires written notice 14 days prior to the proposed out-of-county placement. This conflicts with the notification requirements described in our policy guidance (ACL 1777/MHSUDS 17-032). They also conflict with the timeframes for addressing a request for application of an exception and waiver of presumptive transfer addressed in that guidance.</p> <p>Additionally, WIC Section 361.2(h) does not apply to delinquency proceedings. The cross-reference could be confusing to probation officers.</p>
			<p>Subdivision (d)(1) has been removed for the reasons stated above. Former subdivision (d)(1) was reflecting the notice requirements on page four of ACL 17-77, which requires that notice of the presumptive transfer requirements under AB 1299, including a description of exceptions, the option to request a waiver of presumptive transfer if an exception exists, and how to make such a request to the placing agency be included in the notice provided pursuant to section 361.2(h) if such notice is provided for a new out of county placements. The notice requirement is not however going to be addressed in the rule.</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>This is an area where check boxes on a form would be most helpful. The boxes could be used to identify who received notice of the right to request a waiver.</p> <p><u>Citation:</u> (d)(3) That the placing agency informed the following of its initial presumptive transfer determination, which includes a determination by the placing agency that an exception to presumptive transfer applies, within three days of that determination:</p> <p>(A) The child or nonminor, (B) The Child and Family Team coordinator if one exists, or the placing agency's case carrying social worker or deputy probation officer, (C) The attorney of the child or nonminor, (D) The biological parents when appropriate (if they are not already a member of the Child and Family Team).</p> <p><u>Comment:</u> It is unclear why this is required to be presented to the court. This is the process prior to the hearing, and it includes provisions that are contained in the joint guidance currently under review and subject to change. The departments are also required by WIC Section 14717.1(g) to adopt regulations addressing this process. To include it in a court rule will limit</p>	<p>Subdivision (d)(3) has been removed from the rule for the reasons stated above. The committee included this subdivision in the original rule to ensure a more meaningful hearing and to ensure that the placing agency followed the administrative requirements of ACL 17-77. It will not be addressed in the rule going forward however.</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>the ability of the departments to execute their statutory mandate.</p> <p>Additionally, it appears irrelevant to the court's review of whether the placing agency's decision on a request for waiver is in the child's best interests. Presumably, the person applying for the hearing was informed of all his or her right to request a waiver and his or her right to request a hearing or he or she would not have filed the application for a hearing. This information is only relevant if the applicant for the hearing contends a hearing is necessary because he or she was not informed of the decision and the right to seek a waiver.</p> <p>Subdivision (d)(3)(D) should refer to parents rather than biological parents. The parents involved in the case could be adoptive parents. There may also be more than two presumed parents, all of whom should be participating in the proceedings.</p>	
3.	Chua Chao Program Manager Marin County Children and Family Services San Rafael, CA		4. Under rule 5.647 (d) (3) (D)-top of page 15, where it states “The biological parents ...), should this say presumed or legal parents? What about legal guardians? Adoptive parents? This may require a legislative fix but I think this will create confusions for agencies.	Subdivision (d)(3) is being removed from the proposed rules because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. Subdivision (d)(3) was taken from the policy guidance of ACL 17-77.

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
4.	Department of Health Care Services Erika Castro Branch Chief (Staff Services Manager III) Sacramento, CA		<ul style="list-style-type: none"> • What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age? <p>DHCS believes that the appropriate minimum age for a minor to be notified of the presumptive transfer requirements and exceptions is 10 years old. As indicated in the Invitation to Comment, a minor can consent to mental health treatment at the age of 12 (Family Code, Section 6924). Additionally, at the age of 10 a child is to be provided notice of their right to attend court, and a child of any age who is subject of a juvenile hearing is entitled to be present at a hearing (W&I Code Section 349). Additionally, if the child is 10 years old or older, the placing agency must provide written notification to the child at least 14 days prior to the date of placement (W&I Code, Section 361.2(h) and ACL 17-81. Establishing 10 years as the minimum age for children to receive notification of presumptive transfer conforms with existing and related notification requirements in statute. In addition, forthcoming DHCS and CDSS guidance will indicate that the appropriate age for a minor to be notified of presumptive transfer requirements and exceptions is 10 years old.</p> <ul style="list-style-type: none"> • Should the rule include the requirements of the placing agency’s responsibilities during 	<p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance and pending regulations. The rule therefore will not review the placing agency’s responsibilities to notice the child of the presumptive transfer requirements.</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>DHCS defers to CDSS.</p> <ul style="list-style-type: none"> • Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules. <p>CDSS and DHCS have specified both business days and calendar days to define the range of time for notifications, requests for waivers, and hearing requests. We chose calendar days for timeframes associated with a request for waiver to expedite the process and not be delayed due to weekends, holidays, or different approaches to determining a business day (ACL 17-77/MHSUDS IN 17-032). Therefore, we agree with the proposed rule using calendar days for the request for waiver to a placing agency and setting a timeframe of two (2) court days of an agency providing notice for a request for hearing, and using court days to determine timeframes for the rule of court.</p>	<p>No response required, see comment from CDSS above.</p> <p>For the reasons stated above, the committee has elected to remove subdivision (b)(2) that relates to an administrative function during the presumptive transfer process.</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
5.	Executive Committee of the Family Law Section of the California Association Andrew Cain San Francisco, CA	AM	<p>2. Rule 5.647(b)(1-2) and Rule 5.648(b)(1-2) – We recommend deleting these provisions. They speak to the administrative process that occurs prior to judicial review. The procedures governing this process are outlined in an All-County letter prepared last year by the state Department of Social Services. We believe there is no need for the Judicial Council to issue similar regulatory language.</p> <p>3. Rule 5.647(b)(2) and Rule 5.648(b)(2) – In the event the Advisory Committee disagrees with our opinion that the language above should be deleted, we recommend a slight change to subdivision (b)(2) of both proposed rules. The language “...or within two court days of the agency providing notice in subdivision (d)(1)(C)” should be deleted. First, we believe it references the wrong subdivision of the proposed rules. It should be (d)(1). Second, the proposed timeline is not required by statute. The statute only speaks to the seven-day requirement that is outlined in the first part of (b)(2). Third, two court days is often not enough time for counsel and/or parties to gather relevant information necessary to determine whether requesting a waiver is appropriate.</p>	<p>The committee agrees with the commentator as to (b)(2) because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement policy guidance and regulations to implement AB 1299. The committee however believes that (b)(1) is necessary to identify who may request waiver and thus a hearing.</p> <p>Subdivisions (b) of both rules have been removed from the proposal for the reasons stated above. The commentator was however correct that the reference in (b)(2) to (d)(1)(C) was incorrect. There was a last-minute modification to the rule’s numbering which resulted in the oversight. The correct reference should be to (d)(1) and the rule has been modified. The committee inserted the language “...or within two court days of the agency providing notice in subdivision (d)(1)(C)” to protect against those situations in which the placing agency does not provide notice of the presumptive transfer requirements within seven calendar days of the decision to place the child outside the county of jurisdiction as required by the regulations as currently constructed. While two days may not be very much time, the committee had to balance the amount of time</p>

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>7. Rule 5.647(d)(1) and Rule 5.648(d)(1) – We recommend deleting the language “consistent with section 361.2(h)” in the first sentence. That Welfare and Institutions Code Section governs, among other things, changes in placement. The notice that is required under that section is not consistent with the notice governing presumptive transfer.</p> <p>8. Rule 5.647(d)(1)(A) and Rule 5.648(d)(1)(A) – The statute requires notice of presumptive transfer rights to go to the foster youth, among others. This provision would require such notice to go to any foster youth 12 or older. We recommend the requirement apply to any foster youth 10 or older. The Invitation to Comment specifically asked for feedback as to whether the age should be 10 or 12. Age 10 is consistent with various rights related to juvenile dependency, including the rights to notice of hearings and the ability to participate in proceedings.</p> <p>11. Rule 5.648(a) – As mentioned above, Rule 5.647 applies only to placement changes that occur on or after September 1, 2018. Rule 5.648 is designed to capture all youth that are residing</p>	<p>given with the overall purpose of AB 1299 of not delaying access to specialty mental health services. At this point however, the matter is moot for the reasons stated above.</p> <p>For reasons stated above, subdivision (d)(1) has been removed from the proposed rules. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g).</p> <p>See comment above.</p> <p>Rule 5.648 applies to those youth described in section 14717.1(c)(2). These are youth who either reside in a county other than the county of original jurisdiction after June 30, 2017 and are not</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>in out of county placements that began on or before August 31, 2018. The language unnecessarily attempts to reconcile the Rule of Court with statutory language concerning where a child resided on December 31. As a result, this provision can be read as only covering youth that were placed out of county on or before that date. This interpretation would leave youth placed out of county between January 1 and August 31 without the same remedies as their earlier-placed peers. In order to make the rule clearer, we recommend deleting the language "...for any child or nonminor that resides outside their county of original jurisdiction as of December 31, 2017" and replacing it with "for any child or nonminor that resides outside their county of original jurisdiction as of the effective date of this rule." Further, we would delete the last sentence. The reference to the rule sunseting is duplicative of subdivision (f). We also believe the language regarding timing is confusing, for the reasons already stated.</p> <p>13. Rule 5.648(d)(1) – The notice provision unnecessarily references statutory language. As a result, it is too limiting. It should not</p>
			<p>receiving specialty mental health services consistent with his or her mental health needs and requests transfer of responsibility or for a foster child who resided in a county other than the county of original jurisdiction after December 31, 2017. For these youth, the presumptive transfer determination is required to happen prior to their first scheduled section 366 hearing in the year 2018. Foster youth placed out of county after December 31, 2017 are therefore covered by 14717.1(c)(1), which requires the presumptive transfer process to start when the change placement decision is made as addressed in rule 5.647.</p> <p>While the committee agrees that there may be a gap in the rules' coverage for youth who are placed in an out-of-county placement after December 31, 2017 but before the effective date of these proposed rules, the rules can only provide a framework for hearings as specified in section 14717.1(c). For those youth that had a placement change in 2018 prior to the effective date of these rules, the presumptive transfer process is still required to occur as specified in section 14717.1(c)(1). A hearing may be requested and held under section 14717.1 even if there is no rule of court.</p> <p>Subdivision (d)(1) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>necessarily tie to the first status review hearing of 2018. Rather, it should read identically to the provision proposed in Rule 5.647(d)(1).</p> <p>14. Rule 5.648(d)(3) – For the reasons stated in our comment to proposed Rule 5.648(d)(1), the language here should be identical to its companion in Rule 5.647.</p>
6.	Kern County Department of Human Services Terrie Martinez, MSW Program Specialist, Assistant Director’s Office		<p>the policy guidance required by section 14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending. The purpose of rule 5.648 is address procedures for youth described in section 14717.1(c)(2). These are youth who have an existing out-of-county placement. The procedures of rule 5.647 are triggered when a determination is made that the youth will be placed in an out of county placement. For these youth, the Judicial Council is required to adopt the procedural requirements as they are found in the Welfare and Institutions Code. However, because this subdivision relates to an administrative function of the placing agency, it is being removed.</p> <p>See comment above.</p> <p>The committee agrees. Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance.</p> <p>Because the committee is removing administrative responsibilities from the rules, the committee believes that the proposal should proceed.</p>

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Administrative Responsibilities Removed from the Rule				
Commentator	Position	Comment	Committee Response	
		<p>regulations which will be adopted by 7/1/19.</p> <ul style="list-style-type: none"> What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age? <p>10 years.</p> <ul style="list-style-type: none"> Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? <p>No.</p> <ul style="list-style-type: none"> And should the rule require the court to review these efforts to ensure compliance? <p>No!</p>	<p>Subdivision (d)(1) is being removed from the proposed rule for the reasons stated above.</p> <p>The committee agrees and has removed from the rules the review of administrative responsibilities of the placing agency during the presumptive transfer process found in ACL 17-77. However, the responsibilities of the placing agency during the presumptive transfer process found in section 14717.1 will remain in the rule.</p> <p>See comment above.</p>	

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<ul style="list-style-type: none"> • Is there any concern with subdivision (b)(2) reflecting a timeline of seven <i>calendar</i> days as opposed to seven <i>court</i> days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules. <p>Should be 7 court days-ACL should be amended.</p> <p>For the reasons stated above related to administrative functions in the rule, subdivision (b)(2) will be removed from the rules.</p>
7.	Los Angeles County Department of Children and Family Services By Ruena Borja, LCSW Children Services Administrator I DCFS Policy Section Norwalk, CA		<p><u>With regards to the hearing process, we suggest the following:</u></p> <ul style="list-style-type: none"> - Following the receipt of a presumptive transfer notice, the rule should reflect and clarify that the requesting party has the option to request a waiver directly from the placing agency. The placing agency should make a decision on this request and notify the requesting party and parties entitled to receive notice, regarding the decision on the request. Should the requesting party disagrees with the decision, then the party can opt to request a judicial review. - This process would be similar with many grievance processes already in place. <p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement policy guidance and regulations to implement AB 1299. Therefore, the rule will not address the notice of presumptive transfer requirements and exceptions or the notice of the placing agency’s determination on the request for waiver of presumptive transfer.</p> <p>The rule will not address the presumptive transfer process prior to the request for a hearing, because</p>

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Administrative Responsibilities Removed from the Rule					
	Commentator	Position	Comment		Committee Response
			<p>This suggested procedure will streamline the process and minimize unnecessary court proceedings when the matter can otherwise be resolved amongst the placing agency, CFT and requesting party first.</p> <ul style="list-style-type: none"> - The contest/waiver request must be made to the placing agency within 7-calendar days of the contesting party’s receipt of the notice of presumptive transfer. This will be similar to the timeline given to parties when objecting to an out of county placement per WIC 361.2(h). - The placing agency should make the transfer effective no less than 14 days from the date of the presumptive transfer notice to allow time to determine if a waiver request/contest will be received (14 days account for the 7-days given to the contesting party from the date of receipt of notice, and mail processing time when the party sends a request for a waiver). This 14-day timeline is similar to WIC 361.2(h)’s stipulation to send the notice 14-days prior to placing out of county, unless unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. 		<p>section 14717.1 requires that this developed and implemented by CDSS and DHCS. The rule will however address who may request a hearing, when a hearing must be requested, how to request a hearing and the conduct of that hearing.</p> <p>Subdivision (b)(2) has been removed for the reasons stated above.</p> <p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g). The rule does not place a requirement on when the transfer must occur except to require that it not occur until a decision has been made on the request for a hearing or a final judicial determination, which is a requirement of section 14717.1(d)(4). As mentioned above, the committee has elected to not include administrative functions in the rules.</p>

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Administrative Responsibilities Removed from the Rule				
Commentator	Position	Comment	Committee Response	
		<ul style="list-style-type: none"> - If the request is made to the placing agency, the placing agency must make a determination regarding the waiver request within 10 business days from the receipt of the waiver request; and send the notification to the requesting party regarding the decision within that same 10 business days period, including information on the option to request a judicial review within 7-calendar days of the contesting party’s receipt of the notice regarding the decision on the waiver request. Following this notification, the placing agency should not make the decision final no sooner than 14 days from the date of the notice to allow time to determine if a judicial review is requested/filed • What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age? <p>While acknowledging a basis for 12 years of age to be consistent with minor consent laws (Family Code § 6924 and Health & Safety Code § 124260), LA DCFS recommends 10 years of age to be consistent with existing notification statutes.</p>	<p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g).</p>	<p>Subdivision (d)(1) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g). Comments related to this process will be forwarded to CDSS and DHCS.</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>WIC 361.2(h) already requires that “whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian, the child’s attorney, and, if the child is 10 years of age or older, on the child, at least 14 days prior to the placement...”</p> <ul style="list-style-type: none"> • Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance? <p>In reviewing the legislative analysis for AB 1299, there's reference to existing law which indicates: "... that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical, and emotional well-being of children who are at risk of harm (WIC Section 300.2)."</p>
			<p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g). The reasons for this are mentioned by the commentator, policy guidance is evolving and regulations are pending. Absent their inclusion in the rule and in statute, procedures for the placing agency to follow during the presumptive transfer process will need to be promulgated by policy guidance and regulations.</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>In addition, the text of AB 1299 states: " (E) A party to the case who disagrees with the presumptive transfer individualized exception determination made by the county placing agency pursuant to subdivision (d) is afforded an opportunity to request judicial review prior to a transfer or exception being finalized."</p> <p>As such, it appears the concern stated above is to not require the Court to review compliance unless there's a disagreement with the presumptive transfer and the department would provide the court with information regarding a minor placed out of county who is receiving mental health services when DCFS submits a status review report.</p> <p>In addition and given that the comprehensive/updated guidelines, forms etc. from the CDSS, the JV forms and rules of court remain pending, during the court's review of the efforts, the placing agency should not be made accountable to previously set timelines (e.g. that notice be sent 10 days prior to the first status review hearing that occurs after 12/31/17). The court's review of the efforts particularly with regards to the timeliness of the notice, should commence prospectively after the Rules of Court, updated ACLs have become effective, and allow time for placing agencies to develop/update guidelines/forms for staff and</p>	

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>train them thereafter on the new rules of court and updated timelines/procedures.</p> <ul style="list-style-type: none"> • Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules. <p>If we follow WIC 361.2(h), it states calendar days. Again for consistency, the ACL and rules should be the same.</p>	<p>Subdivision (b)(2) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending.</p>
8.	<p>Kim Narvaez, MFT Children’s Mental Health Program Manager Yolo County Health and Human Services Agency, Child and Family Branch</p>	NI	<ul style="list-style-type: none"> • What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age? <p>12, 12 is the consenting age for MH counseling.</p>	<p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. Subdivision (d)(1) has therefore been removed from the proposed rules. Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>policy guidance and regulations to implement AB 1299.</p> <p>• Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77?</p> <p>Yes</p> <p>And should the rule require the court to review these efforts to ensure compliance?</p> <p>Yes</p> <p>• Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>No</p> <p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g). However, the placing agency’s responsibilities found in section 14717.1(d) will be required in the rule.</p> <p>See comment above.</p> <p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g).</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
9.	Office of County Counsel County of Santa Clara By James R. Williams & Michaela L. Lewis San Jose, CA		<p>2. What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?</p> <p>A minor should be provided notice at the age of 12 years, because at this age, the minor is able consent to certain types of medical treatment, including most mental health services.</p> <p>6. Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>As stated above, the ACL and the rules should be consistent to avoid confusion in practice and implementation of this new procedure. Inconsistencies - such as a single use of calendar days - could result in a party unintentionally missing a deadline despite best efforts to comply with the requirements.</p>
			<p>Subdivision (d)(1) has been removed from the rules for the reasons stated above.</p> <p>Subdivision (b)(2) has been removed for the reasons stated above related to the evolving policy guidance and pending regulations.</p>
10.	Orange County Bar Association Nikki P. Miliband, President Newport Beach, CA	AM	<p>Comments: Recommend changing the age of a minor required to be notified from age 10 to age 12 in Rule 5.647 (c)(2)(E) to conform with age 12 in (d)(1)(A) and because, in general, minors are given the opportunity to be consulted in other dependency matter issues, such as birth</p>
			<p>Subdivision (d)(1) has been removed from the rule for reasons state below.</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>control decisions, after reaching age 12. The same change is recommended in Rule 5.648 in the same subsections.</p> <ul style="list-style-type: none"> • What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age? • Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance? <p>Comment: The Rules are acceptable as written.</p>	<p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. Subdivision (d)(1) has therefore been removed from the proposed rules. Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement policy guidance and regulations to implement AB 1299.</p> <p>See comment above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g).</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> Is there any concern with subdivision (b)(2) reflecting a timeline of seven <i>calendar</i> days as opposed to seven <i>court</i> days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules. <p>Comment: No, but we would not object to seven court days.</p>	Subdivision (b)(2) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g).
11.	<p>Sacramento County Department of Health and Human Services Sacramento County Office of the County Counsel By Robyn Truitt Drivon County Counsel & Traci Lee Assistant County Counsel Sacramento, CA</p>	NI	<p>By and through counsel, Sacramento County Department of Health and Human Services (DHHS) provides the comments below pertaining to Presumptive Transfer of Specialty Mental Health Services (SMHS) proposed Rules of Court and Judicial Counsel (JV) forms in response to the Invitation to Comment (IC) W18-07. Sacramento County Child Protective Services, Behavioral Health and Probation departments have been diligently working to develop and implement policies and procedures to ensure compliance with the legislation. Through this work it has become evident that the legislation effectuating the Presumptive Transfer of SMHS is complicated involving systems with differing terminology and practices that will need to coordinate closely at both a State and County level to ensure the goals of the legislation are met.</p>	

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>Comment 1: One key element is the definition of the placing agency’s determination and whether it is the “initial determination” or “final determination”. Clear definitions of both terms need to be developed and incorporated in the rules.</p> <p>Comment 4: Proposed Rule of Court 5.647(d)(3)(D) – should reference parents/guardians instead of “biological parents” given the specific legal significance of “biological” parent in the juvenile court context (i.e. you could have presumed parent who is not in fact a biological parent.)</p> <p>Comment 8: What is the appropriate age for a minor to be notified of presumptive transfer? Although Health and Safety section 124260 allows a minor who is 12 years of age or older to consent to outpatient mental health treatment</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>or counseling services, for the purposes of noticing regarding presumptive transfer the age of the youth should include minors 10 years of age or older to mirror WIC section 361.2(h).</p> <p>Comment 10: Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>No. These responsibilities are adequately laid out in the statute and ACL and it is not required that the court make findings as to these responsibilities in making its ruling on the question of presumptive transfer. It would not add any clarity to the rule.</p> <p>Comment 13: Is there concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days?</p> <p>No, calendar days should be used throughout for consistency. The ACL should be changed to coincide with calendar days.</p>	<p>See the response above related to the removal of administrative requirements from the rule. The committee agrees with the comment as it relates to the responsibilities under ACL 17-77. However, the committee has elected to require in subdivision (d) that the report address requirements found in section 14717.1 related to the presumptive transfer process. This is to ensure that the placing agency has meet these responsibilities and ensures a more meaningful review.</p> <p>Subdivision (b)(2) has been removed from the rules for the reasons stated above. See the response above related to the removal of administrative requirements from the rule.</p>
12.	San Bernardino County Program Development Division	NI	Comment Request:	

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
<p>By Robert Silva Supervising Program Specialist Program Development Division County of San Bernardino San Bernardino, CA</p>		<p>Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days?</p> <p>Notes: Calendar days were used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>County Comment: N/A</p> <p>Comment Request: What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?</p> <p>Notes: A minor can consent to MH treatment at 12 and must be noticed of their right to attend court at 10. Any child has the right to present at any hearing.</p> <p>County Comment: Since a child age 10 and older are noticed for out-of-county placement changes, the child should be noticed of presumptive transfer requirements at the same time.</p>	<p>No response required.</p> <p>Because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. The rule therefore will not review the placing agency’s responsibilities to notice the child of the</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			presumptive transfer requirements. Comments related to administrative functions will however be forwarded to CDSS and DHCS as they implement policy guidance and regulations to implement AB 1299.
13.	Santa Clara County Department of Family and Children Services By Francesca LeRue, Director San Jose, CA	AM	<p>3. A minor can consent to the mental health treatment at the age of 12 because this is a hearing about specialty mental health treatment; therefore, 12 is the appropriate age to be notified of the presumptive transfer requirements and exceptions. Current draft JV214 states 10 years of age.</p> <p>4. Should the rule reflect any new timelines for requesting a hearing that are introduced by subsequent ACLs or ACINs?</p> <ul style="list-style-type: none"> • Yes, we support and recommend consistency between the administration rules and rules of court. <p>8. As to the language of the proposed Cal. Rule of Court 5.647 & 5.648:</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<ul style="list-style-type: none"> Inaccurate cite in subdivision (b)(2)? The latter part of the sentence provides that a request for waiver must be made to the placing agency "...within two court days of the agency providing notice in subdivision (d)(1)(C)." However, (d)(1)(C) requires notice <i>only</i> to "the person or agency responsible for making mental health care decisions on behalf of the child or nonminor." It appears that the cite should more correctly read as "subdivision (d)(1)," which more broadly includes the child/nonminor and their attorney, <i>as well as</i> the person responsible for making mental health care decisions on behalf of the child or nonminor.
14.	Solano County Counsel's Office By Clarisa P. Sudarma Deputy County Counsel Fairfield, CA	NI	<p>Specific Comments:</p> <ul style="list-style-type: none"> - Extending the parties' ability to request a hearing within 7 days from the time they are notices of CWS's determination seems appropriate. - 12 years old seems an appropriate age for the minor to be notified of the presumptive transfer requirements and exceptions as it is when they start receiving copies of reports.

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> - No concern regarding the 7 calendar day requirement as long as it remains explicitly different than the rest of rules which refer to court days 	Subdivision (b)(2) has been removed from the rules for the reasons stated above related to the removal of administrative requirements from the rule.
15.	Kim Suderman, LCSW California County Behavioral Health Directors Association Sacramento, CA	NI	<p>Page 5: A minor can consent to mental health treatment at the age of 12. At the age of 10, a child is to be provided notice of their right to attend court. A child of any age who is the subject of a juvenile court hearing is entitled to be present at a hearing. The committee is seeking input on whether age 10 or age 12, or some other age, is most appropriate.</p> <p><i>Because AB 1299 is about mental health services, and the age of consent for mental health treatment is age 12, it makes sense to start at age 12.</i></p> <p>Page 5 & 6: Bottom of the page 5, top of page 6 ... Finally, to ensure that the administrative process of presumptive transfer does not take place prior to the court ruling... This will ensure that the placing agency will be aware of the request for a hearing and should not proceed with presumptive transfer until...</p> <p><i>The Placing Agency should notice the MHP of jurisdiction that a JV-214 has been</i></p>	<p>Subdivision (d)(1) has been removed from the rules for the reasons stated above. Subdivision (d)(1) addresses notice of the initial presumptive transfer determination, which the rule will no longer require to be reviewed by the court.</p> <p>The committee agrees that the placing agency should provide this notification, but believes it is</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p><i>submitted. Presumptive Transfer responsibility for the MHP of Residence begins when the Placing Agency notifies them of the out of county placement into their county, do notification timing is critical.</i></p> <p>Page 8—1st paragraph: For these children, the SMHS jurisdiction is to transfer either if the foster child requests the transfer...</p> <p><i>Presumptive transfer is to occur for any youth placed after July 1, 2017. Where in AB 1299 does it say that “SMHS is to transfer if the foster child requests the transfer”?</i></p> <p>outside the scope of the proposed rules. This would need to be addressed in pending regulations. The committee has elected to not have the proposed rules address administrative functions that are the subject of evolving policy guidance and pending regulations.</p> <p>Section 14717.1(c)(2) requires that the presumptive transfer process be initiated if a foster youth resides in a county other than the county of original jurisdiction after June 30, 2017, is not receiving specialty mental health services consistent with his or her mental health needs, and requests transfer of responsibility.</p>
16.	Superior Court of Riverside County By Susan D. Ryan Chief Deputy of Legal Services	A	<p>2. What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?</p> <p>It seems that since 12 is the age when a minor can consent to mental health treatment, then 12 should also be the age when the minor receives information regarding the presumptive transfer requirements and exceptions. This would provide the minor with information on how to consent to or challenge a decision that has been made regarding mental health. A minor at 10</p> <p>Subdivision (d)(1) has been removed from the rules for the reasons stated above.</p>

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

Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>years of age should receive notice of a court hearing if one is set.</p> <p>4. Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>It would provide more clarity if these requirements were included in the rule, however a reference to WIC 14717.1(b)(2)(A)) and that the Mental Health Provider (MHP) in the county of original jurisdiction can contract and provide services within 30 days might also be sufficient. For a complete determination at the hearing it would seem the court should at least make findings on these issues. Perhaps listing them on the JV-215 would be the easiest way to accomplish this.</p> <p>8. Is there any concern with subdivision (b)(2) reflecting a timeline of seven <i>calendar</i> days as opposed to seven <i>court</i> days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>No concerns.</p>	<p>As mentioned above, the committee has elected to remove items from the rule that relate to administrative process of presumptive transfer. The rules however still require that the placing agency address whether the Mental Health Provider (MHP) in the county of original jurisdiction can contract and provide services within 30 days. The requirements are also reflected in form JV-215.</p> <p>No response required.</p>

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
17.	Superior Court of San Diego By Mike Roddy, Executive Officer San Diego, CA		<p>2. What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?</p> <p>10. Per ACL 17-77, notice should be provided as set forth in WIC § 361.2(h), which requires notice to the child if 10 or older.</p> <p>8. Is there any concern with subdivision (b)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>The concern with subdivision (b)(2) is not that it uses calendar days as opposed to court days. Rather, it is problematic in other respects:</p>
			<p>The committee has elected to remove subdivision (d)(1) which addresses notice to the child of presumptive transfer requirements because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change, the committee has decided to remove elements from the rule that directly relate to this policy guidance. The committee appreciates this comment, but the it addresses a portion of the rule that will be removed for reason mentioned above. The comment however be forwarded to representatives at the CDSS and DHCS. who are creating policy guidance and regulations implementing AB 1299.</p> <p>Subdivision (b)(2) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to the policy guidance required by section</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending.</p> <p>1. The timeline of “seven calendar days of the determination that the <i>child or nonminor will be in a placement</i> outside the county of original jurisdiction” is similar but slightly different from the timeline specified in ACL 17-77: “within 7-calendar days of the placing agency’s determination of <i>where the foster child will be placed</i> out of county.” (ACL 17-77, p. 8.) It is conceivable that a placing agency will decide an out-of-county placement is appropriate some time (days or weeks?) before it actually decides the specific location of that placement. If the committee intended to mirror the requirements in ACL 17-77, it should read: “seven calendar days of the determination that of where the child or nonminor will be in a placement placed outside the county of original jurisdiction.”</p> <p>2. Shouldn’t the timeline start when the agency <i>has given notice</i> of its decision to place out-of-county rather than when the agency <i>has made its decision</i>? Arguably, the timeline in ACL 17-77 should read: “The waiver request must be made to the placing agency within 7-calendar days of <u>the date</u> the placing agency’s determination <u>served written notice</u> of where the foster child will be placed out of county.” (See WIC § 361.2(h) [“The child or parent or guardian may object to the [out-of-county]</p> <p>See comment above. The committee has removed subdivision (b)(2) from the proposed rules.</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>placement not later than seven days after receipt of the notice ...].)</p> <p>3. Where does the alternative timeline (“within two court days of the agency providing notice in subdivision (d)(1)(C)”) come from? This refers to notice “of the presumptive transfer requirements,” the “exceptions to presumptive transfer, the option to request a waiver of presumptive transfer ..., and how to make such a request...given to the “person or agency responsible for making mental health care decisions....”</p> <p>a. Why is this timeline limited to notice given to the “person or agency responsible for making mental health care decisions...”? Shouldn’t it be when notice is given to <i>all who are entitled to notice</i>, i.e., “within two court days of the agency providing notice in subdivision (d)(1)(C)”? (Note: Under WIC § 361.2(h), notice of an out-of-county placement must be served “at least 14 days prior to the placement.”)</p> <p>b. Is two court days after receiving notice enough time for requesting a waiver? Under WIC § 361.2(h), an objection to out-of-county placement may be made up to seven days after receipt of the notice.</p>
			<p>See comment above. The committee has removed subdivision (b)(2) from the proposed rules. For reference, the two-day timeline was added by the committee to address those situations where the placing agency does not adhere to the notice requirement found in former subdivision (d)(1).</p> <p>See comments above. The subdivision has been removed from the proposed rules.</p> <p>See comment above.</p>

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>4. Regardless of how these issues are resolved, if subdivision (b)(2) offers two alternative timelines, should it specify an outer limit, e.g., “within seven calendar days ... or within two court days ..., <u>whichever occurs later</u> [or <u>whichever occurs first</u>].”</p> <p><u>Subd. (b)(2): For consistency and clarity --</u></p> <p>A request for waiver must be made to the placing agency within seven calendar days of the determination <u>decision</u> that the child or nonminor will be in a placement <u>placed</u> outside the county of original jurisdiction or within two court days of the agency providing the notice described in subdivision (d)(1)(C),^[2] <u>whichever occurs later</u>.</p> <p>¹ <i>It is not clear why subparagraph “(C)” is specified, as that narrows the condition down to notice provided to the “person or agency responsible for making mental health care decisions on behalf of the child or nonminor.” Shouldn’t the trigger be notice to all parties who are entitled to notice?</i></p> <p><i>Preferred revisions (see responses to question 8 above):</i></p> <p>A request for waiver must be made to the placing agency within seven calendar days of the determination <u>date the placing agency</u></p>	<p>See comment above.</p> <p>For the reasons stated above, subdivision (b)(2) is being removed from the proposed rules.</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p><u>served written notice of where that the child or nonminor will be in a placement placed outside the county of original jurisdiction or within two court days of the agency providing the notice described in subdivision (d)(1)(C), whichever occurs later.</u></p> <p><u>Subd. (d)(1)(A): For consistency with WIC § 361.2(h) and for clarity --</u></p> <p>The child, if aged 12 <u>10 years old</u> of age or older, or nonminor;</p> <p><u>Subd. (d)(1)(B): To correct grammar --</u></p> <p>The attorney of <u>for</u> the child or nonminor; and</p> <p><u>Subd. (d)(3): For consistency --</u></p> <p>That the placing agency informed the following of its initial presumptive transfer determination decision, which includes a determination decision <u>decision</u> by the placing agency that an exception to presumptive transfer applies, within three days of that determination decision <u>decision</u>:</p> <p><u>Subd. (d)(3)(B): For consistency --</u></p> <p>The Child and Family Team coordinator if one exists, or the placing agency's case-carrying social worker or deputy probation officer,</p>	<p>For reasons stated above, subdivision (d)(1) has been removed from the rule.</p> <p>See comment above</p> <p>For the reasons stated above, subdivision (d)(3) has been removed from the rule. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending.</p> <p>See comment above.</p>

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p><u>Subd. (d)(3)(C): To correct grammar --</u></p> <p>The attorney of <u>for</u> the child or nonminor,</p> <p><u>Subd. (d)(3)(D): To correct grammar --</u></p> <p>The biological parents when appropriate (if they are not already a <u>members</u> of the Child and Family Team).</p> <p><u>Subd. (d)(5): For consistency, clarity, and brevity --</u></p> <p>That notice of the placing agency's determination decision <u>decision</u> of whether to waive presumptive transfer was provided to the individual person or agency <u>individual person or agency</u> who requested waiver of presumptive transfer, along with all parties to the case, within three court days of the placing agency's decision on the application of waiver <u>whether to waive</u> to presumptive transfer.</p> <p style="text-align: center;"><u>CRC 5.648</u></p> <p><i>All comments for CRC 5.647, ante, also apply to CRC 5.648 to the extent those provisions are repeated in the latter. As a result, the following comments refer only to the provisions highlighted in gray on the proposal.</i></p>	<p>See comment above.</p> <p>See comment above.</p> <p>For the reasons stated above, subdivision (b)(5) has been removed from the rule. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending.</p> <p>Rule 5.648 has been removed from the proposal because after the removal from the rules of items related to policy guidance, rule 5.648 became unnecessary as it was identical to rule 5.647 except in the language of its applicability.</p>

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p><u>Subd. (a):</u> <i>For clarity and to correct grammar -</i></p> <p>-</p> <p>for any child or nonminor that <u>who</u> resides outside their county of original jurisdiction as of December 31, 2017. ... This rule will sunset <u>on January 1, 2020</u>, and only <u>applies only</u> to those children or nonminors that <u>who</u> reside in a placement outside their county of original jurisdiction as of December 31, 2017.</p> <p><u>Subd. (d)(1):</u> <i>For clarity and brevity --</i></p> <p>That notice was provided prior to the determination of presumptive transfer at least 10 days prior to <u>before</u> the child’s or nonminor’s next section 366 status review hearing that occurs after December 31, 2017, or as soon as <u>possible</u> thereafter, of the presumptive transfer requirements under section 14717.1.</p> <p><i>Note re text highlighted in green: What “determination”? Per WIC § 14717.1(c)(2), “A foster child who resided in a county other than the county of original jurisdiction after June 30, 2017, and who continues to reside outside the county of original jurisdiction after December 31, 2017, shall have jurisdiction transferred no later than the child's first regularly scheduled status review hearing conducted pursuant to Section 366 in the 2018 calendar year unless an exception described under subdivision (d)</i></p>

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p><i>applies.” This language suggests the transfer of jurisdiction occurs <u>by operation of law</u>, not as a result of a <u>determination</u>.</i></p> <p><i>-- Is “determination” meant to refer to a determination by the placing agency that an exception under subd. (d) does not apply?</i></p> <p><i>-- Would it not be clearer to simply delete “prior to the determination of presumptive transfer”? If this change is made, subd. (d)(1) would still be consistent with (d)(3). It would then read,</i></p> <p><i>“That notice was provided at least 10 days prior to before the child’s or nonminor’s next section 366 status review hearing that occurs after December 31, 2017, or as soon as <u>possible</u> thereafter, of the presumptive transfer requirements under section 14717.1.”</i></p> <p><i><u>Subd. (d)(3): For consistency and brevity --</u></i></p> <p><i>That at least 10 days prior to <u>before</u> the child’s or nonminor’s next status review hearing that occurs after December 31, 2017, the placing agency informed the following of its initial presumptive transfer determination <u>decision</u>, which includes a determination <u>decision</u> by the placing agency that an exception to presumptive</i></p>	

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Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>transfer applies, within three days of that determination <u>decision</u>:</p> <p><i>Note: It is somewhat confusing to have two different deadlines within the same sentence – “at least 10 days prior to the ... next status review hearing” and “within three days of that decision.” Perhaps it would be clearer as follows:</i></p> <p>That the placing agency informed the following of its initial presumptive transfer decision, which includes a decision by the placing agency that an exception to presumptive transfer applies, within three days of that decision <u>and at least 10 days before the child’s or nonminor’s next status review hearing that occurs after December 31, 2017:</u></p> <p><u>Subd. (d)(7):</u> <i>For brevity and to correct grammar --</i></p> <p>That for a child or nonminor who resides in a county other than the county of original jurisdiction after June 30, 2017, that <u>and who</u> is not receiving specialty mental health services consistent with his or her mental health needs as specified in the child’s or nonminor’s client plan, the placing agency ensured:</p> <p>(A) That the child or nonminor has been provided <u>received</u> a mental health screening</p>

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Administrative Responsibilities Removed from the Rule				
	Commentator	Position	Comment	Committee Response
			<p>prior to <u>before</u> completing the steps of presumptive transfer, unless a waiver is requested; and</p> <p>(B) For a child or nonminor that <u>who</u> has been screened and assessed as needing specialty mental health services but is not receiving them, that presumptive transfer occurs consistent with this rule.</p> <p><u>Advisory Committee Comment: For clarity and brevity --</u></p> <p>This rule describes the process for presumptive transfer of responsibility for specialty mental health services for children or nonminors who, <u>as of December 31, 2017,</u> are residing in a California county as of December 31, 2017, that is not the county of original jurisdiction. The rule will sunset <u>on</u> January 1, 2020, because it is not considered likely that the rule will still be needed after that point. A presumptive transfer determination for children or nonminors who reside out-of-county as of December 31, 2017, is required to <u>must occur</u> prior to <u>before</u> the first scheduled section 366 hearing in the year 2018. For more information, see the advisory committee comment of <u>on</u> rule 5.647.</p>	
18.	Lynn Thull, Ph.D.,	NI	2. There are references to decisions of youth, some listing the age as 12, other	References to the youth’s age in subdivision (d)(1) which addresses notice to the child of

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

Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
<p>Mental Health Policy and Practice Improvement Consultant, California Alliance of Child and Family Services Sacramento, CA</p>		<p>places listing the age of 10. This needs to be consistent throughout.</p> <p>From Attachment 1 Rule 5.647, (d)(3)(B) page 14:</p> <p>(B) The Child and Family Team coordinator if one exists, or the placing agency's case-carrying social worker or deputy probation officer,</p> <p>Comment: This should be "and" not "or"</p> <p>From Attachment 1 Rule 5.648, (d)(3)(B) page 20:</p>	<p>presumptive transfer requirements has been removed because policy guidance on the implementation of AB 1299, required by section 14717.1(b)(1-2) and (g), is incomplete and subject to change. The committee has decided to remove elements from the rule that directly relate to this policy guidance. The comment however be forwarded to representatives at the CDSS and DHCS. who are creating policy guidance and regulations implementing AB 1299. References to the child's age are only referenced once in the rule, at subdivision (c)(2)(E).</p> <p>Subdivision (d)(3) has been removed from the rules for the reasons stated above. The committee has elected to remove items in the rule related to the policy guidance required by section 14717.1(b)(1-2) and (g) because policy guidance are evolving and regulations are pending.</p>

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Juvenile Law: Presumptive Transfer of Specialty Mental Health Services (Adopt Cal. Rules of Court, rules 5.647 and 5.648; adopt forms JV-214, JV-214(A), JV-214-INFO, and JV-215; renumber current form JV-215 as JV-212)

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

Administrative Responsibilities Removed from the Rule			
	Commentator	Position	Committee Response
			<p>(B) the Child and Family Team coordinator if one exists, or the placing agency’s case-carrying social worker or deputy probation officer,</p> <p>Comment: This should be "and" and not "or"</p> <p>From Attachment 1 Rule 5.648, (d)(7)(B) page 20:</p> <p>(B) For a child or nonminor that has been screened and assessed as needing specialty mental health services but is not receiving them, that presumptive transfer occurs consistent with this rule.</p> <p>Comment: Neither (A) nor (B) are part of the statute. There is no requirement for a child/youth to be screened or assessed prior to transfer. Of greatest concern is (B) as it will delay access to care.</p>
19.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) Sacramento, CA		<p>2. What is the appropriate age for a minor to be notified of the presumptive transfer requirements and exceptions: 10 or 12 years old, or a different age?</p> <p>The age should be 12, not 10. Rationale: These children are already being given mental health services and a 10-year-old will receive them regardless of their consent, since consent for services begins at age 12. Notice of a right to</p>

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Administrative Responsibilities Removed from the Rule			
Commentator	Position	Comment	Committee Response
		<p>attend court is far less complicated than the transfer or continuance of mental health services in a particular jurisdiction. To be consistent with the consent rule for minors, 12 should be the age where notice is required.</p> <p>4. Should the rule include the requirements of the placing agency’s responsibilities during the presumptive transfer individualized exception determination as laid out in section 14717.1 and ACL 17-77? And should the rule require the court to review these efforts to ensure compliance?</p> <p>The rule should include requirements for the agency and court review to make sure requirements are met.</p> <p>8. Is there any concern with subdivision (c)(2) reflecting a timeline of seven calendar days as opposed to seven court days? Calendar days was used to mirror the requirements in ACL 17-77. Court days is used throughout the rest of both rules.</p> <p>Subdivision (b)(2) and all other timelines should be changed to court days, to avoid confusion.</p>	<p>The committee has elected to remove review of administrative requirements from the rule for the reasons stated above but responsibilities under section 14717.1(d) will remain in the rule.</p> <p>The committee has elected to remove review of administrative requirements including subdivision (b)(2) from the rule for the reasons stated above.</p>