



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

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Title	Agenda Item Type
Juvenile Law: Detention	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; revise forms JV-642 and JV-667	January 1, 2016
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	October 9, 2015
Hon. Jerilyn L. Borack, Cochair	Contact
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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three California Rules of Court and revising two forms to conform to legislative amendments to sections 635 and 737 of the Welfare and Institutions Code. The legislative amendments clarify that the basis for detaining a child must not be his or her status as a dependent of the court or the child welfare department's inability to provide a placement for the child, and add requirements to the 15-day reviews that occur when a child or nonminor dependent is detained pending execution of a placement order. The amendments and revisions ensure that the rules and forms are consistent with the amended law. They also make technical corrections and clarifications, including clarifying that home supervision does not qualify as a detention for the purposes of federal foster care funding.

### Recommendation

The committee recommends that the Judicial Council, effective January 1, 2016, amend three of the California Rules of Court and revise two Judicial Council forms, as follows:

1. Amend rule 5.502(11) and 5.760(c) to clarify that children placed on home supervision are not detained for the purposes of federal foster care funding under title IV-e. Amend rule 5.760(l) to delete the word “detention.” These amendments will resolve confusion regarding the foster care funding eligibility of a child placed on home supervision.
2. Further amend rule 5.760(c) to conform to the new statutory requirement that the court’s decision to detain a dependent child of the court in juvenile hall must not be based on the child’s status as a dependent of the court or the inability of the child welfare department to provide a placement for the child.
3. Amend rule 5.760(c) to conform to the new statutory requirement that establishes that when no grounds for detention exist, the court must order dependents of the court released to the child welfare department, and that agency will ensure that the child’s current caregiver take custody of the child or it will take custody of the child and place the child in a licensed or approved home.
4. Amend rule 5.760(e) to remove the requirement that the findings and orders document be signed, as California law does not require a signature for a valid court order.
5. Amend rule 5.790 to conform to new statutory requirements regarding the 15-day reviews that the court must conduct when a child is detained pending implementation of a dispositional order. To limit additional changes to the rule necessitated by future modifications to section 737, the committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737.

The committee recommends the following revisions to Judicial Council forms:

1. On *Initial Appearance Hearing—Juvenile Delinquency* (form JV-642), insert a new item 26 to allow the court to state that the child is a dependent of the court under section 300, is ordered released from custody, and is ordered into the care of child welfare services to ensure that either the child’s current caregiver takes physical custody of the child or child welfare services takes physical custody and places the child in an approved placement.
2. On *Custodial and Out-of-Home Placement Disposition Attachment* (form JV-667), remove references to detaining children on home supervision. Add to two items the finding, “Continuance in the home is contrary to the child’s welfare,” which is required at any court hearing where the court is authorizing the removal of the child from the home and is critical to ensure federal foster care funding.<sup>1</sup>

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<sup>1</sup> See 42 U.S.C. § 672(a)(1)–(2); 45 C.F.R. § 1356.21(c).

The text of the amended rules is attached at pages 6–8. A copy of the revised forms is attached at pages 9–13.

## **Previous Council Action**

The Judicial Council adopted:

- Rule 5.502 as rule 1401, effective January 1, 1990. The rule has been amended 14 times since then, most recently in 2014 to conform to statutory amendments that required adding or clarifying definitions related to education, Indian children, and nonminors.
- Rule 5.760 as rule 1475, effective January 1, 1998. The rule has been amended four times since then, most recently in 2007.
- Rule 5.790 as rule 1493, effective January 1, 1991. The rule has been amended eight times since then, most recently in 2007.

All juvenile court rules were renumbered and placed in title 5, effective January 1, 2007.

*Initial Appearance Hearing—Juvenile Delinquency* (form JV-642) was adopted for mandatory use, effective January 1, 2006. It was made optional effective January 1, 2012, and last revised effective July 1, 2013.

*Custodial And Out-of-Home Placement Disposition Attachment* (form JV-667) was approved for optional use, effective January 1, 2012.

## **Rationale for Recommendation**

Assembly Bill 388 amended section 635 of the Welfare and Institutions Code to clarify that a child who has been declared a dependent of the court is not to be detained because of the child’s status as a dependent or because the child welfare services department has failed to locate a placement for the child. Assembly Bill 2607 amended section 737 of the Welfare and Institutions Code to incorporate additional required elements into the 15-day reviews that must be held while a child or nonminor dependent awaits placement under a dispositional order. The committee proposes limited amendments and technical corrections to the affected rules and forms.

### **Rule 5.502 and 5.760(c)**

Although rule 5.502 is not directly affected by AB 388 and AB 2607, the current definition of *detained* in rule 5.502(11) and the phrasing in rule 5.760(c) have caused confusion regarding the eligibility for federal foster care funding of children on home supervision. Section 628.1 of the Welfare and Institutions Code states that if the child meets the criteria for detention but the probation officer does not believe that 24-hour secure detention is necessary, the probation officer must “release such minor to his or her parent, guardian, or responsible relative on home supervision.” Eligibility for federal foster care payments is based on, among other things,

placement of the child in a foster family home or child-care institution and a judicial determination that it is contrary to the child's welfare to stay in the home from which he or she was removed. A child who returns to the home from which he was removed is ineligible to receive foster care payments because his return home signals that it is not contrary to his welfare to remain in the care of his parent or guardian and because he has not been ordered into out-of-home placement in a foster family home or child-care institution. Because the child is not detained for the purposes of federal foster care funding under title IV-e, the committee proposes making the recommended amendments to eliminate confusion regarding the title IV-e eligibility of a child placed on home supervision.

#### **Rule 5.760(c)**

The amendments to sections 635 and 636 enacted by AB 388 are aimed at ensuring that children who are dependents of the court and detained in juvenile hall, are not detained because of delays in identifying a placement. Rule 5.760(c) states the grounds on which a child may be detained but does not currently contain language clarifying that neither a child's status as a dependent of the court, nor the child welfare services department's inability to find a placement, is grounds for detention. Failure to include the new requirement in rule 5.760(c) would be inconsistent with the statutory change. The committee therefore recommends amending the rule to include the new requirement.

#### **Rule 5.790**

The 15-day review requirement is stated in rule 5.790 but the rule neither contains nor references the review requirements delineated in amended section 737. Rather than stating the specific requirements, the committee proposes cross-referencing recently amended section 737 so that any future modifications to section 737 will not necessitate changes to the rule.

### **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 court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program volunteers; and other juvenile and family law professionals.

The committee received six comments. One commentator agreed with the proposal and five agreed if modified. No commentators disagreed with the proposal. Most of the commentators suggested minor or technical changes, such as more closely tracking the statutory language. The committee agreed with all of them without debate. A chart with the full text of the comments received and the committee's responses is attached at pages 14–23.

One suggestion generated the most committee discussion.

### **Comment considered: Removing home supervision from the definition of detention**

One commentator did not agree that home supervision should be removed from the definition of detention in rule 5.502 because it may be a form of detention. The committee recommends leaving the reference to home supervision in the definition of detention in rule 5.502(11) and adding this sentence: “A child released or placed on home supervision is not detained for the purposes of federal foster care funding.” The addition of this sentence to rule 5.502(11) clarifies that although home detention may be considered a restriction of liberty, it is not a detention for the purposes of title IV-E foster care funding.

The proposed revision to rule 5.760(*l*) is also slightly modified to draw a distinction between release and home supervision.

### **Alternatives considered**

The committee considered making only the changes necessary to implement AB 388 and AB 2607 but determined that amending rules 5.502(11) and 5.760(c) and revising forms JV-642 and JV-667 would clarify the differences between detention for federal foster care funding purposes and home supervision. For those children placed on home supervision, a judicial decision that it would not be contrary to their welfare for them to return home has been made; thus, they are ineligible for foster care funding under title IV-e. Although they may be detained in the sense that their liberty has been restricted, children placed on home supervision are not detained for the purposes of title IV-e; consequently, detention orders must be made when a child is removed from the home after being placed on home supervision. The revisions to rules 5.502(11) and 5.760(c) and forms JV-642 and JV-667 are intended to eliminate any confusion about this distinction.

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

In implementing the revised forms, courts would incur standard reproduction costs and retraining of affected staff.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.502, 5.760, and 5.790, at pages 6–8
2. Forms JV-642 and JV-667, at pages 9–13
3. Chart of comments, at pages 14–23
4. Assembly Bill 388  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB388&search\\_keywords](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB388&search_keywords)
5. Assembly Bill 2607  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB2607&search\\_keywords](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2607&search_keywords)

Rules 5.502, 5.760, and 5.790 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 5.502. Definitions and use of terms**

2  
3 Definitions (§§ 202(e), 303, 319, 361, 361.5(a)(3), 450, 628.1, 636, 726, 727.3(c)(2),  
4 727.4(d), 4512(j), 4701.6(b), 11400(v), 11400(y), 16501(f)(16); 20 U.S.C. § 1415; 25  
5 U.S.C. § 1903(2))

6  
7 As used in these rules, unless the context or subject matter otherwise requires:

8  
9 (1)–(10) \* \* \*

10  
11 (11) “Detained” means any removal of the child from the person or persons legally  
12 entitled to the child’s physical custody, or any release of the child on home  
13 supervision under section 628.1 or 636. A child released or placed on home  
14 supervision is not detained for the purposes of federal foster care funding.

15  
16 (12)–(45) \* \* \*

17  
18 **Rule 5.760. Detention hearing; report; grounds; determinations; findings; orders;**  
19 **factors to consider for detention; restraining orders**

20  
21 (a)–(b) \* \* \*

22  
23 (c) **Grounds for detention (§§ 625.3, 635, 636)**

24  
25 (1) The child must be released unless the court finds that continuance in the home  
26 of the parent or legal guardian is contrary to the child’s welfare, and one or  
27 more of the following grounds for detention exist:

28  
29 ~~(1)~~(A) The child has violated an order of the court;

30  
31 ~~(2)~~(B) The child has escaped from a commitment of the court;

32  
33 ~~(3)~~(C) The child is likely to flee the jurisdiction of the court;

34  
35 ~~(4)~~(D) It is a matter of immediate and urgent necessity for the protection of the  
36 child; or

37  
38 ~~(5)~~(E) It is reasonably necessary for the protection of the person or property of  
39 another.

1 (2) If the child is a dependent of the court under section 300, the court's decision  
2 to detain must not be based on the child's status as a dependent of the court or  
3 the child welfare services department's inability to provide a placement for the  
4 child.

5  
6 ~~The court may order the child detained in juvenile hall or in a suitable place~~  
7 ~~designated by the court, or on home supervision under the conditions stated in~~  
8 ~~sections 628.1 and 636.~~

9  
10 (3) The court may order the child placed on home supervision under the  
11 conditions stated in sections 628.1 and 636, or detained in juvenile hall or in a  
12 suitable place designated by the court.

13  
14 (4) If the court orders the release of a child who is a dependent of the court under  
15 section 300, the court must order the child welfare services department either  
16 to ensure that the child's current caregiver takes physical custody of the child  
17 or to take physical custody of the child and place the child in a licensed or  
18 approved placement.

19  
20 **(d) Required determinations before detention**

21  
22 Before detaining the child, the court must determine whether continuance in the  
23 home of the parent or legal guardian is contrary to the child's welfare and whether  
24 there are available services that would prevent the need for further detention. The  
25 court must make these determinations on a case-by-case basis and must state the  
26 evidence relied on in reaching its decision.

27  
28 (1) If the court determines that the child can be returned to the home of the parent  
29 or legal guardian through the provision of services, the court must release the  
30 child to the parent or guardian and order that the probation department provide  
31 the required services.

32  
33 (2) If the child cannot be returned to the home of the parent or legal guardian, the  
34 court must state the facts on which the detention is based.

35  
36  
37 **(e) Required findings to support detention (§ 636)**

38  
39 If the court orders the child detained, the court must make the following findings on  
40 the record and in the written, ~~signed~~ orders. The court must reference the probation  
41 officer's report or other evidence relied on to make its determinations:  
42

- 1 (1) Continuance in the home of the parent or guardian is contrary to the child's  
2 welfare;  
3  
4 (2) Temporary placement and care is the responsibility of the probation officer  
5 pending disposition or further order of the court; and  
6  
7 (3) Reasonable efforts have been made to prevent or eliminate the need for  
8 removal of the child, or reasonable efforts were not made.

9  
10 (f)–(k) \* \* \*

11  
12 **(l) Restraining orders**

13  
14 As a condition of release or ~~detention~~ ~~on~~ home supervision, the court may issue  
15 restraining orders as stated in rule 5.630 or orders restraining the child from any or  
16 all of the following:

17  
18 (1)–(3) \* \* \*

19  
20 **Rule 5.790. Orders of the court**

21  
22 (a)–(i) \* \* \*

23  
24 **(j) Fifteen-day reviews (§ 737)**

25  
26 If the child or nonminor is detained pending the implementation of a dispositional  
27 order, the court must review the case at least every 15 days as long as the child is  
28 detained. The review must meet all the requirements in section 737. ~~The court must~~  
29 ~~inquire about the action taken by the probation officer to carry out the court's order,~~  
30 ~~the reasons for the delay, and the effects of the delay on the child.~~

31  
32



CHILD'S NAME:	CASE NUMBER:
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**INITIAL APPEARANCE HEARING—JUVENILE DELINQUENCY**

Out-of-Custody Appearance       In-Custody Appearance and Detention

**THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:**

1.  Notice has been given as required by law.
2.  The child's date of birth is (*specify*):
3.  The child is to remain out of custody pending the next hearing.
4.  The child was taken into custody at:       a.m.  p.m.      on (*specify date*):
5.  The petition or notice of probation violation was filed at:       a.m.  p.m.      on (*specify date*):
6.  Counsel is appointed for the child as follows:  
Counsel is to represent the child until relieved by the court in accordance with California Rules of Court, rule 5.663.
7.  The information on the face of the petition was       confirmed       corrected as follows:
8. a.  The court inquired of       the mother       others (*names and relationships*):  
  
as to the identities and addresses of all presumed or alleged fathers.
- b.  The court finds (*name*):      to be the       legal       biological  
     presumed       alleged father.
9. The  mother       father       legal guardian       other (*specify*):  
    were provided with a *Parental Notification of Indian Status* (form ICWA-020) and ordered to complete the form and submit it to the court before leaving the courthouse today.
10. a.  The child       is       may be      an Indian child, and the county agency must provide, as required by law, notice of the proceeding and of the tribe's right to intervene. Proof of such notice must be filed with the court.
- b.  There is reason to believe that the child may be of Indian ancestry, and the county agency must provide notice of the proceedings to the Bureau of Indian Affairs as required by law. Proof of such notice must be filed with this court.
11.  The court advised the child and parent or legal guardian of (*check all that apply*)
  - a.  the contents of the petition.
  - b.  the nature and possible consequences of juvenile court proceedings.
  - c.  the purpose and scope of the initial hearing.
  - d.  the hearing rights described in rule:
  - e.  the reason the child was taken into custody.
  - f.  the parent or legal guardian's financial obligation and right to be represented by counsel.
  - g.  other:
12.  Reading of the petition and advice of rights were waived by       the child       the child's counsel.
13.  The prosecutor has requested that a hearing be set to determine whether the child is a fit and proper subject under Welfare and Institutions Code section 707(a) or (c).
14.  The child       through counsel
  - a.  denied the allegations of the petition dated:
  - b.  asked the court to take no action on the petition at this time.
15.  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.
16.  After inquiry, the court finds that the child understands the nature of the allegations and the direct consequences of admitting or pleading no contest to the allegations of the petition, and understands and waives the hearing rights, which were explained (*check all that apply*):
  - a.  The right to have a hearing.

CHILD'S NAME:	CASE NUMBER:
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16.  b.  The right to cross-examine and confront witnesses.  
 c.  The right to subpoena witnesses and present a defense.  
 d.  The right to remain silent.
17.  The child  through counsel
- a.  admitted the petition  as filed  as amended on (date): \_\_\_\_\_
- b.  pleaded no contest to the petition  as filed  as amended on (date): \_\_\_\_\_
- c.  The child's counsel consents to the admission or plea of no contest.
- d.  The admission or plea of no contest is freely and voluntarily made.
- e.  There is a factual basis for the admission or plea of no contest.
- f.  The court finds that the child was under 14 years old at the time of the offense but the child knew the wrongfulness of his or her conduct at the time the offense was committed.

18. a.  The following allegations are admitted and found to be true: \_\_\_\_\_

Count number	Statutory violation	Misdemeanor	Felony	To be specified at disposition	Enhancement (if applicable)
		<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"/>	
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

- b.  As to any offense that could be considered a misdemeanor or felony, the court is aware of and exercises its discretion to determine the offense, as stated in 18a.
- c.  The following allegations are dismissed: \_\_\_\_\_
- |                     |                            |
|---------------------|----------------------------|
| <u>Count number</u> | <u>Statutory violation</u> |
|---------------------|----------------------------|

19.  The child is described by section  601  602 of the Welfare and Institutions Code.
20.  The maximum confinement time is:
21.  The child's residence is in: \_\_\_\_\_ County.
22.  The matter is transferred to: \_\_\_\_\_ County for disposition and further proceedings. *Juvenile Court Transfer Orders* (form JV-550) will be completed and transmitted immediately.
23.  The child waives his or her right under *People v. Arbuckle* to have the disposition heard by this judicial officer.

**CHILD IN CUSTODY**

24.  The court has considered the detention report prepared by probation  and the following documents (*specify*):  
 and the testimony of (*name*):  
 and the examination by the court of (*name*):  
 and takes judicial notice of the entire court file.
25.  The child is released from custody  to the home of (*name, address, and relationship to child*): \_\_\_\_\_
- on home supervision  on electronic monitoring
- the terms of which are stated in the attached *Terms and Conditions* (form JV-624).
26.  The child is a dependent of the court under section 300 and is ordered released from custody. The child welfare services department must either ensure that the child's current caregiver take physical custody of the child or take physical custody of the child and place the child in a licensed or approved placement.

CHILD'S NAME:	CASE NUMBER:
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- 27.  A prima facie showing has been made that the child's disposition is by section 601 or 602.
- 28.  Based on the facts stated on the record, the child is detained in secure custody on the following grounds *(check all that apply)*:
  - a.  The child has violated an order of the court.
  - b.  The child has escaped from a court commitment.
  - c.  The child is likely to flee the jurisdiction of the court.
  - d.  It is a matter of immediate and urgent necessity for the protection of the child.
  - e.  It is reasonably necessary for the protection of the person or property of another.
- 29.  Based on the facts stated on the record, continuance in the child's home is contrary to the child's welfare.
- 30.  Based on the facts stated on the record, there are no available services that would prevent the need for further detention.
- 31.  Temporary placement and care is the responsibility of the probation department.
- 32.  Reasonable efforts to prevent or eliminate the need for detention of the child  have  have not been made.
- 33.  Probation is ordered to provide services that will assist with reunification of the child and the family.
- 34.  Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.
- 35.  The child and the parent or legal guardian have been advised that if the child cannot be returned home within the statutory timelines, a proceeding may be scheduled to determine an alternative permanent home, including an adoptive home after parental rights are terminated.
- 36.  The  mother  father  legal guardian are ordered to supply the names and contact information of adult relatives to probation so probation can notify them of the removal and of their options to be included in the child's life.
- 37.  The probation officer must file a case plan within 60 days.
- 38.  Probation is authorized to release the minor  at its discretion  under the following circumstances:
- 39.  The court accepts transfer from the County of:
- 40.  Other orders:
- 41.  Child  Counsel waives time for *(check all that apply)*  
 jurisdiction hearing  disposition hearing  other:
- 42.  **The next hearings will be**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:
- 43.  The child
  - a.  is ordered to return to court on the above date and time.
  - b.  remains detained.
- 44. All prior orders not in conflict, including any terms and conditions of probation, remain in full force and effect.
- 45.  All appointed counsel are relieved.

Date:

JUDGE   
  JUDGE PRO TEMPORE   
  COMMISSIONER   
  REFEREE

Countersignature for detention orders *(if necessary)*:

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
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**CUSTODIAL AND OUT-OF-HOME PLACEMENT DISPOSITION ATTACHMENT**

**THE COURT FINDS AND ORDERS**

1.  The maximum time the child may be confined
  - a.  in secure custody for the offenses sustained in the petition before the court is (*specify*):
  - b.  in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (*specify*):
  
2.  The child is committed to (*specify*):  days  months in juvenile hall
  - a.  and is remanded forthwith. Continuance in the home is contrary to the child's welfare.
  - b.  and is to report to (*name*): \_\_\_\_\_ by  a.m.  p.m. on (*date*): \_\_\_\_\_
  - c.  with credit for (*specify*): \_\_\_\_\_ days served.
  
3.  The welfare of the child requires that physical custody be removed from the parent or guardian. (*Check only if applicable*):
  - a.  The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
  - b.  The child has been on probation in the custody of the parent or guardian and has failed to reform.
  - c.  Continuance in the home is contrary to the child's welfare.
  
4.  Probation is granted the authority to authorize medical, surgical, or dental care under Welfare and Institutions Code section 739.
  
5.  Reasonable efforts to prevent or eliminate the need for removal
  - a.  have been made.
  - b.  have not been made.
  
6. a.  The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:
 

Mother     Biological father     Legal guardian     Presumed father  
 Alleged father     Indian custodian     Other (*specify*): \_\_\_\_\_
- b.  Reunification services do not need to be provided to (*name*): \_\_\_\_\_ because the court finds by clear and convincing evidence that (*check one*)
  - (1)  reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
  - (2)  that parent has been convicted of  murder of another child of the parent  voluntary manslaughter of another child of the parent  aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent  felony assault resulting in serious bodily injury to the child or another child of the parent.
  - (3)  the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.
- c.  The child is  ordered to  continued in \_\_\_\_\_ the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.
- d.  The following are ordered to meet with the probation officer on a monthly basis:
 

Mother     Biological father     Legal guardian     Presumed father  
 Alleged father     Indian custodian     Other (*specify*): \_\_\_\_\_
- e.  The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

CHILD'S NAME:	CASE NUMBER:
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6. f.  The child is to be placed out of state at the following (*name and address*):
- (1)  In-state facilities are unavailable or inadequate to meet the needs of the child.
  - (2)  The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.
  - (3)  The requirements of section 7911.1 of the Family Code are met.
- g.  Pending placement, the child is detained in juvenile hall. If being housed in another county, please specify county:
- h.  The child is placed on home supervision in the home of
- (a)  parent (*name*): \_\_\_\_\_  mother  father
  - (b)  parent (*name*): \_\_\_\_\_  mother  father
  - (c)  legal guardian (*name*): \_\_\_\_\_
  - (d)  other (*name and address*): \_\_\_\_\_
- and is subject to electronic monitoring.
- i.  The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.
- j.  The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.
- k.  The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is (*specify date*):
- l.  The right of the parent or guardian to make educational decisions for the child is specifically limited. *Order Designating Educational Rights Holder* (form JV-535) will be completed and transmitted.
7.  The child has been ordered into a placement described by title IV-E of the Social Security Act.
- a.  The date the child entered foster care is: \_\_\_\_\_, which is 60 days after the day the child was removed from his or her home.
  - b.  An exception applies to the standard calculation of the date the child entered foster care because
    - (1)  the child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of: \_\_\_\_\_.
    - (2)  the child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be: \_\_\_\_\_.
    - (3)  at the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the date entered foster care is unchanged from the date the child entered foster care in dependency court. That date is: \_\_\_\_\_.
8.  The child is committed to the care, custody, and control of the probation office for placement in the county juvenile ranch, camp, forestry camp, or:
- a.  for: \_\_\_\_\_ months \_\_\_\_\_ days.
  - b.  until the requirements of the program have been satisfactorily completed.
  - c.  If being housed in another county, please specify:
9.  The child is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732) will be completed and transmitted.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

**SPR15-24****Juvenile Law: Detention** (amend Cal. Rules of Court, rules 5.502, 5.760, and 5.790; amend forms JV-642 and JV-667)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Judges Association Hon. Joan P. Weber	AM	We support the proposal, however, there is serious disagreement about whether home supervision is a form of detention. Because of that we recommend that the rule not address that issue but leave it to the legislature, or possibly the courts, to resolve.	The committee acknowledges that the initial proposal’s discussion of home supervision caused confusion. The committee’s intent is to clarify that children placed on home supervision are not detained for the purposes of federal foster funding under title IV-E. To do this, the committee recommends keeping the current definition of “detained” in Rule 5.502 and adding the following sentence: “A child released or placed on home supervision is not detained for the purposes of federal foster care funding.” The committee also recommends revising Rule 5.760(1) to remove the word “detention.” Rule 5.760(1) would read “As a condition of release or home supervision, the court may issue....” The proposed revisions acknowledge that placing a child on home supervision may represent a form of restricted liberty but not one that qualifies as a detention for the purposes of federal foster care funding under title IV-E. Home supervision is not a title IV-e detention because returning the child to his/her parents establishes it is <i>not</i> contrary to the child’s welfare to return home.
2.	Los Angeles Superior Court	AM	1. Does the proposal appropriately address the stated purpose?  Yes.	1. As the recommendation is to leave home supervision within the definition of “detention” it is not necessary to add the language related to setting hearings.

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	Commentator	Position	Comment	Committee Response
			<p>We concur with the removal of home supervision from the definition of “detained,” however, it must be emphasized that a minor on home supervision is considered to be detained for purposes of setting hearings. The quoted language below from WIC 628.1 should be added to CRC 5.752(f). See last paragraph of WIC 628.1: “A minor on home supervision shall be entitled to the same legal protections as a minor in secure detention, including a detention hearing.”</p> <p>2. Should rule 5.760 be amended to state that a court’s decision to detain a child must not be based on a finding that continuance in the child’s current placement is contrary to the child’s welfare? This finding is not authorized by statute or rule.</p> <p>No.</p> <p>3. It is suggest that CRC 5.760(e) not include the proposed language: “The inability of the child welfare services department to provide a placement for the child cannot be the basis for any of the above grounds.”</p>	<p>2. The addition of the phrase “of the parent or legal guardian” to Rule 5.760(c)(1) clarifies that the contrary to the welfare finding discussed in title IV-e applies only to removal of a child form his parent or guardian.</p> <p>3. The revised language will track the statutory language.</p>

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			<p>Instead include only the language of the statute: “If the minor is a dependent of the court subject to Section 300, the court’s decision to detain shall not be based on the minor’s status as a dependent of the court or the child welfare department’s inability to provide a placement for the minor.”</p> <p>The presently proposed language (inability may not be the basis for above grounds) may be interpreted to negate the third finding, “The child is likely to flee the jurisdiction of the court.” While argument can be made that the child welfare department’s inability to contain the minor in a placement is not an appropriate basis for detention, we think the better rule is that it is a proper basis and would not add the language that “inability ... may not be the basis for above grounds.”</p> <p>4. In the proposed change to 5.760(l), Restraining Orders, we suggest the following wording: “As a condition of release home or release on home supervision, the court may issue restraining orders...”</p> <p>5. CRC 5.790(j) should read: If the child or nonminor [deleting the word</p>	<p>4. The committee agrees to the gist of this amendment and recommends that Rule 5.760(l) read: “As a condition of release or home supervision, the court may....”</p> <p>5. The committee will delete the word “dependent.”</p>



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			<p>“dependent”]....</p> <p>The revision to WIC 737 did not address nonminor dependents, but youth who are wards and age 18 or over.</p> <p>6a. Revisions to JV-642: We suggest the following language for #16: “After inquiry the court finds that the child understands...”</p> <p>It is not always the court who inquires, sometimes the inquiry is done by the DA.</p> <p>6b. We agree with the additions to #17.</p> <p>6c. We suggest the following language in 18b: “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>7. We disagree with the proposed changes to JV-667, #6h. This is a dispositional attachment and a minor would not be “released on home supervision” The minor would be “placed on home supervision” as a condition of probation.</p>	<p>6a. The committee agrees that it is not always the court that conducts the inquiry and will make the suggested modification.</p> <p>6b. No response required.</p> <p>6c. The committee agrees that the comment enhances the clarity of the form and recommends that 18b read: “As to those sustained wobbler offense(s) enumerated above, the court exercises its discretion to determine whether the offense(s) should be misdemeanors or felonies.”</p> <p>7. The committee will use the phrase “placed on” rather than “released on.”</p>
3.	Orange County Bar Association Ashleigh Aitken, President	AM	We recommend modifying to address the problem of the proposed revisions directing the Juvenile Delinquency Court to make orders against a party/nonparty (“the child	The committee’s proposed revision tracks the Welfare and Institutions Code section 635, which states “the court shall order the child welfare services department...to ensure...the

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			<p>welfare services department”) that is not present at delinquency detention hearing, received no notice of the delinquency detention hearing, received no copy of the delinquency petition, received no copy of the Probation report, and is denied an opportunity to be heard at the delinquency detention hearing.</p> <p>We recommend that the child welfare services department be given notice and an opportunity to be heard.</p>	<p>current...caregiver takes physical custody of the minor or take physical custody of the minor....”</p>
4.	San Diego Superior Court Mike Roddy	AM	<p><b>1. Rule 5.760(c):</b> The new language at the bottom of page 5 should be deleted because it is already in (c)(2). The new (c)(4) should track the language in Welfare and Institutions Code section 635(c)(2).</p> <p><b>2. Rule 5.760(d):</b> The new language in (d)(2)(B) is already in (c)(4) and does not appear to be appropriate in (d). We recommend that the language remain “court must state the facts on which the detention is based.”</p> <p><b>3. Rule 5.760(e):</b> We recommend to delete the proposed new “and order” because 1, 2, and 3 are findings. We recommend as an alternative: “court must make the following</p>	<p>1. To eliminate redundancy, the language in Rule 5.760(c)(1)(e) that appears at the bottom of page 5 will be deleted. Rule 5.760(c)(4) will be revised to track the statutory language.</p> <p>2. Subsection (2)(B) of Rule 5.760(d) will be removed.</p> <p>3. The comment enhances the clarity of the rule and will be incorporated.</p>

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			findings on the record and in the written order.”	
5.	Youth Law Center Catherine McCulloch	AM	<p><b>Rule 5.760 – Detention hearing; report; grounds; determinations; findings; orders; factors to consider for detention; restraining orders – Agree if Modified</b></p> <p>The proposed changes amend Rule 5.760 to conform to the new statutory requirement that the court’s decision to detain in juvenile hall cannot be based on certain criteria. The amendment is incomplete as it does not include sufficient guidance to the court. For dependent children the court’s decision to detain should not be based on the youth’s current foster care placement, child welfare’s inability to find a placement, or the youth’s status as a dependent. There is a presumption that a child in the legal care and custody of a child welfare agency should be returned to the physical custody of the child welfare agency for placement.</p> <p><i>In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:</i></p> <p>Rule 5.760 (c)(2) should be amended to read –If the child is a dependent of the court under section 300, the court’s decision to</p>	<p>This comment is an accurate statement of the law but has limited substantive effect on the rule.</p>

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	Commentator	Position	Comment	Committee Response
			<p>detain must not be based on the child’s status as a dependent of the court or the child welfare services department’s inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement.</p> <p>Rule 5.760 (e) should be amended to add – If the child is a dependent of the court under section 300, the court’s decision to detain must not be based on the child’s status as a dependent of the court or the child welfare services department’s inability to provide a placement for the child. In all cases when a minor is adjudged a dependent child of the court under section 300 and the court orders removal from a parent or guardian, the court orders the care, custody, control, and conduct of the child to be under the supervision of the social worker who is responsible for placing the child in an appropriate placement.</p> <p><b>Rule 5.790 Orders of the Court – Agree if Modified</b></p>	<p>This comment is an accurate statement of the law but has limited substantive effect on the rule.</p> <p>This comment goes beyond the scope of this proposal and raises issues necessitating</p>

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			<p>The committee proposes eliminating the specific requirements and using a cross-reference to the recently amended section 737. The committee’s rationale for this decision is that any future modification to section 737 will not result in the need for change to the rule. However, the rules of court are meant to instruct and aid the court in using the law. The cross-reference provides no aid or clarification for the court. <i>In order for this rule to fully and clearly conform to the new statutory requirement we suggest the following amendments:</i></p> <p>Rule 5.790 (j) should be amended to add- If the minor or nonminor is detained pending the implementation of a dispositional order, the court must review the case at least every 15 days as long as the child is detained. The review must meet all the requirements in section 737. The court must inquire about the actions taken by the probation officer to carry out the court’s order, the reasons for the delay, and the effects of the delay on the minor or nonminor.</p> <p>The court shall meaningfully evaluate all the steps that have been taken by the probation department, since the last 15 day court review, to identify and advocate for an appropriate placement for the minor or nonminor, including but not limited to:</p>	circulation for comment.

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			<p>(1) The number of placements contacted; (2) The type of placements contacted, and whether placements with additional supports and services would be appropriate, including but not limited to: (a) Kinship with wraparound services; (b) Therapeutic foster care; (c) Foster home through an FFA; and (d) Group home (3) The appropriateness of placements contacted including whether placements with additional supports and services would be appropriate; (4) Whether or not the probation officer has modified his or her approach to finding placements if the officer has been unsuccessful with past attempts, and how the probation officer modified the approach; (5) What characteristics the probation officer uses to describe the youth to the potential placements; and (6) Whether or not the probation officer has acted on recommendations given by the youth's public defender, and what were those actions. The court will consider whether the delay was reasonable. A court shall not consider any of the following to be a reasonable delay: (1) The probation officer's inability to</p>	

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			<p>identify an appropriate placement when the court finds that the probation officer has not made reasonable efforts to identify one;</p> <p>(2) A delay caused by administrative process;</p> <p>(3) A delay in the convening any meetings between agencies; and</p> <p>(4) The court may find any other delay to be unreasonable</p> <p>If the court finds the delay to be unreasonable the court shall order the probation officer to assess the availability of any suitable temporary placements or other alternatives to secure confinement.</p>	
6.	Dependency Advocacy Center Hilary Kushins	A		No response required.