Judicial Council *of* California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-150
For business meeting on September 20, 2024

Title
Juvenile Law: Harm of Removal

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.674, 5.676, and 5.678; revise form JV-410

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Stephanie E. Hulsey, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2025

Date of Report
September 6, 2024

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Executive Summary

To implement recent legislation creating new factors to be considered by the juvenile court at a detention hearing, the Family and Juvenile Law Advisory Committee proposes amending three rules and revising one Judicial Council form, effective January 1, 2025. Senate Bill 578 (Ashby; Stats. 2023, ch. 618) amended Welfare and Institutions Code section 319 to require the court to consider the impact on the child when being separated from their parent or guardian at a detention hearing. The proposed changes to the rules and form related to the detention hearing address the new reporting requirements and clarify the court's role in mitigating harm to the child related to removal from their home.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Amend rule 5.674 of the California Rules of Court to address new reporting requirements created by SB 578;

2. Amend rule 5.676 of the California Rules of Court to update reporting requirements and to reduce statutory redundancy;

3. Amend rule 5.678 of the California Rules of Court to address minor technical updates to references to subdivision numbers in section 319 renumbered by SB 578 and to provide clarification of a new determination on the child's placement created by SB 578; and

4. Revise *Findings and Orders After Detention Hearing* (form JV-410) to conform it to new requirements related to SB 578.

The proposed amended rules and revised form are attached at pages 11–21.

Relevant Previous Council Action

The Judicial Council has not previously taken action to implement Senate Bill 578.

The Judicial Council adopted rule 5.674 as rule 1444, effective January 1, 1998. It was amended one time, effective July 1, 2002, to make technical changes. It was renumbered and amended, effective January 1, 2007.

The Judicial Council adopted rule 5.676 as rule 1445, effective January 1, 1998. It was amended one time, effective July 1, 2002, to make technical changes. It was renumbered and amended, effective January 1, 2007.

The Judicial Council adopted rule 5.678 as rule 1446, effective January 1, 1998. It was amended two times—once, effective January 1, 1999, to expand the definition of "relative" as required by statutory changes, and again, effective July 1, 2002, to make technical changes. It was renumbered and amended, effective January 1, 2007.

Analysis/Rationale

The detention hearing is the first hearing addressing a child's removal from their parent or guardian for abuse or neglect. The hearing must be held no later than one judicial day after the filing of the Welfare and Institutions Code section 300[1] petition, which must be filed within 48 hours of the child's removal.[2] The court must order the release of the child unless there is a prima facie showing that the child comes within the description of section 300,[3] that continuance

[1] All unspecified statutory references are to the Welfare and Institutions Code.

[2] §§ 313, 315.

[3] Section 300, subdivisions (a) through (j), are the grounds for the court's jurisdiction of a child who has suffered, or is in substantial risk of suffering, serious harm, due to factors related to, inter alia, abuse, neglect, relinquishment, or the absence of provisions for support. The petition must state the facts sufficient to show that the child comes within one of the section 300 provisions. (§ 332.) The determination whether the child is a person described by section 300 is addressed at the jurisdiction hearing, which must be set within 15 judicial days after the detention hearing if the child is in custody at the time the petition is filed. (§§ 334, 355(a).)

in the home is contrary to the child's welfare, and that one of the circumstances in section 319(c)(1)(A)–(D), which addresses various factors related to the child's safety, is found to exist.

Senate Bill 578 (Link A) creates new responsibilities for the placing agency and for the court at a detention hearing related to mitigating harm to the child because of their removal from their parent or guardian. According to the bill analysis: "There is no disputing that children suffer harm when they are separated from their parents. The highly traumatic experience of family separation can cause irreparable harm, disrupting a child's brain architecture and affecting their short- and long-term health."[4]

The bill seeks to ameliorate the impact of removal by creating new reporting requirements addressing the impact on the child from removal, and by requiring the court to determine whether less disruptive alternatives to removal were considered by the placing agency. In a written order or on the record, the court must also state all the following if it finds that removal is necessary (§ 319(c)(2)(B)):

(i) The basis for its findings and the evidence relied on.
(ii) Its determination regarding the child's placement, including whether it complies with the placement preferences set forth in Section 361.31 [if an Indian child is involved] and less disruptive alternatives.
(iii) Include any orders necessary to alleviate any disruption or harm to the child resulting from removal.

SB 578 also added to section 319 language that requires the court to consider the report from the social worker described in subdivision (b). And subdivision (b) was updated to include new reporting requirements addressing any short-term or long-term harms—or *both* short-term and long-term harms—to the child that may result from their removal from the custody of their parent, guardian, or Indian custodian and measures that may be available to alleviate disruption and minimize the harms of removal.

The bill did not disturb the basic requirements for removal at a detention hearing discussed above. The bill clarified in new paragraph (c)(2)(C) of section 319 that "[n]othing in this paragraph permits a child to be released to a parent, legal guardian, or Indian custodian, or to be placed in an unsafe placement, due solely to the court determining the child was not offered less disruptive alternatives." The bill addresses mitigating the harm of removal after the decision to remove has been made.

The proposal would amend three rules and revise one form to reflect changes to the detention hearing discussed above made by SB 578.

[4] Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill 578 (2023–2024 Reg. Sess.), Sept. 14, 2023, p. 6, *https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB578.*

Rule amendments

The committee recommends amending three rules to reflect the changes made to section 319 by SB 578.

Rule 5.674, Conduct of hearing; admission, no contest, submission

A minor amendment is proposed to subdivision (b) of the rule to reflect new language created by SB 578 requiring the court to review the report for the hearing described in section 319(b). Before SB 578, whether a report from the social worker was required for the hearing was somewhat ambiguous.[5] Section 319 now requires that the court consider the report described in section 319(b), and the rule should reflect this change because the rule addresses evidence the court must consider at the detention hearing.

Rule 5.676, Requirements for detention

The recommended amendments to this rule relate to the updated reporting requirements and reduce statutory redundancy.

The requirements for removal of the child from the home stated in subdivision (a) are a restatement of the requirements in section 319(c)(1). The committee elected to maintain this language in the rule, with one edit. Subdivision (a)(3) of the rule conditions detention by requiring that "[o]ne or more of the grounds for detention in rule 5.678 is found." Previous versions of rule 5.678 included the grounds for detention, but they have since been removed from the rule. The committee therefore proposes changing the reference to read that "[o]ne or more of the grounds for detention in section 319(c)(1)(A)–(D) is present."

The committee also recommends that subdivision (c) be amended to mandate the new report information required in section 319(b).

Subdivision (c) also permits the court to "rely *solely* on written police reports, probation or social worker reports, or other documents" (italics added) when determining whether the child must be removed. The committee recommends that this language remain in the rule because, as discussed above, SB 578 does not modify the legal requirements for removal but instead addresses factors related to the child's well-being after that decision has been made. The committee therefore elected to maintain this language.

In addition, current subdivision (c) includes two items that are already included in section 319: "A statement of the reasons the child was removed from the parent's custody" in (c)(1) and "Identification of the need, if any, for the child to remain in custody" in (c)(4). Both these

[5] The previous version of section 319 required only that the social worker report to the court on certain matters without a specific reference to a social worker report. Subdivision (a) required the court to "examine the child's parents, guardians, Indian custodian, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the child's Indian custodian, the petitioner, the Indian child's tribe, or their counsel desires to present." SB 578 added language to this sentence that the court must also "review the report described in subdivision (b)."

reporting requirements are restatements of requirements stated in section 319(b). The committee therefore recommends deleting these items to reduce the redundancy in the rule.

Subdivision (d) of the rule also restates statutory requirements related to reporting requirements addressing an Indian child. The subdivision is a restatement of the items in section 319(b)(1)–(9). This restatement, however, was a deliberate decision by the committee when it recommended rules implementing Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), which the council approved effective 2020.[6] At the time, the committee considered it important to have these requirements restated in the rule because there were significant changes in practice based on the legal requirements of the Indian Child Welfare Act (ICWA). The committee maintains this position and elects to retain the statutory requirements in the rule being recommended. An additional requirement was added to this list by SB 578 as section 319(b)(10), and this new subdivision has been included in subdivision (d) of the rule as well.

Rule 5.678, Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives

Recommended amendments to this rule address minor technical updates to the references to subdivision numbers in section 319 renumbered by SB 578. In addition, the committee recommends a clarification of a new determination on the child's placement created by SB 578.

SB 578 added language to section 319 that requires the court to make a determination on the child's placement: "[The court's] determination regarding the child's placement, including whether it complies with the placement preferences set forth in Section 361.31 and less disruptive alternatives." (§ 319(c)(2)(B)(ii).) However, in making this determination, the court must determine whether less disruptive alternatives to removal were considered by the agency (§ 319(c)(2)(A).)

New subdivision (d) is recommended to clarify this new determination. When making the determination about whether "less disruptive alternatives" were considered by the agency, the social worker, under section 319(b), is required to include information in the report as follows:

(i) A description of the relationship between the child and their parents, guardians, or Indian custodians, based on the child's perspective, and the child's response to removal and, where developmentally appropriate, their perspective on removal.
(ii) The relationship between the child and any siblings.
(iii) The relationship between the child and other members of the household.
(iv) Any disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home, and in the

[6] The proposal can be found at *https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000*.

case of an Indian child, any impact on the child's connection to their tribe, extended family members, and tribal community.

(§ 319(c)(2)(A).)

In addition, to address mitigating the impact of removal, subdivision (d) would also require the court, in its order, to consider whether measures are available to alleviate disruption to the child and minimize the impact of removal and whether those measures have been utilized. Information on this issue is also required by SB 578 to be addressed in the social worker report. Finally, new subdivision (d) includes a list of additional factors (beyond those in the statute) related to least disruptive alternatives and the impact of removal that the court may consider in addition to the factors listed in section 319(c)(2)(A)(i)–(iv).

Findings and Orders After Detention Hearing (form JV-410)

There are several recommended revisions to the form addressing the detention hearing.

Less disruptive alternatives

The bill requires the court to determine whether less disruptive alternatives to removal were considered by the placing agency. To address these new findings, items 15m and 15n have been added to the form. The committee elected to also include the factors listed in section 319(c)(2)(A)(i)–(iv) on the form to ensure that courts identify which factors related to the harm of removal were considered by the placing agency.

Determination regarding the child's placement

A finding that the placement complies with section 361.31 already exists on the form in item 16d. The committee recommends that item 16d be revised to indicate the placement is a less disruptive alternative to removal.

Other changes

The committee recommends that both item 15e and item 15f be revised to address the update in section 319(c)(2)(B)(i), which requires the court—on the record or in its written order—to state its basis for its findings and evidence relied on. New item 15o would be added to address section 319(c)(2)(B)(iii) that the court include any orders necessary to alleviate any disruption or harm to the child resulting from removal.

A comment from the Superior Court of San Diego County noted that the list of placement options for the court to order at detention (form JV-410, item 15g) did not include some of the options in statute. As the commenter noted, the list does not include "an extended family member, as defined in Section 224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.)" *or* "[t]he approved home of a resource family, as described in Section 16519.5, or a home licensed or approved by the Indian child's tribe." In response, the committee recommends that the list of placement options in item 15g be revised to *mirror* the list of placement options in section 319(h)(1)(A)(i)–(iv).

Policy implications

The proposal mostly makes nonsubstantive changes to the rules and form related to updates made to the social worker report and the court's new determinations created by SB 578. The committee, however, did ask for specific comment to provide more clarification for the court's determination that a placement must comply with less disruptive alternatives to removal, by requiring the court to find that the placement is the least disruptive alternative to return to the parent or guardian.

Comments

The proposal circulated for public comment between March 29 and May 3, 2024, as part of the regular spring comment cycle. Twelve comments were received. Four commenters agreed with the proposal as proposed, 4 agreed if modified, and 4 did not indicate a position. A chart with the full text of all comments received and the committee's responses is attached at pages 22–45.

Below are notable issues that were raised by commenters.

Placement is the least disruptive alternative to return to the home.

Before circulating the proposal for comment, the committee determined that the proposal should include a clarification of the following statutory language created by SB 578: "Its determination regarding the child's placement, including whether it complies with the placement preferences set forth in Section 361.31 and less disruptive alternatives." (§ 319(c)(2)(B)(ii).) The language requires the court to make a determination regarding the child's placement after determining that removal is necessary. In an attempt to provide some clarity on this determination, the committee proposed requiring a finding in rule 5.678 that "the child's placement is the least disruptive alternative to return to the parent, guardian, or Indian custodian."

A request for specific comment was made asking whether this finding should be included in the rule and whether this finding is appropriate to describe the court's consideration of the child's placement required in section 319(c)(2)(B)(ii). Five commenters agreed with the proposed finding, including three superior courts (Riverside, Los Angeles, and San Diego), the Orange County Bar Association, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee. These commenters noted that the finding provided clarity, was an appropriate finding related to section 319(c)(2)(B)(ii), and properly implemented the requirements of SB 578.

Sacramento County Counsel described the challenges that agencies would face attempting to find a suitable placement in the short timelines of a detention hearing. The commenter suggested adding the word "current" before the word "placement" in subdivision (d) "to acknowledge that the child's placement may only be short-term, given the agency's potential limitations, as noted above."

Two commenters did not agree with adding the new finding. The Superior Court of Orange County said the language was not necessary because section 319(c)(1) is listed in subdivision (d)

of the rule, which covers these factors and does not need to be separately called out within the rule.

San Diego County Counsel opined that the new finding created a heightened burden that was not envisioned by SB 578, noting that SB 578 essentially requires the court and the placing agency to consider less disruptive alternatives to out-of-home detention. The commenter also emphasized the fluid nature of the initial stage of a dependency proceeding, noting that the court and placing agency would not have sufficient information at the early stage of the proceedings to make a determination comparing different placement options:

> The detention hearing often occurs 48–72 hours after the referral was generated or exigent circumstances occurred. Social workers must investigate, meet with family, find a placement, and write a court report in that time. They simply do not have the ability to research multiple possible caregivers and provide information about extracurricular activities and visitation schedules so the court may determine the least disruptive alternative at the detention hearing.

In addition, the commenter noted that, often at detention, the available placement may not be the best long-term placement but is the only person available to take the child in with little to no notice, and that this analysis would be better addressed at the disposition hearing. Sacramento County Counsel also raised many of the same concerns and stressed the limited availability of placements at the initial stage of the detention hearing.

After careful consideration and discussion of the comments, the committee initially elected to maintain the finding in the proposed rule amendments, with two committee members opposed and several committee members abstaining from voting. On further consideration, the committee concluded that the statutory language is susceptible to more than one interpretation and that adding the finding to the rule would exceed the rule-making authority of the Judicial Council. Subdivision (d) was further amended to more closely conform to the statute.

Initial removal at disposition.

Judge Leonard Edwards (Ret.) commented that "[t]he legislation applies any time the court removes a child. That may be at the detention hearing, but it could also be at the disposition hearing. The idea is that the court should put in place orders that ameliorate the trauma a child experiences when removed from parental care." The committee could not address the application of SB 578 at the disposition hearing through a rule because the bill only amends section 319 and not the dispositional statutes found at section 360 et seq. Thus, no rule related to the disposition hearing circulated for public comment in this proposal, and to address this issue would require a substantive change that would require that it circulate for comment. The committee, however, will consider this comment in a future proposal.

Repeat required determination of section 319(f) regarding relative placement.

The Orange County Bar Association recommended that rule 5.678(d)(1) repeat the requirement from section 319(f)(3) that "the court shall determine if there is a relative who is able and willing

to care for the child, and has been assessed pursuant to Section 361.4." The committee has elected to adopt this language in the rule. Although the Judicial Council seeks to avoid repeating language from statute in rules, exceptions have been made. For instance, in 2019 the committee recommended, and the council approved, restating statutory language in subdivision (d) of rule 5.676 related to reporting requirements addressing an Indian child because of a significant change in practice created by new legislation and because ICWA requirements are often overlooked. In this proposal, the committee has elected to maintain this restatement of statute in rule 5.676. The committee believes that the restatement related to section 361.4 raised by the commenter fits with the underlying purpose of SB 578 of mitigating harm to the child from removal. The committee also notes the heightened priority that the Legislature has placed on relative placements.

Additional factors related to less disruptive alternatives.
The California CASA Association suggested additional language in rule 5.678(d)(2)(A) and (B), the additional factors that the court may consider when determining whether less disruptive alternatives to removal were considered. One suggestion was to, in the context of the placement's ability to accommodate the proposed visitation schedule, add "including providing or arranging transportation when needed." The commenter also suggested specifically mentioning the court-appointed special advocate (CASA) volunteer as a service provider in the context of "[the child's] services, including but not limited to medical, dental, mental health, and educational services."

The committee believes that the language as proposed sufficiently addresses providing and arranging transportation, and that transportation is often a shared responsibility because the placement may not always be in a position to provide transportation. As to including the CASA volunteer relationship as a specific factor in rule 5.678's list of less disruptive alternative factors, the committee believes that highlighting that relationship would open the door to numerous other service relationships not mentioned. The committee agrees that these relationships are important, but the committee does not believe that they rise to the level of the type of disruption envisioned by the legislation. In addition, because the analysis of least disruptive alternatives under SB 578 will in most cases occur at the initial detention hearing, a service relationship with the CASA volunteer will not typically have been established.

Mandatory form JV-410.
The Executive Committee of the Family Law Section of the California Lawyers Association suggested making the form mandatory, noting recent changes in the law and the level of detail required for all judges to consider on the record. The commenter also noted that there is little opportunity (absent an extraordinary writ) for appellate review in a timely manner for detention hearings, and that the form creates additional safeguards to ensure that all judges are consistently and appropriately considering these new factors. The committee considered this comment and determined to continue to recommend the form as optional because each court has different ways of documenting detention findings and orders and the committee wanted to ensure courts had the flexibility to memorialize findings and orders in a manner that meets their needs.

Alternatives considered

The committee did not consider taking no action because SB 578 created new findings that the court must make at the detention hearing. In conjunction with the legislative mandate, the committee did consider whether statutory redundancies—unnecessary restatements of statutory language—should be removed from the rules in this proposal. As discussed, the committee elected to remove some restatements of statutory provisions but retained some related to ICWA because these requirements are often overlooked, and it was deemed important to restate them in the rule for that reason.

The committee also considered whether a new subdivision was needed in rule 5.678 addressing the court's new determination of the child's placement in section 319(c)(2)(B)(ii), discussed above. The committee considered letting courts implement this provision based on their own reading of the language by not adding a new subdivision to the rule. The committee elected, however, to recommend a new subdivision to clarify the need for courts to consider whether measures are available to alleviate disruption and minimize the impact of removal on the child.

Fiscal and Operational Impacts

New considerations required at the detention hearing are unlikely to create fiscal or operational impacts on courts. Any impact is likely to be negligible and would likely relate more to the implementation of SB 578 than it does to this rules and forms proposal.

Attachments and Links

1. Cal. Rules of Court, rules 5.674, 5.676, and 5.678, at pages 11–14
2. Form JV-410, at pages 15–21
3. Chart of comments, at pages 22–44
4. Link A: Sen. Bill 578 (Stats. 2023, ch. 618), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB578*

Rules 5.674, 5.676, and 5.678 of the California Rules of Court are amended, effective January 1, 2025, to read:

Rule 5.674. Conduct of hearing; admission, no contest, submission

(a) * * *

(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)

(1) The court must read, consider, and reference the social worker's report as described in section 319(b), any other report~~s~~ submitted by the social worker, and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.

(2) * * *

(c)–(e) * * *

Rule 5.676. Requirements for detention

(a) Requirements for detention (§ 319)

No child may be ordered detained by the court unless the court finds that:

(1) A prima facie showing has been made that the child is described by section 300;

(2) Continuance in the home of the parent, Indian custodian, or guardian is contrary to the child's welfare; and

(3) One or more of the grounds for detention in ~~rule 5.678~~ section 319(c)(1)(A)–(D) is ~~found~~ present.

(b) * * *

(c) Evidence required at detention hearing

In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents.

The reports relied on must include the required information in section 319(b) and:

~~(1) A statement of the reasons the child was removed from the parent's custody;~~

~~(2)~~(1) A description of the services that have been provided, including those under section 306, and of any available services or safety plans that would prevent or eliminate the need for the child to remain in custody;

~~(3)~~(2) If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with the parent, information and a recommendation regarding whether the child can be returned to the custody of that parent;

~~(4) Identification of the need, if any, for the child to remain in custody;~~ and

~~(5)~~(3) If continued detention is recommended, information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained.

(d) Additional evidence required at detention hearing for Indian child

If it is known, or there is reason to know, that the child is an Indian child, the reports relied on must also include:

(1) A statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent the imminent physical damage or harm to the child;

(2) The steps taken to provide notice to the child's parents, Indian custodian, and tribe about the hearing under section 224.3;

(3) If the child's parents and Indian custodian are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate Bureau of Indian Affairs regional director;

(4) The residence and the domicile of the Indian child;

(5) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village;

(6) The tribal affiliation of the child and of the parents or Indian custodian;

(7) A specific and detailed account of the circumstances that caused the Indian child to be taken into temporary custody;

(8) If the child is believed to reside or be domiciled on a reservation in which the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and that are being made to contact the tribe and transfer the child to the tribe's jurisdiction; ~~and~~

(9) A statement of the efforts that have been taken to assist the parents or Indian custodian so the Indian child may safely be returned to their custody~~.~~; and

(10) The steps taken to consult and collaborate with the tribe, and the outcome of that consultation and collaboration.

Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives

(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)

The court must order the child released from custody unless the court makes the findings specified in section 319(c)(1), and where it is known, or there is reason to know the child is an Indian child, the additional finding specified in section 319(d).

(b)–(c) * * *

(d) Orders of the court (§ 319; 42 U.S.C. § 672)

(1) If the court orders the child detained, the court must, in a written order or on the record, order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court and must make the other findings and orders specified in section 319(c)(2), (e), and (f)(3).

(2) When making the determination in section 319(c)(2)(B)(ii) that the placement complies with less disruptive alternatives, the court must also consider whether measures are available to alleviate disruption to the child and minimize the impact of removal and whether those measures have been utilized. In addition to considering the factors listed in section 319(c)(2)(A)(i)–(iv) related to the impact of removal and less disruptive alternatives, the court may consider factors that include, but are not limited to, whether the current placement:

(A) Can accommodate the proposed visitation schedule;

(B) Will disrupt the child's extracurricular activities or other services, including but not limited to medical, dental, mental health, and educational services;

(C) Will allow the child to observe their religious or cultural practices; and

(D) Can accommodate the child's special needs.

(e) *** * ***

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	*FOR COURT USE ONLY*
NAME:		
FIRM NAME:		
STREET ADDRESS:		
CITY:	STATE: ZIP CODE:	
TELEPHONE NO.:	FAX NO.:	
EMAIL ADDRESS:		
ATTORNEY FOR (*name*):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		

DRAFT
Not approved by the Judicial Council
JV-410.v13.081624.am

FINDINGS AND ORDERS AFTER DETENTION HEARING **(Welf. & Inst. Code, § 319)**	CASE NUMBER:

1. This matter came before the court on the
   ☐ original petition ☐ subsequent petition ☐ supplemental petition ☐ other *(specify):*
   filed on *(date):*

2. **Detention hearing**

   a. Date:
   b. Court reporter *(name):*
   c. Department:
   d. Bailiff *(name):*
   e. Judicial officer *(name):*
   f. Interpreter *(name and language):*
   g. Court clerk *(name):*

h. Party *(name)*	Present	Attorney *(name):*	Present	Appointed today
(1) Child:	☐		☐	☐
(2) Mother:	☐		☐	☐
(3) Father—presumed:	☐		☐	☐
(4) Father—biological:	☐		☐	☐
(5) Father—alleged:	☐		☐	☐
(6) Legal guardian:	☐		☐	☐
(7) Indian custodian:	☐		☐	☐
(8) De facto parent:	☐		☐	☐
(9) County agency social worker:	☐		☐	☐
(10) Tribal representative:	☐		☐	☐
(11) Other *(specify):*	☐		☐	☐

   i. Others present in courtroom
      (1) Court Appointed Special Advocate (CASA) volunteer *(name):*
      (2) Other *(name):*
      (3) Other *(name):*

3. **The court has read and considered and admits the following into evidence:**
   a. ☐ Report of social worker dated:
   b. ☐ Report of CASA volunteer dated:
   c. ☐ Other *(specify):*
   d. ☐ Other *(specify):*

Form Approved for Optional Use
Judicial Council of California
JV-410 [Rev. January 1, 2025]

Welfare and Institutions Code, § 319;
Cal. Rules of Court, rule 5.678
www.courts.ca.gov

CHILD'S NAME:	CASE NUMBER:

BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS

4. a. ☐ Notice of the date, time, and location of the hearing was given as required by law.

   b. ☐ **For a child 10 years of age or older who is not present**

      (1) ☐ The child was properly notified under Welf. & Inst. Code, § 349(d) of the right to attend the hearing and was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

      (2) ☐ The child was not properly notified under Welf. & Inst. Code, § 349(d) of the right to attend the hearing or the child wished to be present and was not given an opportunity to be present and

         (a) ☐ there is good cause for a continuance for a period of time necessary to provide notice and secure the presence of the child to enable the child to be present.

         (b) ☐ it is in the best interest of the child not to continue the hearing.

5. ☐ The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

6. a. ☐ The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds

      (1) the child understands the nature of the proceedings;

      (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

      (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel.

   b. A Court Appointed Special Advocate volunteer is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

7. ☐ A Court Appointed Special Advocate volunteer is appointed for the child.

8. **Parentage**

   a. ☐ The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.

   b. ☐ The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to

      (1) alleged parent *(name):*

      (2) alleged parent *(name):*

      (3) alleged parent *(name):*

9. **Indian Child Welfare Act (ICWA) inquiry**

   On the record, the court has

   a. ☐ asked each participant present at the hearing

      - whether the participant is aware of any information indicating that the child is a member or citizen of or eligible for membership or citizenship in an Indian tribe or Alaska Native village and if yes, the name of the tribe or village;
      - whether the residence or domicile of the child, either of the child's parents, or Indian custodian is on a reservation or in an Alaska Native village and if yes, the name of the tribe or village;
      - whether the child is or was ever a ward of a tribal court, and if yes, the name of the tribe or village; and
      - if the child, either of the child's parents, or the child's Indian custodian possesses an identification card indicating membership or citizenship in a tribe or Alaska Native village, and if so, the name of the tribe or village.

   b. ☐ instructed the participants to inform the court if they receive any information indicating that the child is a member or citizen of or eligible for membership or citizenship in a tribe or Alaska Native village.

CHILD'S NAME:	CASE NUMBER:

10. **ICWA status**

a. ☐ The court finds there is no reason to believe or reason to know the child is an Indian child and ICWA does not apply; or

b. ☐ The court finds there is reason to believe the child is an Indian child; and

(1) ☐ the agency has completed further inquiry as required by Welf. & Inst. Code, § 224.2(e), and there is no reason to know that the child is an Indian child. ICWA does not apply; or

(2) ☐ the agency is ordered to complete further inquiry as required by Welf. & Inst. Code, § 224.2(e) and file with the court evidence of this inquiry, including all contacts with extended family members, tribes that the child may be affiliated with, the Bureau of Indian Affairs, the California Department of Social Services, and/or others.

c. ☐ The court finds that there is reason to know that the child is an Indian child, and

(1) ☐ the agency has presented evidence in the record that it has exercised due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status; or

(2) ☐ the agency is required to exercise due diligence to identify and work with all of the tribes where the child may be a member or eligible for membership to verify the child's status and provide notice in accordance with Welf. & Inst. Code, § 224.3 and file proof of due diligence and notice with the court; and

(3) ☐ notice has been provided as required by law; and

(4) ☐ the court will treat the child as an Indian child until it is determined on the record that the child is not an Indian child.

d. ☐ The court finds that the child is an Indian child and a member of the: tribe.

11. **ICWA jurisdiction**

a. It is known or there is reason to know that the child is an Indian child. The court finds *(select one)*

(1) ☐ that it has jurisdiction over the proceeding because

(a) the court finds that the residence and domicile of the child are not on a reservation where the tribe exercises exclusive jurisdiction; and

(b) the court finds that the child is not already under the jurisdiction of a tribal court; or

(2) ☐ the court finds that it does not have jurisdiction because the child is under the exclusive jurisdiction of the tribal court; or

(3) ☐ the court finds that the child is under the exclusive jurisdiction of the tribal court, but that there is a basis for emergency jurisdiction in accordance with section 1922 of title 25 of the United States Code.

Advisements and waivers

12. **The court has informed and advised the**

☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ Other *(specify):*
☐ Other *(specify):*

of the following:

a. The right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

b. The right to be informed by the court of the following:

- The contents of the petition;
- The nature of and possible consequences of juvenile court proceedings;
- The reasons for the initial detention and the purpose and scope of the detention hearing if the child is detained;
- The right to have a child who is detained immediately returned to the home of the parent, legal guardian, or Indian custodian if the petition is not sustained;

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12. b.
- That if the petition is sustained and the child is removed from the care of the parent, legal guardian, or Indian custodian, the time for services will commence on the date the petition is sustained or 60 days from the date of the initial removal, whichever is earlier;
- That the time for services will not exceed 12 months for a child aged three years or over at the time of the initial removal; and
- That the time for services will not exceed 6 months for a child under the age of three years at the time of the initial removal or for the member of a sibling group that includes such a child if the parent, legal guardian, or Indian custodian fails to participate regularly and make substantive progress in any court-ordered treatment program.

c. The right to a hearing by the court on the issues presented by the petition.

d. The right to assert the privilege against self-incrimination; to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify against the parent, legal guardian, or Indian custodian; to subpoena witnesses; and to present evidence on their own behalf.

13. ☐ The ☐ mother ☐ biological father ☐ legal guardian ☐ child
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ Other *(specify):*
☐ Other *(specify):*

has knowingly and intelligently waived the right to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on one's own behalf.

14. ☐ **CHILD NOT DETAINED**

a. ☐ Services that would prevent the need for further detention, including those set forth in item 17, are available.

b. ☐ The child is returned to the custody of
☐ mother ☐ biological father ☐ legal guardian ☐ Other *(specify):*
☐ presumed father ☐ alleged father ☐ Indian custodian ☐ Other *(specify):*

15. ☐ **CHILD DETAINED**

a. Services that would prevent the need for further detention are not available.

b. A prima facie showing has been made that the child comes within Welf. & Inst. Code, § 300.

c. Continuance in the parent's or legal guardian's home is contrary to the child's welfare AND *(select at least one)*

(1) ☐ there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody of the parent or legal guardian.

(2) ☐ there is substantial evidence that a parent, legal guardian, or custodian of the child is likely to flee the jurisdiction of the court, and in the case of an Indian child, fleeing the jurisdiction will place the child at risk of imminent physical damage or harm.

(3) ☐ the child has left a placement in which they were placed by the juvenile court.

(4) ☐ the child has been physically abused by a person residing in the home and is unwilling to return home.

(5) ☐ the child has been sexually abused by a person residing in the home and is unwilling to return home.

d. The child is detained, and temporary placement and care of the child is vested with the county child and family services agency pending the hearing under Welf. & Inst. Code, § 355 or further order of the court.

e. The initial removal of the child from the home was necessary for the reasons stated here or on the record:

f. The facts on which the court bases its decision to order the child detained are stated here or were stated on the record:

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15. g. The child is placed in

(1) ☐ the home of a relative; an extended family member, as defined in Welf. & Inst. Code, § 224.1 and section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.); or a nonrelative extended family member, as defined in Welf. & Inst. Code, § 362.7, that has been assessed under Welf. & Inst. Code, § 361.4;

(2) ☐ the approved home of a resource family, as described in Welf. & Inst. Code, § 16519.5, or a home licensed or approved by the Indian child's tribe;

(3) ☐ an emergency shelter or other suitable licensed place; if a short-term residential therapeutic program or community treatment facility, a hearing to review the placement under Welf. & Inst. Code, § 361.22 is set for *(date):*

(4) ☐ a place exempt from licensure designated by the juvenile court.

h. Services, including those stated in item 17, are to be provided to the family as soon as possible to reunify the child with their family.

i. ☐ Reasonable efforts were made to prevent or eliminate the need for removal from the home.

j. ☐ Reasonable efforts were not made to prevent or eliminate the need for removal from the home.

k. ☐ There is a relative who is able, approved, and willing to care for the child.

l. ☐ A relative who is able, approved, and willing to care for the child is not available. This is a temporary finding and does not preclude later placement with a relative under Welf. & Inst. Code, § 361.3.

m. ☐ Less disruptive alternatives to removal were considered by the agency.

n. ☐ The impact of removal on the child was considered by the agency, including

(1) ☐ the relationship between the child and their parents, guardians, or Indian custodians, based on the child's perspective.

(2) ☐ the child's response to removal and, where developmentally appropriate, their perspective on removal.

(3) ☐ the relationship between the child and any siblings.

(4) ☐ the relationship between the child and other members of the household.

(5) ☐ any disruption to the child's schooling, social relationships, and physical or emotional health that may result from placement out of the home, and in the case of an Indian child, any impact on the child's connection to their tribe, extended family members, and tribal community.

(6) ☐ Other *(specify):*

o. ☐ Orders necessary to alleviate any disruption or harm to the child resulting from removal were stated on the record or are stated here:

16. ☐ **CHILD DETAINED AND THERE IS REASON TO KNOW CHILD IS AN INDIAN CHILD**

a. ☐ The evidence includes all the requirements of Welf. & Inst. Code, § 319(b).

b. The agency *(select (1) or (2))*

(1) ☐ has made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as detailed in the record, and these efforts have proved ☐ successful or ☐ unsuccessful;

or

(2) ☐ has not made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; the agency is ordered to initiate or continue active efforts.

c. ☐ For the reasons stated on the record, detention is necessary to prevent imminent physical damage or harm to the child.

d. Either *(select (1) or (2))*

(1) ☐ The child's placement complies with the placement preferences stated in Welf. & Inst. Code, § 361.31 and less disruptive alternatives. The child is placed

(a) ☐ with a member of the child's extended family;

(b) ☐ in a foster home licensed, approved, or specified by the child's tribe;

(c) ☐ in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(d) ☐ in an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs; or

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16. d. (2) ☐ For the reasons stated on the record, the court finds by clear and convincing evidence that there is good cause not to follow the placement preferences.

17. ☐ The services below will be provided pending further proceedings:

Service	Mother	Presumed father	Biological father	Legal guardian	Indian custodian	Other *(specify):*
a. ☐ Alcohol and drug testing	☐	☐	☐	☐	☐	☐
b. ☐ Substance abuse treatment	☐	☐	☐	☐	☐	☐
c. ☐ Parenting education	☐	☐	☐	☐	☐	☐
d. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
e. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐
f. ☐ *(Specify):*	☐	☐	☐	☐	☐	☐

18. ☐ **Contact with the child is ordered as stated in** *(check appropriate boxes and attach indicated forms)*

a. ☐ *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b. ☐ *Visitation Attachment: Sibling* (form JV-401).

c. ☐ *Visitation Attachment: Grandparent* (form JV-402).

19. ☐ The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ Other *(specify):*
☐ Other *(specify):*
must disclose to the county agency social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

20. ☐ The ☐ mother ☐ biological father ☐ legal guardian
☐ presumed father ☐ alleged father ☐ Indian custodian
☐ Other *(specify):*
☐ Other *(specify):*
must complete *Your Child's Health and Education* (form JV-225) or provide the necessary information for the county agency social worker to complete the form.

21. ☐ There is reason to know the child is an Indian child, and the county agency must provide notice under Welf. & Inst. Code, § 224.3 for any hearings that may result in the removal or foster care placement of the child, termination of parental rights, preadoptive placement, or adoptive placement. Proof of such notice must be filed with this court.

22. ☐ **Other findings and orders**

a. ☐ See attached.

b. ☐ *(Specify):*

23. ☐ The parents, legal guardians, and Indian custodians must keep the court, the agency, and their attorneys advised of their current addresses and telephone numbers and provide written notification of any changes to their mailing addresses. The parents, legal guardians, and Indian custodians present during the hearing who had not previously submitted a *Notification of Mailing Address* (form JV-140) or its equivalent were provided with and ordered to complete the form or its equivalent and to submit it to the court before leaving the courthouse today.

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24. ☐ **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept.:	Room:

a. ☐ Jurisdictional hearing
b. ☐ Dispositional hearing
c. ☐ Settlement conference
d. ☐ Mediation
e. ☐ Other *(specify):*

25. **All prior orders not in conflict with this order remain in full force and effect.**

26. Number of pages attached: _____

Date: _____ _____
Judicial Officer

Countersignature for detention orders *(if necessary):*

Date: _____ _____
Judge

SPR24-19

Juvenile Law: Harm of Removal (amend Cal. Rules of Court, rules 5.674, 5.676, and 5.678; revise form JV-410)

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

	Commenter	Position	Comment	Committee Response
1.	California CASA Association By Cady Villarreal Executive Assistant	**NI**	In Summary: CRC 5.674: OK as proposed CRC 5. 676: OK as proposed CRC 5.678: See proposed new language to add Form JV-410: OK as proposed, except for inquiry about the word "volunteer" after CASA. *Amended Rule 5.678:* The proposed amendment to this Rule adds language to clarify the court's decision regarding removal and placement* at detention. The 2023 statutory amendment to WIC sec. 319 requires the court to determine if the removal at detention was the least disruptive option available, and the new language in the Rule requires the court to make that specific finding. In making this finding (that the removal was the least disruptive available option), the court may consider factors that include, but are not limited to those already listed in the statute. The proposed new factors for Rule 5.678 are listed below. Suggested additions to those factors are in red: (d)(2)(A) "Can accommodate the proposed visitation schedule, including providing or arranging transportation when needed; (d)(2)(B) Will disrupt the child's relationship with a Court Appointed Special Advocate (CASA), extracurricular activities and their services,	No response required. The committee believes that arranging transportation would be sufficiently addressed in the language proposed. In addition, transportation is often a shared responsibility, and it may not always be the case that the placement must be in a position to provide transportation. The committee believes that highlighting the CASA relationship would open the door to numerous other service relationships not

			including, but not limited to medical, dental, mental health and educational services;	mentioned. These relationships are important, but the committee does not believe that they rise to the level of the type of disruption envisioned by the legislation. In addition, because the analysis of least disruptive alternatives under Senate Bill 578 will in most cases occur at the initial detention hearing, a service relationship with the CASA will typically not have been established yet.
			Form JV-410: The form, a court order, is acceptable, as it tracks the findings that must be made in accord with the statute and the Rules, discussed above; however, the word "volunteer" was inserted without explanation or comment at Items 6 and 7 of the Form after the words "Court Appointed Special Advocate." This language is not required by the statute. We inquire about the reason for this. Please see new language below in red under the heading Form JV-410.	Rule 5.655(e)(1) uses the term "volunteer" when referring to the CASA. For this reason, the committee is attempting to update forms to refer to the "CASA volunteer." Rule 5.655(e)(1): "(1) A CASA volunteer is a person who has been recruited, screened, selected, and trained; is being supervised and supported by a local CASA program; and has been appointed by the juvenile court as a sworn officer of the court to help define the best interest of children or nonminors in juvenile court dependency and wardship proceedings."
			* The Rules and the Judicial Council discussion both refer to removal at detention as "detention" and as "placement," seemingly using the terms interchangeably. Technically, the words have different legal meanings, as placement generally is used by the courts to refer to a permanent plan, while a detention is a temporary "placement".	Rule of Court 5.502(11) defines "detained" as "any removal of the child from the person or persons legally entitled to the child's physical custody, or any release of the child on home supervision under section 628.1 or 636." "Placement" is not specifically defined in rule 5.502 but is generally understood to mean where a child lives after being removed from their home. Welfare and Institutions Code section 14000(k) defines "Placement and care" as "the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency

			FORM JV-410 6. The attorney appointed to represent the child as the child's attorney of record is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem. a. The child will not benefit from representation by an attorney and, for the reasons stated on the record, the court finds: (1) the child understands the nature of the proceedings; (2) the child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and (3) under the circumstances of the case, the child would not gain any benefit from being represented by counsel. b. A Court Appointed Special Advocate volunteer (new word) is appointed for the child, and that person is also appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem. 7. A Court Appointed Special Advocate volunteer (new word) is appointed for the child.	or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of the individual being appointed the child's legal guardian."
2.	California Lawyers Association, Executive Committee of the Family Law Section (FLEXCOM)	**A**	FLEXCOM agrees with this proposal. FLEXCOM also suggests that the proposed form JV-410 be a mandatory form. Currently, the juvenile dependency findings and orders forms throughout each phase of the case are approved for optional use only. This form is particularly important for judges in all counties to utilize because of the recent changes in the law and the level of detail required for all judges to consider on the record. Furthermore, there is little opportunity (absent an extraordinary writ) for appellate review in a timely manner when a judge does not make the	As the commenter notes, most forms related to dependency hearings are optional, giving courts flexibility to memorialize findings and orders in a manner that suits their particular practice and needs. The committee elects to maintain this position with form JV-410. However, the committee agrees that the detention hearing is unique in the way the comment mentions.

			appropriate findings at detention hearings. This form creates additional safeguards to ensure that all judges are consistently and appropriately considering these new factors.	
3.	Hon. Leonard Edwards Retired Judge	**NI**	The legislation applies any time the court removes a child. That may be at the detention hearing, but it could also be at the disposition hearing. The idea is that the court should put in place orders that ameliorate the trauma a child experiences when removed from parental care.	The committee could not address the application of Senate Bill 578 at the disposition hearing through a rule because Senate Bill 578 only amends section 319 and not the dispositional statutes found at sections 360 et. seq. Because of this, no rule related to the disposition hearing circulated for public comment in this proposal, and to address this issue would require a substantive change that would require it circulate for comment. The committee, however, will consider this comment in a future proposal.
4.	Orange County Bar Association by Christina Zabat-Fran President	**AM**	**Comments:** **Should rule 5.678 include the proposed subdivision (d)(1) addressing the court's determination regarding the child's placement and that it "is the least disruptive alternative to return to the parent, guardian, or Indian custodian"?** Yes. **Is this finding appropriate to describe the court's determination regarding the child's placement required in section 319(c)(2)(B)(ii)?** Yes. Additionally, the following language should be added to the first sentence of subdivision (d)(1):	 No response required. The committee has elected to recommend adding this language in the rule. While the Judicial

			"and determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to Section 361.4." This is a direct quote from 319(f)(3), which is specifically referenced in rule 5.678(d)(1). Adding this language emphasizes the court's duty to mitigate the harm of removal (the whole purpose of the statutory amendment) by prioritizing relative placement. The proposed additional language is also in line with other provisions within 319. For instances, 319(h)(1)(A) states: "If the child is not released from custody, the court may order the temporary placement of the child in any of the following for a period not to exceed 15 judicial days: (i) The home of a relative, an extended family member, as defined in Section 224.1 and Section 1903 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.), or a nonrelative extended family member, as defined in Section 362.7, that has been assessed pursuant to Section 361.4." Also, section 319(h)(3) provides: "The court may authorize the placement of a child on a temporary basis in the home of a relative, regardless of the status of any criminal record exemption or resource family approval, if the court finds that the placement does not pose a risk to the health and safety of the child." Adding this proposed language is consistent with the legislative preference for relative placement expressed in 361.3, which states: "In any case in which a child is removed from the physical custody of his or her parents pursuant to Section	Council seeks to avoid repeating language from statute in rules, exceptions have been made. For instance, in 2019 the committee recommended, and the council approved, to restate statutory language in subdivision (d) of rule 5.676 related to reporting requirements addressing an Indian child because of a significant change in practice created by new legislation and because Indian Child Welfare Act requirements are often overlooked. In this proposal, the committee has elected to maintain this restatement of statute in rule 5.676. The committee believes that the restatement related to section 361.4 raised by the commenter fits with the underlining purpose of Senate Bill 578 of mitigating harm to the child from removal. The committee also notes the heightened priority that the legislature has placed on relative placements.

			361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative, regardless of the relative's immigration status." Further, in 2021, the State passed SB 354, which amended relative placement provisions to "facilitate juvenile dependency courts placement of foster youth with relatives and NREFMs" and made changes "intended to remove barriers to relative placements." Notably, the bill's author stated, "[I]t is well known that children living with family members or relatives rather than institutional or non-familial foster care experience better outcomes," and recognized "[i]t has long been the goal of the CWS system to preserve familial ties whenever possible." **• Should rule 5.678 include the additional factors listed in subdivision (d)(2)(A)–(D) that the court may consider when addressing the impact of removal and least disruptive alternatives? Are there other factors that should be considered as well?** Yes, 319(c)(2)(A) requires courts to determine if the agency considered "factors related to the impact of removal on the child, including, but not limited to (i) A description of the relationship between the child and their parents, guardians, or Indian custodians, based on the child's perspective, and the child's response to removal and, where developmentally appropriate, their perspective on removal. (ii) The relationship between the child and any siblings. (iii) The relationship between the child and other members	As discussed above, the Judicial Council seeks to avoid restating statutory language in the rules. In this case, the committee believes that the factors listed in (d)(2) provide further guidance on factors that can be considered when the court is considering less disruptive alternatives. The rule is clear that these factors can be considered in addition to the factors listed in the statute. The

			of the household." These factors, although referenced, should be listed out in the rule. The proposed wording of 5.678 (d)(2) alone gives short shrift to the harm of removal factors (making sure these factors are actually considered was the whole point of the amendment). The inclusion of non-statutory factors alone on "least disruptive alternatives" detracts from the importance of the statutory factors. If we're leaving these factors in, then we should also separately add the specific "impact of removal" factors from 319.	committee therefore believes that the statutory restatement is not necessary.
5.	Sacramento County Counsel's Office by Tina Roberts	**AM**	Regarding SPR24-19 and amendments to Rule 5.678 at subsection (d)(2): While the factors that the court may consider when assessing whether the placement is the least disruptive alternative to return to the parent/guardian/Indian custodian are relevant to the well-being of a child, there are challenges that are worth noting. For example, cases involving children who are removed via exigent circumstances or even a Protective Custody Warrant, have challenges to include short timelines for the completion of referral investigation, location and approval of available and willing relatives pursuant to WIC § 361.4 and 309, and the filing of a detention report. (The hearing must be held no later than one judicial day after the filing of the Welfare and Institutions Code section 3001 petition, which must be filed within 48 hours of the child's removal. WIC §§ 313, 315). Although counties strive to locate the most appropriate and least disruptive placement	The committee fully appreciates the concerns raised and agrees that they present major challenges that placing agencies face at the initial stage of a case. The committee however notes that the requirement to consider and document less disruptive alternatives to removal is a requirement created by the legislature in Senate Bill 578, not in this rule proposal. The legislation has required that the placing agency consider less disruptive alternatives to removal and the court must find that the placing agency has done so. The analysis must be made on a case-by-case basis. The rules proposal in rule 5.678(d)(2) adds additional criteria that may be considered when making this analysis. Section 319(b) was also updated by SB 578 to require the social workers report include "…an assessment of the *least disruptive alternatives* to returning the child to the custody of their parent, guardian…" (italics added).

			for each child in these time-limited circumstances, limitations on time and the availability of willing relatives or NREFMs who clear emergency placement criteria are often a tremendous challenge. Although relative placements are preferred, if foster care is the only option initially, at the detention hearing, there is also a statewide shortage of available foster placements that each California county contends with on a daily basis. Placement of large sibling sets is yet another challenge. So while the proposed additions to subsection (d)(2) are what every county strives for, the reality, based upon the aforementioned challenges, is that some cases may have very limited, initially available options for placement. Therefore, subsection (d)(2) should be modified to add the word "current" before the word "placement" to acknowledge that the child's placement may only be short-term, given the agency's potential limitations, as noted above.	The committee agrees that the analysis on the child's placement at issue in this proposal would only be addressed towards the placement the child is in at the time of the detention hearing. The committee therefore has followed the suggestion and added the word "current" before "placement" in rule 5.678(d)(2).
6.	San Diego County Office of County Counsel	**NI**	**Rule 5.674. Conduct of hearing; admission, no contest, submission** **…** **(b) Detention hearing; general conduct (§ 319; 42 U.S.C. § 600 et seq.)** (1) The court must read, consider, and reference any reports submitted by the social worker, the required report described in section 319(b), and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court.	

			San Diego County Counsel recommends adopting the below language for better clarity: The court must read, consider, and reference the social worker's report as described in section 319(b), any other reports submitted by the social worker, and any relevant evidence submitted by any party or counsel. All detention findings and orders must appear in the written orders of the court. **Rule 5.676. Requirements for detention** **(a) Requirements for detention (§ 319)** No child may be ordered detained by the court unless the court finds that: (1) A prima facie showing has been made that the child is described by section 300; (2) Continuance in the home of the parent, Indian custodian, or guardian is contrary to the child's welfare; and (3) One or more of the grounds for detention in section 319(c)(1)(A)-(D) ~~rule 5.678~~ is present ~~found~~ …. **(c) Evidence required at detention hearing** In making the findings required to support an order of detention, the court may rely solely on written police reports, probation or social worker reports, or other documents. The reports relied on must include the required information in section 319(b), and: ~~(1) A statement of the reasons the child was removed from the parent's custody;~~	The committee agrees that this language would provide more clarity and has added it to the recommended rule.

			(1) ~~(2)~~ A description of the services that have been provided, including those under section 306, and of any available services or safety plans that would prevent or eliminate the need for the child to remain in custody; (2) ~~(3)~~ If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, information and a recommendation regarding whether the child can be returned to the custody of that parent; ~~(4) Identification of the need, if any, for the child to remain in custody; and~~ (3) ~~(5)~~ If continued detention is recommended, information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained. **(d) Additional evidence required at detention hearing for Indian child** …. (10) The steps taken to consult and collaborate with the tribe and the outcome of that consultation and collaboration.	
			San Diego County counsel supports this change.	No response required.
			Rule 5.678. Findings in support of detention; factors to consider; reasonable efforts; active efforts; detention alternatives **(a) Findings in support of detention (§ 319; 42 U.S.C. § 672)**The court must order the child released from custody unless the court makes the	

			findings specified in section 319(c)(1), and where it is known, or there is reason to know the child is an Indian child, the additional finding specified in section 319(d). *(Subd (a) amended effective January 1, 2020; previously amended effective July 1, 2002, January 1, 2007, and January 1, 2019.)* **(d) Orders of the court (§ 319; 42 U.S.C. § 672)** If the court orders the child detained, the court must order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court and must make the other findings and orders specified in section 319(c)(2), (e) and (f)(3). (1) When making the finding in section 319(c)(2)(B)(ii), the court must determine whether the placement is the least disruptive alternative to return to the parent, guardian, or Indian custodian. The court must also consider whether measures are available to alleviate disruption to the child and minimize the impact of removal and whether those measures have been utilized. (2) When making that finding, in addition to considering the factors listed in section 319(c)(2)(A)(i) to (iv) related to the impact of removal and least disruptive alternatives, the court may consider factors that include, but are not limited to whether a placement: (A) Can accommodate the proposed visitation schedule. (B) Will disrupt the child's extracurricular activities and their services, including but not limited to medical, dental, mental health, and educational services.	

			(C) Will allow the child to observe their religious or cultural practices. (D) Can accommodate the child's special needs San Diego County Counsel opposes the proposed language. The language in this rule of court creates a heightened standard not codified by SB 578. SB 578 essentially requires the court and the Agency to consider less disruptive alternatives to out-of-home detention. However, this rule of court puts an extra burden on the court to not just consider less disruptive alternatives but to determine at the detention stage of the proceedings, whether the proposed temporary placement is the least disruptive alternative to out-of-home detention. Courts are unlikely to have sufficient information to make such a determination at the detention hearing which is an emergency hearing. The detention hearing often occurs 48-72 hours after the referral was generated or exigent circumstances occurred. Social workers must investigate, meet with family, find a placement, and write a court report in that time. They simply do not have the ability to research multiple possible caregivers and provide information about extracurricular activities and visitation schedules so the court may determine the least disruptive alternative at the detention hearing. Children are detained from their parents only if there is a substantial risk of imminent harm to the child and there are no reasonable means to protect	This point is well taken. The committee has modified the rule language to conform more closely to the statute.

			the child from such harm. At the detention hearing the juvenile court is tasked with making a temporary placement order which provides for immediate safety. Often the most immediately available option is a relative or foster parent who may not be the best long-term placement, but who is the only person available to take the child in with little to no notice. The time to deal with the best possible and least disruptive placement is the disposition hearing. While the proposed factors in this rule of court are important and should be considered when contrasting two possible available placements, they are best addressed at the dispositional stage of the proceedings where there is more time to determine the best placement, what the visitation schedule should be, and what extracurricular activities the children participate in. The proposed factors would certainly be excellent factors to consider when making a best-interest determination under WIC 361.3. At this time, County Counsel encourages the Judicial Council to let SB 578 do what it was intended to do – require the court and the agency to consider less disruptive alternatives when considering temporary detention orders without adding heightened standards that require more information than is generally available at the detention stage of the proceeding.	The committee agrees that these factors are important to consider at the disposition hearing. Since the scope of this proposal is limited to SB 578 and rules and a form regarding the detention hearing, the committee will retain this comment for consideration in a future proposal.
7.	Superior Court of California, County of Los Angeles by Bryan Borys	**A**	In response to the Judicial Council of California's "ITC SPR24-19 Juvenile Law: Harm of Removal," the Court agrees with the proposal and	No response required.

			its ability to appropriately address its stated purpose. The Court agrees that rule 5.678 should include the proposed subdivision (d)(1) addressing the Court's determination regarding the child's placement and that it "is the least disruptive alternative to return to the parent, guardian, or Indian custodian." Furthermore, the Court also agrees that this finding is appropriate to describe the Court's determination regarding the child's placement required in section 319(c)(2)(B)(ii). Rule 5.678 should include the additional factors listed in subdivision (d)(2)(A)-(D). Although the Court does not see any cost savings from the proposal, it anticipates minimal implementation requirements, which include but are not limited to: 1) Training for judicial assistants to use the appropriate macro; 2) Updating macros and event codes to include the required language in the case management system; 3) Updating policies, procedures, and reference materials. Lastly, the Court agrees that three months from Judicial Council approval of this proposal until its effective date will provide sufficient time for implementation and that this proposal would work well in courts of different sizes.	
8.	Superior Court of California, County of Orange	**NI**	**Comments** N/A.	

			Request for Specific Comments **In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:** ▪ Does the proposal appropriately address the stated purpose?	
			Yes, the proposal appropriately addresses the stated purpose.	No response required.
			▪ Should rule 5.678 include the proposed subdivision (d)(1) addressing the court's determination regarding the child's placement and that it "is the least disruptive alternative to return to the parent, guardian, or Indian custodian"? Is this finding appropriate to describe the court's determination regarding the child's placement required in section 319(c)(2)(B)(ii)?	
			It is not necessary to include subdivision (d)(1) since 319(c)(2) is listed in subdivision (d), which covers these factors and does not need to be separately called out within the rule.	The committee agrees and has removed the proposed finding from the rule.
			▪ Should rule 5.678 include the additional factors listed in subdivision (d)(2)(A)–(D) that the court may consider when addressing the impact of removal and least disruptive alternatives? Are there other factors that should be considered as well?	

			These factors can be included, but issues or changes of circumstances relating to these factors may not be known until placement has occurred. **The advisory committee also seeks comments from courts on the following cost and implementation matters:** ▪ Would the proposal provide cost savings? If so, please quantify. No, the proposal does not appear to provide any cost savings. ▪ 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? Implementation would require providing communication to judicial officers and staff. ▪ Would an effective date of January 1, 2025, three months from Judicial Council approval of this proposal until its effective date, provide sufficient time for implementation? Yes, three months would provide sufficient time for implementation in Orange County. ▪ How well would this proposal work in courts of different sizes?	The committee appreciates this fact. It is noted however that SB 578 required the placing agency to provide information on the placement. (See section 319(b)). No response required. No response required. No response required.

			Our court is a large court, and this could work for Orange County.	No response required.
9.	Superior Court of California, County of Riverside by Susan Ryan Chief Deputy of Legal Services	**A**	**Position on Proposal:** Agree with the proposal. **Specific Comments** <u>Does the proposal appropriately address the stated purpose?</u> Yes, the updates to Cal. Rules of Court, rules 5.674, 5.676, and 5.678, and the revision to the JV-410 form will implement the requirements of SB 578. <u>Should rule 5.678 include the proposed subdivision (d)(1) addressing the court's determination regarding the child's placement and that it "is the least disruptive alternative to return to the parent, guardian, or Indian custodian"? Is this finding appropriate to describe the court's determination regarding the child's placement required in section 319 (c)(2)(B)(II)?</u> Yes, this implements the requirements of SB 578. <u>Should rule 5.678 include the additional factors listed in subdivision (d)(2)(A)-(D) that the court may consider when addressing the impact of removal and least disruptive alternatives? Are there other factors that should be considered as well?</u> Yes, this implements the requirements of SB 578.	No response required. No response required. No response required. No response required.

			Would the proposal provide cost savings? If so, please quantify? There would be no cost savings to the court. 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? Judicial officers will need to be made aware of these additional findings. Minute codes will need to be updated in the case management system. Would an effective date of January 1, 2025, three months from Judicial Council approval of this proposal until its effective date, provide sufficient time for implementation? Yes How well would this proposal work in courts of different sizes? The proposal should work for courts of all sizes.	No response required. No response required. No response required. No response required.
10.	Superior Court of California, County of San Diego by Mike Ruddy Executive Officer	**AM**	**Specific Comments** Q: Does the proposal appropriately address the state purpose? **A: Yes.**	No response required.

			Q: Should rule 5.678 include the proposed subdivision (d)(1) addressing the court's determination regarding the child's placement and that it "is the least disruptive alternative to return to the parent, guardian, or Indian custodian"? Is this finding appropriate to describe the court's determination regarding the child's placement required in section 319(c)(2)(B)(ii)? **A: Yes, proposed subdivision (d)(1) helps clarify the statutory language in WIC §319(c)(2)(B)(ii). Suggest modifying the wording in subdivision (d)(2). Does "When making that finding" refer to the finding in §319(c)(2)(B)(ii) or does it refer to one of the two additional findings described in proposed subdivision (d)(1): whether the placement is the least disruptive alternative or whether measures are available to alleviate disruption?** Q: Should rule 5.678 include the additional factors listed in subdivision (d)(2)(A)–(D) that the court may consider when addressing the impact of removal and least disruptive alternatives? Are there other factors that should be considered as well? **A: Yes, rule 5.678 should include the additional factors listed in subdivision (d)(2)(A)–(D).** Q: Would the proposal provide cost savings? If so, please quantify. **A: No.**	The committee has modified subdivision (d) to no longer require the court to make a finding that the child's placement is the least disruptive alternative. This is discussed in the report. No response required. No response required.

			Q: 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?	
			A: Implementation will require training of staff, updates to the case management system, and revising internal procedures. In addition, courts would need to inform their judicial officers and their justice partners (child welfare agency, probation department, tribal agencies, attorney offices, CASA offices, et al.) of the amended rules of court and the new form.	No response required.
			Q: Would an effective date of January 1, 2025, three months from Judicial Council approval of this proposal until its effective date, provide sufficient time for implementation?	
			A: Yes.	No response required.
			Q: How well would this proposal work in courts of different sizes?	
			A: This proposal should work well, regardless of the size of the court.	No response required.
			General Comments **JV-410, Item 15.g:** Should a check box be added for "an extended family member, as defined in Section 224.1 and Section 1903 of the federal Indian Child Welfare	The committee agrees that the forms should reflect the list of placement options in section 319(h)(1)(A)(i)-(iv). The form has been modified

			Act of 1978 (25 U.S.C. Sec. 1901 et seq.)"? (See WIC § 319(h)(1)(A)(i).) Should a check box be added for "The approved home of a resource family, as described in Section 16519.5, or a home licensed or approved by the Indian child's tribe"? (See WIC § 319(h)(1)(A)(ii.) Should a check box be added for "a home that complies with the placement preferences set forth in Section 361.31 and in the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.)"? (See WIC § 319(h)(1)(C).) No addItional Comments.	to mirror the statutory language for placement options in item 14(g). Yes, for the same reason discussed above.
11.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	**A**	**JRS Position: Agree** with proposed changes. This proposal does address the stated purpose – implementation of recent legislation creating new factors to be considered by the juvenile court at a detention hearing in WIC 300 proceedings. The proposed amendments and modifications to existing Rules (5.674, 5.676, 5.678), including the amendment of subdivision (d) to Rule 5.676 along with the modification to form JV-410 align with the stated purpose of the proposal. Given the nature of the proposed changes, fiscal and operational impacts on our Court and other interested parties are, as presented, negligible.	No response required.
12.	Michael Ward Retired Disabled Veteran	**AM**	* The commenter described his frustrating experience as a parent navigating the child welfare system and his service in the US military,	The committee appreciates this comment and hopes that this proposal can help to reduce the harm caused by family separation.

			including overseas tours of duty. He expressed anger and resentment toward what he saw as the system's hypocrisy and corruption, his conviction that the system did not reflect the values that he had fought to protect, and his support for the legislation implemented by this proposal.	