



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title	Agenda Item Type
Juvenile Delinquency: Documenting Wobbler Determination	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form JV-665	January 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 9, 2015
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Audrey Fancy, 415-865-7706 audrey.fancy@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination and to make other nonsubstantive changes to improve the accuracy of the form.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2016, revise form JV-665, *Disposition—Juvenile Delinquency*, to clarify documentation of a wobbler (felony or misdemeanor public offense) determination.

A copy of the proposed revised form is attached at pages 5–6.

Previous Council Action

Form JV-665 was adopted, effective January 1, 2006, as part of a comprehensive packet to provide a standard cover page and attachments for court orders and findings in juvenile

delinquency proceedings.¹ The form was then revised, effective January 1, 2007, to correct grammatical and legal inaccuracies, to delete the option of releasing the child to a parent or guardian pending placement in a group home, and to add a new dispositional option for placement in a ranch or camp.

Most recently, effective January 1, 2012, the form was revised as part of a second comprehensive proposal that resulted in the creation of 8 new Judicial Council forms and the revision of 15 other forms for juvenile delinquency proceedings. Some of those revisions were in response to legal changes; others responded to suggestions to the Family and Juvenile Law Advisory Committee from the courts and their justice partners to make the forms easier to use and more comprehensive, as well as to serve the needs of courts that use electronic versions of the forms. As part of that revision, form JV-665 and all but one of the delinquency court orders forms were revised to be optional rather than mandatory to relieve any financial burdens on local courts. In addition, the length of this form was significantly reduced by moving the findings and orders related to children in placement to the newly created form JV-667; and the form was modified to reduce repetitive entry of allegation information, allow for a disposition under Welfare and Institutions Code section 725(a), and allow for more than one next hearing date to be set.

Rationale for Recommendation

Form JV-665 is an optional disposition form that states required findings and orders in delinquency cases. At item 3, the form provides space to designate an offense as a felony or misdemeanor as required by Welfare and Institutions Code section 702.² Item 3 currently reads: “The court previously sustained the following counts. Any charges which may be considered a misdemeanor or a felony for which the court has not previously specified the level of offense are now determined to be as follows.”

In the case *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 [60 Cal.Rptr.2d 889, 930 P.2d 1255], the California Supreme Court concluded that section 702 is unambiguous and “requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult.” *Manzy* further noted that “the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler.” (*Id.* at p. 1209.) The current language at item 3 was drafted to comply with *Manzy W.* A recent unpublished case, however, noted that the language on the form is unclear with regard to the court’s determining

¹ That proposal implemented the recommendations of the Probation Services Task Force Final Report as directed by the Judicial Council at its August 29, 2003, meeting. Specifically, staff was directed to “work with probation departments and the Chief Probation Officers of California to develop statewide standards for enhanced probation services.” That proposal was developed by a working group of court and probation representatives including judges (appellate and trial court), court clerks, a chief probation officer, probation managers, and probation line staff.

² Welf. & Inst. Code, § 702: “If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.”

whether an offense is a felony or a misdemeanor and in a footnote suggested that the Judicial Council consider modifying the form.³ See *In re S.J.* (H040997), footnote 6:

We take judicial notice of the existence and contents of the Judicial Council’s form order entitled JURISDICTION HEARING—JUVENILE DELIQUENCY (JV-644 [Rev. Jan. 1, 2012]). (See Evid. Code, §§ 452, subd. (c), 459.) The form provides space for a court to list allegations that have been admitted and found true after the child’s admission or no contest plea. By checking the appropriate box, the court may declare each listed statutory violation to be a misdemeanor or a felony or it may indicate the status of the statutory violation will be specified at disposition. It contains additional preprinted language with respect to those allegations: “The court has considered whether the above offense(s) should be felonies or misdemeanors.” A juvenile court adopts this language by checking the adjacent box.

The Judicial Council may wish to consider revising Judicial Council form JV-665 to provide for the identification or separately listing of each statutory violation that “would in the case of an adult be punishable alternatively as a felony or a misdemeanor” (§ 702) and to clearly reflect that the court is exercising its discretion pursuant to section 702 and explicitly declaring the status of each such offense. The rebuttable presumption that official duty is regularly performed (see Evid. Code, §§ 660, 664) would answer any concern that a clerk filled out the form and the judge signed it unthinkingly without exercising discretion. (See *People v. Visciotti* (1992) 2 Cal.4th 1, 49 [“In the absence of any indication to the contrary we presume, as we must, that a judicial duty is regularly performed. [Citations.]”].)

The committee considered this suggestion and determined that the language on form JV-665 is unclear and should be revised consistent with form JV-664, *Jurisdiction Hearing—Juvenile Delinquency*. The committee recommends changing the order of the columns in item 3 and providing more specificity of enhancements in the final column. In addition, the committee also recommends technical changes to form JV-665 to improve the parallelism of subpoints in item 11 and to update cross-references to other forms listed as attachments after the judicial officer’s signature line at the bottom of page 2. The current cross-references list out-of-date form names.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Four organizations provided comment. Two agreed with the

³ California Rules of Court, rule 8.1115(a), states that an unpublished opinion “must not be cited or relied on by a court or a party in any other action.” This case is cited here to provide background information for this form change.

proposal and two agreed if modified; no commentators disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 7–8.

One of the commentators suggested alternative wording for item 3: “We recommend the language from Manzy W.: ‘As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor.’” Because the text introduces a list of all sustained counts, some, if not all of which may not be wobblers, and since the term *wobbler* is not a legal term, the committee proposes: “The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows.”

Two commentators provided comment on item 11. During the comment period the committee did not solicit comment on item 11. However, the recommended changes appear to improve the clarity of that item and are appropriate to make at this time under rule 10.22 (d)(2) because the change is a “correction or a minor substantive change that is unlikely to create controversy.” The committee recommends revising item 11 to more clearly specify the custody and probation status of the youth.

The committee considered whether amending the form as suggested by the court in *In re S.J.* was necessary and concluded that amending the language as suggested would provide helpful clarity.

Implementation Requirements, Costs, and Operational Impacts

Implementation will require some changes in court procedures and training, as well as reproduction costs. Implementation should also result in greater clarity with regard to wobbler determinations, resulting in fewer remands and associated costs.

Attachments and Links

1. Form JV-665, at pages 5–6
2. Chart of comments, at pages 7–8

CHILD'S NAME:	CASE NUMBER:
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DISPOSITION—JUVENILE DELINQUENCY

- The court has read and considered the social study prepared by the probation officer and any other relevant evidence.
- The child has been detained and is at risk of entering foster care. The probation officer believes that child will be able to return home, and the social study includes a case plan as described in Welfare and Institutions Code section 636.
- The probation officer has recommended initial or continuing placement in foster care, and the social study includes a case plan as described in Welfare and Institutions Code section 706.6.

THE COURT FINDS AND ORDERS

- 1. Notice has been given as required by law.
- 2. The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
- 3. The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:

Count number	Statutory violation	Misdemeanor	Felony	Enhancement (specify)
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	

- 4. The child resides in (specify): _____ County.
- 5. The case is transferred to (specify): _____ County for disposition. *Juvenile Court Transfer Orders (form JV-550)* will be completed and transmitted.
- 6. For the reasons stated on the record, the petition is dismissed in the interests of justice because the child does not need treatment or rehabilitation.
- 7. The child is placed on probation for up to six months under Welfare and Institutions Code section 725(a) under conditions described in an attachment to this form.
- 8. Deferred entry of judgment is granted denied.
- 9. The child is declared continued as a ward of the court.
- 10. The recommended findings and orders contained in the probation report dated _____ at pages _____ are adopted as modified by the court as its own, a copy of which is attached and incorporated herein.
- 11. The child is declared a ward and placed on probation
 - a. under the supervision of the probation officer without probation supervision
 - b. in the custody of
 - (1) parent (name): _____ mother father
 - (2) parent (name): _____ mother father
 - (3) legal guardian (name): _____
 - (4) probation for out-of-home placement or confined commitment. Form JV-667, *Custodial or Out of Home Placement Disposition Attachment* is completed and attached.
 - c. under terms and conditions described on the attached form.
- 12. The child and legal parent are to pay a restitution fine of \$ _____ as specified on the attached form.
- 13. The child, with his or her parent, is to pay restitution
 - as described on the attached restitution order.
 - to each victim (name each):
 - a. _____ c. _____
 - b. _____ d. _____
 - in the amount of \$ _____ in the amount and manner determined by the probation office, with the opportunity for review by the court if disputed by the child or the parents.

CHILD'S NAME:	CASE NUMBER:
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- 14. The child, with his or her parents, is to pay a fine in the amount of \$ _____ , plus a penalty assessment in the amount of \$ _____ , for a total of \$ _____
- 15. Terms regarding vehicles. The child must
 - a. participate in and successfully complete (specify): _____
 - b. only drive to and from school, work, and/or counselling programs.
 - c. surrender license to court probation officer.
- 16. The child's driver's license is
 - suspended.
 - revoked.
 - delayed
 - for a period of _____ months _____ years.
 - until the child attains 18 years of age.
- 17. Court will notify the Department of Motor Vehicles of the judgment. The DMV has independent authority to suspend, revoke, or delay driving privileges.
- 18. The child is ordered to register under Penal Code section 290.
- 19. The child is ordered to submit to DNA collection under Penal Code section 296.
- 20. Other (specify): _____

21. **The next hearing will be:**

Date:	Time:	Dept:
Date:	Time:	Dept:

- 22. The child is ordered to return to court on the above date and time.
- 23. The child is advised of his or her right to appeal.
- 24. The child is advised that his or her appointed attorney has a continuing obligation to represent the child on this case, until counsel is relieved by the court under California Rules of Court, rule 5.663.
- 25. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.

Date: _____

JUDICIAL OFFICER

The following attachments are incorporated by reference as findings and orders:

- Custodial and Out Of Home Placement Disposition Attachment (JV-667)*
- Terms and Conditions (JV-624)*
- Juvenile Court Transfer Orders (JV-550)*
- Notice of Hearing and Temporary Restraining Order—Juvenile (JV-250)*
- Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities (JV-732)*
- Order for Victim Restitution (CR-110/JV-790)*
- Order Regarding Application for Psychotropic Medication (JV-223)*
- Order Designating Educational Rights Holder (JV-535)*
- Parentage—Findings and Judgment (JV-501)*

Additional attachments:

- Indian Child Welfare Act
- Order for Repayment of Cost of Legal Services (JV-135)*
- Responses from tribes or BIA
- Victim Identification Form
- Probation officer's case plan approved by the court
 - As submitted
 - As amended and stated on the record
- Other (specify): _____

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association By Hon. Joan P. Weber	A	<p>The Family and Juvenile Advisory Committee proposes revising optional form JV 665 to do three things.</p> <p>1) In response to In re S.J. H040997 footnote 6, where the court raised concerns about the clarity of #3, which addresses the obligation of the court pursuant to W&I 702 to make a determination as to whether each charge is a felony or a misdemeanor, this new form rearranges the sequence of court number, statutory violation, misdemeanor or felony, and enhancements (if any).</p> <p>2) improves the parallelism of subpoints in item 11, and</p> <p>3) updates the cross references at the end of the form which are currently outdated.</p> <p>We considered whether amending the form was necessary and concluded that doing so provided helpful clarity.</p> <p>California Judges Association supports these changes.</p>	No response required.
2.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	No response required.
3.	Superior Court of California, County of Los Angeles	AM	<p>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? <p>Yes.</p> <p>With regard to the JV-665 form, page 1, item #3: Instead of: “The court has considered whether</p>	The committee agrees to revise the wording to more closely track the language of Manzy but

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Juvenile Delinquency: Documenting Wobbler Determination (revise form JV-665)

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	Commentator	Position	Comment	Committee Response
			<p>the offenses below should be considered a misdemeanor or a felony...” We recommend the language from Manzy W.: “As to the following sustained wobbler offense, the court is aware of and exercises its discretion to determine the offense to be a felony or misdemeanor:”</p> <p>Item #11: We suggest the following: 11. The child is declared a ward and placed on probation <input type="checkbox"/> Under the supervision of the probation officer <input type="checkbox"/> Without probation supervision The child is to reside in the custody of: Choices as proposed [parent, legal guardian.] <input type="checkbox"/> Probation for out-of-home placement.</p>	<p>decided to use alternative wording since the term “wobbler,” while commonly used is not a legal term, and to avoid confusion when the charged offenses are not wobblers. The committee proposes the following: “The court previously sustained the following counts. As to any offense that could be considered a misdemeanor or a felony, the court is aware of and exercises its discretion to determine the offense as follows:”</p> <p>The committee did not circulate changes to item 11 but agrees that minor substantive change appears to be a prudent to improve the clarity of this form.</p>
4.	Superior Court of California, County of San Diego By Michael Roddy	AM	Items 11 d, e, and f: We recommend that the following words be deleted “in the custody”.	The committee did not circulate changes to item 11 but due to the two comments on this item the committee has decided to modify item 11 consistent with the suggestion from Los Angeles above.