



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-144

For business meeting on September 20, 2024

Title

Criminal Law and Family Law: Changes to Form MIL-100

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form MIL-100

Effective Date

January 1, 2025

Recommended by

Criminal Law Advisory Committee

Hon. Brian M. Hoffstadt, Chair

Hon. Lisa Rodriguez, Vice-Chair

Family and Juvenile Law Advisory Committee

Hon. Stephanie E. Hulsey, Chair

Date of Report

August 27, 2024

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Executive Summary

The Family and Juvenile Law Advisory Committee and Criminal Law Advisory Committee recommend revising form MIL-100. The Family and Juvenile Law Advisory Committee recommends revising form MIL-100 to implement the requirements of Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). The changes allow the court to comply with section 211.5 when the form is filed in a family law case involving a veteran. The Criminal Law Advisory Committee recommends additional revisions to form MIL-100 to clarify procedures under Penal Code section 858 when the form is filed in a criminal case and to reference treatment options for pretrial diversion under Penal Code section 1001.80. The committees also recommend updating and reformatting the information in the form for improved readability and usefulness.

Recommendation

Effective January 1, 2025, the Family and Juvenile Law Advisory Committee and Criminal Law Advisory Committee recommend revising *Notification of Military/Veteran/Reserve/Active Status*

(form MIL-100) to implement Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). In addition, the committees recommend revising the form to clarify procedures under Penal Code section 858 when the form is filed in a criminal case, and update and reformat information on the form for legal accuracy and improved readability.

The revised version of form MIL-100 is attached at pages 11–12.

Relevant Previous Council Action

Notification of Military/Veteran/Reserve/Active Status (form MIL-100) is an optional form that the Judicial Council initially approved, effective January 1, 2014,¹ as recommended by the Collaborative Justice Courts Advisory Committee. The form notifies the court that a party is a current or former member of the armed services or reserves so that the court may consider legal issues when military status is relevant, including sentencing requirements under the Penal Code, and identify available outside resources for military and former military court users.² Currently, the person completing the form must self-identify as (1) “the person listed in item 1” (a current or former member of the armed services or reserves), (2) “an attorney in the above entitled case,” or (3) “other (*specify*).”

This form has been revised three times since its adoption to comply with changes in the law—most recently, effective January 1, 2021.³

Analysis/Rationale

Senate Bill 1182 added section 211.5 to the Family Code, as follows:

- (a) (1) Commencing January 1, 2024, in proceedings under this code, a court shall provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs.
- (2) The veteran may, at their discretion, provide the information about their veteran status on the Judicial Council military service form, file the form with the court, and serve it on the other parties to the action.
- (b) (1) When a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs.

¹ The Judicial Council report regarding the adoption of form MIL-100 can be found at www.courts.ca.gov/documents/jc-20131025-itemA32.pdf.

² The Judicial Council report regarding revisions to form MIL-100, effective January 1, 2015, can be found at www.courts.ca.gov/documents/jc-20141212-itemA2.pdf.

³ The Judicial Council report regarding revisions to form MIL-100, effective January 1, 2021, can be found at <https://jcc.legistar.com/View.ashx?M=F&ID=8771183&GUID=20C61B6B-54AB-434A-9EE2-41FADF6632AD>.

(2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.

(c) On or before January 1, 2024, the Judicial Council may amend or develop the rules and forms necessary to implement this section.

According to legislative analysis, the above procedures will provide veterans navigating a family law case with the same access to resources and care through the California Department of Veterans Affairs (CalVet) that are available to veterans who have a criminal case. These services can be invaluable to veterans who are dealing with post-traumatic stress disorder, traumatic brain injuries, or a service-linked mental health issue.⁴ Further, the new procedures are intended to increase cultural competency, consistency, and flexibility among family court professionals about the needs of veterans in family court.⁵

In criminal cases, a defendant may acknowledge active duty or veteran status to the court by filing form MIL-100.⁶ As required by statute, the form includes information about rights related to criminal defendants who have active duty or veteran status.⁷

The proposal

Drawing from each committee’s respective subject-matter expertise, the Criminal Law Advisory Committee led the development of form MIL-100’s proposed changes that relate to criminal cases, and the Family and Juvenile Law Advisory Committee led the development of the proposed changes to the form relating to family law cases under Family Code section 211.5. The committees jointly recommend changes to improve the form’s readability and usefulness.

This form would be revised to include the following:

- Replacement of “[a] veteran of the state or federal armed services or reserves,” an option in item 2b to identify the person the form is about, with “formerly served in the state or federal armed services or reserves (regardless of discharge status)”;
- A revised item 3 for the person completing the form to specify the type of case (criminal law, family law, or another type of civil case) and whether the person is filing on their own behalf or is the attorney of record or other legally authorized representative;
- For the criminal law case section of item 3, a change in the description for the attorney check box to “an attorney representing the person listed in item 1 in the above entitled case” and deletion of the entry for “other (*specify*)” to better align with Penal Code section 858;

⁴ Office of Sen. Floor Analyses, bill analysis of Sen. Bill 1182 (Aug. 5, 2022), p. 5 (Link A).

⁵ *Ibid.*

⁶ Pen. Code, § 858(d), (e).

⁷*Id.*, § 858(c).

- For the family law case and other civil law case sections of item 3, a replacement of the check boxes for “other (*specify*)” with check boxes noting the filer is “legally authorized to act on behalf of the person listed in item 1 (*explain*)”;
- A reformatted notice box at the bottom of the form to specify the requirements in criminal law cases and family law cases for sending the form to veteran agencies;
- A change in the notice box to more accurately indicate that the form is being “filed” instead of “submitted” in the criminal law or family law case;
- A reference to Family Code section 211.5 in the footer of page 1 and on page 2;
- A reference on page 2 to pretrial diversion offering treatment as an alternative to trial, conviction, and incarceration under Penal Code section 1001.80;
- A new section below the notice box for the court to use to specify the date that the form was sent to the listed veteran agencies; and
- Reorganized and reformatted information on page 2 to make the form easier to read.

Notice requirements under Family Code section 211.5

Under section 211.5(b), “(1) When a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs. [¶] (2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.”

The committees propose that the notice box include a section for “Family Law Cases” and that it be written in plain language as is the criminal law notice rather than use the exact language of the statute. Because the legislative history of SB 1182 uses the term “Department of Veterans Affairs (CalVet),” the committees propose that the notice box include this same reference to “(CalVet).” Because the notice applies specifically to a veteran who files the form in a family law case, the family law notice would read as follows:

When a veteran files this form in a family law case, the court will send a copy of the form to the California Department of Veterans Affairs (CalVet). CalVet will, in a reasonable time, contact the person listed in item 1 using the information provided in this form.

Requirements under Penal Code section 858

Penal Code section 858 contemplates that the defendant or defendant’s counsel, with the defendant’s consent, would file form MIL-100.⁸ Accordingly, the committees propose specifying

⁸ “The court shall advise the defendant that the defendant should consult with counsel prior to submitting the form and that the defendant may, without penalty, decline to provide this information to the court.” (Pen. Code, § 858(d).) “If the defendant acknowledges active duty or veteran status and submits the Judicial Council military service form to the court, the defendant shall file the form with the court and serve the form on the prosecuting attorney and defense counsel.” (Pen. Code, § 858(e).)

in item 3 that, in a criminal case, either the defendant or the defendant’s counsel is filing the form.

In a criminal case, the court is required to send a copy of the form to the county veterans service officer to confirm the defendant’s military service. (Pen. Code, § 858(e).) However, the current form does not mention this confirmation requirement. To better communicate this requirement, the committees propose revising the form to state that the court will send a copy of the form to the county veterans service officer “to confirm the person’s military status.”

In a criminal case, the court is also required to send a copy of the form to the Department of Veterans Affairs. (Pen. Code, § 858(e).) The form includes a notice box about this requirement. As noted, the committees propose using the term “California Department of Veterans Affairs (CalVet)” in the family law notice due to the legislative history of SB 1182. For consistency, the committees recommend adding a similar reference to CalVet in the criminal law notice.

Based on comments received, the committees also recommend adding language to the notice box that a court may send a copy of the form to the U.S. Department of Veterans Affairs, as related to providing benefits and services under Penal Code sections 1001.80 and 1170.9, and rephrasing language about contact information for the county veterans service office.

Other changes

The committees decided to recommend that the heading “Noncriminal Cases” on page 2 be changed to “Civil Law Cases” because the latter is more legally accurate under California Rules of Court, rule 1.6(3). Rule 1.6(3) provides that “[c]ivil case’ means a case prosecuted by one party against another for the declaration, enforcement, or protection of a right or the redress or prevention of a wrong. Civil cases include all cases except criminal cases and petitions for habeas corpus.”

The committees propose reorganizing and reformatting page 2 of the form so that the content is easier to read. To this end, the “Civil Law Cases” and “Criminal Cases” content would be reformatted in two side-by-side columns below an introductory paragraph and above a section that lists and describes the statutes noted in the form. In addition, a short sentence below the “Civil Law Cases” heading is proposed to define its meaning, and a brief description of Family Code section 211.5 would be listed in the lower-third section of the page.

Policy implications

The proposal is intended to conform the form to state and federal law, provide additional information that may be helpful to the party completing the form, and update citations. In this respect, the form promotes Goal III (Modernization of Management and Administration) of the Strategic Plan for California’s Judicial Branch, as it helps implement an effective, statewide practice for serving the needs of servicemembers and veterans.

Comments

The proposal circulated for public comment from March 29 to May 3, 2024, as part of the regular spring comment cycle. The invitation to comment was sent to the standard mailing list for family law and criminal law proposals.

The committees received a total of eight comments. Commenters included four courts (the Superior Courts of Los Angeles, Orange, Riverside, and San Diego Counties), the Orange County Bar Association, and two judicial officers and one Senate consultant responding as individuals. Two commenters agreed with the proposal. Two commenters agreed with the proposal, if modified. Four commenters did not indicate their position but responded to specific questions in the invitation to comment that the committees asked commenters to consider or included suggestions for revising the form. No commenters disagreed with the proposal.

The Criminal Law Advisory Committee and Family and Juvenile Law Advisory Committee jointly reviewed the public comments and have responded to each. A chart with the full text of the comments received and the committees' responses is attached at pages 13–27. The main comments and the committees' responses to them are discussed below.

Comments about the items identifying that an attorney is completing the form

As noted above, item 3 is for the person completing the form to specify the type of case (criminal law, family law, or another type of civil case) and whether the person is filing on their own behalf or is the attorney of record. No commenters objected to the proposal to change the description in item 3a, for the attorney check box for criminal cases, from “an attorney in the above entitled case” to “an attorney representing the person listed in item 1 in the above entitled case.” Thus, the committee recommends that the revision be incorporated among other changes to the form.

In response to the committees' specific question about item 3b, identifying the person completing the form in family law cases, four commenters stated that the check box should be changed to the language proposed for 3a in criminal cases—specifically, “an attorney representing the person listed in item 1 in the above entitled case.” Three commenters did not specifically address the question.

Having received no objections, the committees recommend that item 3b be revised, as proposed for item 3a. For consistency among the entries in item 3, the committees further recommend that in item 3c (“Other civil law case”) the check box for an attorney be revised to use the same language in items 3a and 3b to identify that the person who checks the second check box is “an attorney representing person listed in item 1 in the above entitled case.”

Comments about whether others can complete the form in family and other civil law cases

Five commenters responded to the question about whether items 3b and 3c, the checkboxes to indicate that the form is being filed in a family law case or other civil law case, should include a check box to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form.

Two commenters did not believe that items 3b and 3c should include a check box to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form.

Two commenters responded that the form should allow persons other than the active military service member, reserve member, or veteran (or their attorney) to complete the form. Both commenters stated that there may be reasons why another person might want to inform the court, and each noted that such persons would include parents or other family members, spouses, military personnel, fellow military members, or veterans. Another commenter responded that “[i]ncorporating a checkbox for third parties to fill out and submit this form could prove beneficial. In cases involving juveniles, for example, various parties may need to submit the form. However, the form should not include an option for someone else to submit the form in family law cases.”

An additional commenter did not respond directly to the question but noted that, if the decision is to permit a third person to file the form, the form should be revised to provide the address of the servicemember or veteran, so the court can provide a list of resources as required.

The committees recommend limiting filing of the form by the party, their attorney, or someone legally authorized to act on behalf of the party in family and civil law cases. Although the committees specifically requested that commenters include a statute that supports allowing a person other than the active military service member, reserve member, or veteran (or their attorney) to complete the form in family and other civil law cases, none of the commenters provided such a reference in support of their answer. Nonetheless, the Servicemembers Civil Relief Act (SCRA) does permit persons who are legally authorized to act on behalf of a party to file the form in civil cases (see, e.g., 50 U.S.C. § 3902(a)(2) (a legal representative of a servicemember in noncriminal matters includes an individual possessing a power of attorney)).

Given the authority under the SCRA, the committees recommend adding a check box in items 3b and 3c stating, “I am ... legally authorized to act on behalf of the person listed in item 1.” The committees believe that any revision that would expand the list beyond the party, the party’s attorney, or a person legally authorized to act on behalf of the party in family law and other civil law cases would require further direction and clarification from the Legislature.

In light of the above revisions to the form after comment, the committees also recommend revising the first field of the form’s caption. The committee recommends that the caption begin with “ATTORNEY OR PARTY WITHOUT ATTORNEY” instead of “PERSON COMPLETING THIS FORM.” This change aligns the form with the standard caption in family and criminal forms.

Comments about the notice box

The committees received two comments relating to the proposed changes to the notice box on page 1 about criminal law cases and family law cases. Regarding the criminal law case notice, two commenters stated that the language is not sufficient. They recommended that the criminal

law notice be expanded to provide that both the California Department of Veterans Affairs (CalVet) and the U.S. Department of Veterans Affairs be notified.

Specifically, the commenters state that “it is the V.A. [the United States Department of Veterans Affairs] who sends a Veterans Justice Officer to be part of the collaborative teams who work in Veterans Treatment Courts. Also note that Penal Code § 858 states ‘The form may be used in determining eligibility services pursuant to section 1170.9,’ and that 1170.9 (g) states: ‘The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran.’”⁹

In a criminal case, Penal Code section 858 requires the form to be sent only to the county veterans service officer and the state Department of Veterans Affairs, not the federal department, which is referred to in related statutes as the U.S. Department of Veterans Affairs.¹⁰ However, as the commenters point out, the military diversion and veterans treatment court statutes contemplate collaboration with the U.S. Department of Veterans Affairs for benefits and services, and Penal Code section 858(e) also states that the form may assist with an eligibility determination for services. Therefore, the committees agree with the comments and recommend adding language stating the courts may send a copy of the form to the U.S. Department of Veterans Affairs as related to providing benefits and services under Penal Code sections 1001.80 and 1170.9.

Another commenter raised an issue about the criminal law section of the notice regarding the local county veterans service office. Specifically, the commenter stated that, “[t]he colon is confusing in the Notice box under Criminal Law Cases, ‘Local County Veterans Services Office Information (to be provided by local court):.’”¹¹ The commenter proposed that the language in the parentheses be changed to “address to be provided by court.” The committees agree, in part, with the suggestion and recommend revising the form to state, “Contact information for the county veterans service office (*to be provided by the court*):.”

Comments about page 2

A commenter suggested that page 2 of the form include “some simple web links to resources of value to the veterans.... VA health services, legal assistance services, etc..... Something along the lines of: If you are facing challenges with your mental well-being or substance use resulting from your service, there are resources to help you.” The committees appreciate the feedback. However, because the suggestions are substantive revisions to the form, they would require

⁹ The committees note that the language in Penal Code section 1170.9(g) is also in section 1001.80(g), regarding military diversion programs.

¹⁰ See Penal Code sections 1001.80(g), 1170.9(g).

¹¹ Under Penal Code section 858(c), the form must “include a space for the local court to provide the contact information for the county veterans service office.”

additional public comment before they could be incorporated into the recommendations. Therefore, the committee will consider the changes in a future proposal.

Other comments

A comment from a consultant to Senator Susan Talamantes Eggman suggested revising item 2, which has check boxes to identify whether the form is about someone who is a current member of the state or federal armed services or is “[a] veteran of the state or federal armed services or reserves.” The comment suggested referring to former service in the state or federal armed services or reserves, regardless of discharge date, rather than referring to veteran status. The commenter noted that certain individuals with military experience may not identify as veterans, such as women and those dishonorably discharged under the federal government’s former “Don’t Ask, Don’t Tell” policy. The committees agreed with the comment and recommended rephrasing item 2b accordingly.

A comment from the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee suggested that the form include “a section for court staff to indicate that the form was mailed to the Department of Veteran Affairs ‘CalVet’ and the date of mailing, so a declaration of mailing and separate entry would not need to be done by staff.” The committees agreed with the commenter’s suggestion and recommended adding a new section of the form, as follows:

For Court Use Only

Form sent to: California Department of Veterans Affairs on (date): _____
 County veterans service office on (date): _____
 U.S. Department of Veterans Affairs on (date): _____

The committees believe that this new content on form MIL-100 will help streamline the process for courts to comply with Penal Code section 858 and Family Code section 211.5, as courts would not have to complete a separate declaration of mailing and entry.

Another commenter recognized that Penal Code section 858 is included in the footer on page 1 of the form but that it is not mentioned anywhere else on the form. The commenter inquired whether “something was inadvertently omitted in this regard.”

In response, the committees note that items 1 to 3 of form MIL-100 are intended to effectuate Penal Code section 858(e) by allowing a defendant or defendant’s counsel to acknowledge active duty or veteran status by filing the form with the court. Form MIL-100 also effectuates Penal Code section 858(c)’s requirements that the form include information explaining rights under section 1170.9 and related statutes of individuals who have active duty or veteran status and a space for the local court to provide the contact information for the county veterans service office. The information explaining those rights is found on page 2 under the heading “California Penal Code section 1170.9.”

Alternatives considered

Form proposal

The Family and Juvenile Law Advisory Committee considered not proposing changes to form MIL-100 because SB 1182 does not specifically mandate that the Judicial Council amend form MIL-100. However, the committee determined that revisions were needed to the notice box at the bottom of page 1 of the current form because the language in the Family Code about the transmission of the form by the family court to the California Department of Veterans Affairs differs from the requirements in criminal cases.

Discussion about other persons completing the form on behalf of an active military service member, reserve member, or veteran

In proposing revisions to the current item 3 of form MIL-100, the committees considered whether the entries for items 3b (“Family law case”) and 3c (“Other civil law case”) should be followed by a check box for “Other (*specify*):” to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form.

The committees were concerned that this could be a sensitive issue for some active military service members, reserve members, or veterans. For example, some active members or veterans may not want another person to be able to file this form to disclose their status. As discussed earlier, the committees recommend limiting filing of the form by the party, their attorney, or someone legally authorized to act on behalf of the party in civil and family law cases.

Absent further legal authority regarding family law and other civil law cases, the committees determined that they cannot recommend that the form maintain a broad “Other (*specify*):” check box in the family law case items and other civil law case items on the form.

Fiscal and Operational Impacts

The impact to the courts includes the cost to educate judicial officers and court staff about the changes in the law and procedures to implement the law. In family law cases, the impact to the courts includes that court clerks would be required to take additional steps to send copies of form MIL-100 to the California Department of Veterans Affairs, and courts would be required to provide the parties with a list of local resources for mental health treatment.

Attachments and Links

1. Revised form MIL-100, at pages 11–12
2. Chart of comments, at pages 13–27
3. Link A: Senate Floor Analyses (Aug. 5, 2022),
leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB1182
4. Link B: Senate Bill 1182,
leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1182

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL v. 8/26/24
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY/VETERAN/RESERVE/ACTIVE STATUS	CASE NUMBER:

1. **This form is about (name):** _____ who is a party in this case.

2. **The person listed in item 1:**

- a. Is currently serving in the state or federal armed services or reserves.
- b. Formerly served in the state or federal armed services or reserves (regardless of discharge status).
 Discharge date (specify if applicable): _____

3. **This form can be filed in any case type.**

(Specify below the type of case in which the form is filed, and identify the person completing this form):

- a. **Criminal law case.** I am (check one):
 - the person listed in item 1.
 - an attorney representing the person listed in item 1 in the above entitled case.
- b. **Family law case.** I am (check one):
 - the person listed in item 1.
 - an attorney representing the person listed in item 1 in the above entitled case.
 - legally authorized to act on behalf of the person listed in item 1 (explain): _____
- c. **Other civil law case** (specify case type): _____ . I am (check one):
 - the person listed in item 1.
 - an attorney representing the person listed in item 1 in the above entitled case.
 - legally authorized to act on behalf of the person listed in item 1 (explain): _____

4. I am providing this notification to the court based on information and belief.

Date: _____ _____

(TYPE OR PRINT NAME OF PERSON FILING THIS FORM)

(SIGNATURE)

Notice	<p>Criminal Law Cases. If this form is filed in a criminal law case, the court will send a copy of the form to the California Department of Veterans Affairs (CalVet) and the county veterans services officer to confirm the person's military status. Contact information for the county veterans service office (to be provided by the court): _____</p> <p>The court may also send a copy of the form to the U.S. Department of Veterans Affairs, as related to providing benefits and services under Penal Code sections 1001.80 and 1170.9.</p> <p>Family Law Cases. When a veteran files this form in a family law case, the court will send a copy of the form to the California Department of Veterans Affairs (CalVet). CalVet will, in a reasonable time, contact the person listed in item 1 using the information provided in this form.</p>
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For Court Use Only

- Form sent to: California Department of Veterans Affairs on (date): _____
- County veterans services office on (date): _____
- U.S. Department of Veterans Affairs on (date): _____

No filing fee or court costs are to be charged for this form.

YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law. Filling out form MIL-100 is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. Form MIL-100 only needs to be filed with the court only one time per case.

CIVIL LAW CASES

Civil cases include all cases (except criminal cases), such as those filed in family, juvenile, or probate court in which a party is asking the court for orders against another person to protect or enforce their legal rights, prevent a harm, or remedy a wrong.

If you are a party to a civil law case be sure to complete all the appropriate forms needed for your case. For example, filing this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Examples of required forms are:

- (1) *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010); and
- (2) *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

CRIMINAL CASES

If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law.

Some examples of benefits of a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restoration relief such as sealing your record, and diversion in misdemeanor cases.

If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.

Below is a brief description of possible rights and protections under the following California laws:

Family Code section 211.5

- Filing this form in a family law case may help you receive information from CalVet and learn about available mental health resources.

Penal Code section 1001.80

- Pretrial diversion program offering treatment instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program.

Penal Code section 1170.9

- Treatment instead of prison or jail time for certain crimes;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered.

Penal Code section 1170.91

- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

SPR24-18

Criminal Law and Family Law: Changes to Form MIL-100 (Revise form MIL-100)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Daniel J. Healy Superior Court of Solano County	N/I	<p>I am joining in Justice Moore’s excellent observations regarding revisions to MIL-100 as follows:</p> <p>Item 3: The present form has a choice of who may submit the form: <input type="checkbox"/> the person listed in item 1 <input type="checkbox"/> an attorney in the above entitled case. The proposed form in 3. a. b. & c. changes that to: I am (check one): the person listed in item 1. <input type="checkbox"/> an attorney representing the person listed in item in the above entitled case</p> <p>COMMENT: Persons other than veteran or their lawyer may wish to inform the court that someone involved in the case is either active duty service member or a veteran – parents or other family members, spouses, military personnel, fellow military members or veterans. I agree that there is no reason to have more inclusive options here.</p>	<p>The committees appreciate the comments.</p> <p>The committees believe the proposed revisions accurately reflect statutory language intending for the party or their counsel to notify the court of the party’s active duty or veteran status.</p> <p>In criminal cases, Penal Code section 858(e) states that the defendant, in consultation with counsel, may acknowledge active duty or veteran status through filing form MIL-100. Additionally, the defendant may, without penalty, decline to provide this information.</p> <p>In family law cases, Family Code section 211.5 (a)(2) provides that, “[t]he veteran may, at their discretion, provide the information about their veteran status on the Judicial Council military form, file the form with the court, and serve it on the other parties to the action.”</p> <p>The committees believe that revising the form as suggested would require further direction and clarification from the legislature.</p>

SPR24-18

Criminal Law and Family Law: Changes to Form MIL-100 (Revise form MIL-100)

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

	Commenter	Position	Comment	Committee Response
			<p>Regarding the black box titled “Criminal Law Case”:</p> <p>The proposed form states “the court will send a copy of the form to the county veterans service officer to confirm the person’s military status and the California Department of Veterans Affairs (CalVet).”</p> <p>COMMENT: I agree with Justice Moore’s comments: “This language is fine so far as it goes, but it’s not enough. Penal Code §§ 1001.80(g) and 1170.9 (g) refers to “the Department of Veterans Affairs and the United States Department of Veterans Affairs. Thus, when it comes to criminal cases, both CalVet and the V.A. need to be notified. Additionally, it is the V.A. who sends a Veterans Justice Officer to be part of the collaborative teams who work in Veterans Treatment Courts. Also note that Penal Code § 858 states “The form may be used in determining eligibility services pursuant to section 1170.9,” and that 1170.9 (g) states: “The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of Veterans Affairs to maximize benefits and services provided to the veteran.”</p> <p>Thus, in that Criminal Law Case box, notice must be given to both CalVet and the V.A.”</p> <p>Regarding the Executive Summary and Origin:</p>	<p>No response required.</p> <p>The committees agree, in part, and recommend adding language stating that courts may send a copy of the form to the U.S. Department of Veterans Affairs as related to providing benefits and services under Penal Code sections 1001.80 and 1170.9.</p>

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			<p>On the first page, it states: “The Criminal Law Advisory committee proposes additional revisions to form MIL-100 to clarify procedures under section 858 when the form is filed in a criminal case, and to reference treatment options for pretrial diversion under Penal Code section 1001.80.”</p> <p>COMMENT: Justice Moore noted that Penal Code § 858 is referenced in the footer but not elsewhere in the form.</p> <p>ADDITIONAL MOTIVATIONAL INFORMATION WOULD BE USEFUL: It seems to me that on page 2 of the form we could include some simple web links to resources of value to the veterans.... VA health services, legal assistance services, etc..... Something along the lines of: If you are facing challenges with your mental well being or substance use</p>	<p>Page 1 of MIL-100 is intended to effectuate Penal Code section 858(e) by allowing a defendant to acknowledge active duty or veteran status by filing MIL-100 with the court.</p> <p>MIL-100 also effectuates Penal Code section 858(c)’s requirements that the form include information explaining rights under section 1170.9 and related statutes of individuals who have active duty or veteran status and a space for the local court to provide the contact information for the county veterans service office. The information explaining those rights is found on page 2 under the heading “California Penal Code section 1170.9.”</p> <p>The committees appreciate the feedback and will consider it in a future proposal.</p>

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	Commenter	Position	Comment	Committee Response
			resulting from your service, there are resources to help you.....	
2.	Hon. Eileen Moore California Court of Appeal, Fourth District	N/I	<p>The following are my comments regarding the proposed changes to MIL-100.</p> <p>Regarding Item 3: The present form has a choice of who may submit the form: <input type="checkbox"/> the person listed in item 1 <input type="checkbox"/> an attorney in the above entitled case.</p> <p>The proposed form in 3. a. b. & c. changes that to: I am (check one): the person listed in item 1. an attorney representing the person listed in item in the above entitled case</p> <p>MY COMMENT: There may be many reasons why a person other than the actual person who serves/served in the military of the person’s lawyer might want to inform the court that someone involved in the case is either active duty service member or a veteran.</p> <p>Examples:</p> <p>The parents of an injured/troubled active duty service member or a veteran The children of an injured/troubled active duty service member or a veteran</p> <p>The spouse or significant other of an injured/troubled active duty service member or a veteran</p>	<p>The committees appreciate the comments.</p> <p>No response required.</p> <p>No response required.</p> <p>The form continues to allow filing in family law and civil cases.</p> <p>The committees believe the proposed revisions accurately reflect statutory language intending for the party or their counsel to notify the court of the party’s active duty or veteran status.</p> <p>In criminal cases, Penal Code section 858(e) states that the defendant, in consultation with counsel, may acknowledge active duty or veteran status through filing form MIL-100. Additionally, the defendant may, without penalty, decline to provide this information.</p> <p>In family law cases, Family Code section 211.5 (a)(2) provides that “[t]he veteran may, at their discretion, provide the information about their</p>

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			<p>A medical/mental health provider of an injured/troubled active duty service member or a veteran</p> <p>The commander of an injured/troubled active duty service member or a veteran</p> <p>A close friend of an injured/troubled active duty service member or a veteran</p> <p>All of these people might be interested in the well being of the active duty service member or a veteran. The courts and the parties, in search of justice, need to know when they have someone who serves/has served in an action. The limitation on the proposed form to just the criminal defendant and the attorney does not contemplate use of the form in any other type of case.</p> <p>Note that the legislative history of Family Code § 211.5 states: “No parent should lose custody of their child solely to a manageable mental health issue.” There very well may be parties in family law cases who have a mental health issue resulting from military service and who do not tell their lawyers about it. Perhaps they don’t realize it themselves. That’s where family, friends and treatment providers may provide needed information to the court.</p> <p>This limitation should be removed and the language of item 3 on the present form should be retained.</p>	<p>veteran status on the Judicial Council military form, file the form with the court, and serve it on the other parties to the action.”</p> <p>The committees are adding an option for a person legally authorized to act on behalf of a party to file the form in civil and family law matters (see, e.g., 50 U.S.C. 3902(a)(2) [a legal representative of a servicemember in noncriminal matters includes an individual possessing a power of attorney]).</p> <p>The committees believe that further revising the form as suggested would require additional direction and clarification from the legislature.</p>

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Criminal Law and Family Law: Changes to Form MIL-100 (Revise form MIL-100)

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	Commenter	Position	Comment	Committee Response
			<p>Regarding the black box titled “Criminal Law Case”:</p> <p>The proposed form states “the court will send a copy of the form to the county veterans service officer to confirm the person’s military status and the California Department of Veterans Affairs (CalVet).”</p> <p>MY COMMENT: This language is fine so far as it goes, but it’s not enough. Penal Code §§ 1001.80(g) and 1170.9 (g) refers to “the Department of Veterans Affairs and the United States Department of Veterans Affairs. Thus, when it comes to criminal cases, both CalVet and the V.A. need to be notified. Additionally, it is the V.A. who sends a Veterans Justice Officer to be part of the collaborative teams who work in Veterans Treatment Courts. Also note that Penal Code § 858 states “The form may be used in determining eligibility services pursuant to section 1170.9,” and that 1170.9 (g) states: “The court and the assigned treatment program may collaborate with the Department of Veterans Affairs and the United States Department of</p>	<p>The committees agree and recommend adding language stating the courts may send a copy of the form to the U.S. Department of Veterans Affairs as related to providing benefits and services under Penal Code sections 1001.80 and 1170.9.</p>

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			<p>Veterans Affairs to maximize benefits and services provided to the veteran.”</p> <p>Thus, in that Criminal Law Case box, notice must be given to both CalVet and the V.A.</p> <p>Regarding the Executive Summary and Origin:</p> <p>On the first page, it states: “The Criminal Law Advisory committee proposes additional revisions to form MIL-100 to clarify procedures under section 858 when the form is filed in a criminal case, and to reference treatment options for pretrial diversion under Penal Code section 1001.80.”</p> <p>MY COMMENT: I see that the proposed form does have Penal Code § 858 in the footer, but I don’t see it mentioned anywhere else on the form. I am not sure whether something was inadvertently omitted in this regard.</p>	<p>Items 1 to 3 of MIL-100 are intended to effectuate Penal Code section 858(e) by allowing a defendant to acknowledge active duty or veteran status by filing MIL-100 with the court.</p> <p>MIL-100 also effectuates Penal Code section 858(c)’s requirements that the form include information explaining rights under section 1170.9 and related statutes of individuals who have active duty or veteran status and a space for the local court to provide the contact information for the county veterans service office. The information explaining those rights is found on</p>

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	Commenter	Position	Comment	Committee Response
				page 2 under the heading “California Penal Code section 1170.9.”
3.	Jacob Fraker, MSW Senate Consultant - CA Legislative LGBTQ Caucus Office of the Chair, Senator Susan Talamantes Eggman		<p>For Question 2 Part b – Instead of saying “A veteran of the state or federal armed services or reserves”. My suggestion would be to change to “Formerly served in the state or federal armed services or reserves (regardless of discharge status)”</p> <p>It is also important to acknowledge that studies have documented the fact that some women veterans don’t self-identify themselves, acknowledge themselves or may not understand that they are military “veterans”. When Women Veteran were asked if they served in the military they answered “yes” more than they did when asking them if they were a veteran. Additionally, those who were dishonorably discharged, particularly under Don’t Ask Don’t Tell, do not or struggle to identify as “veterans”. Using that word may lead some folks to not fill out the form or feel they can’t fill out the form.</p>	The committees agree and recommend replacing references to being a veteran with “formerly served in the state or federal armed services or reserves.”
4.	Orange County Bar Association by Christina Zabat-Fran, President	A	Revises military form 100 to comply with Family Code § 211.5 when the form is filed in a family law case involving a person who has military service and to clarify procedures under Penal Code 858 when the form is used in a criminal case. Clarifies differences between criminal and family court procedures used to voluntarily connect those with military background to available services. Meets the stated purpose.	The committees appreciate the comment.

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5.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	<p>The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee.</p> <p>The Court agrees with the proposal in SPR24-18, “Criminal Law and Family Law: Changes to Form MIL-100.”</p> <p>For clarity purposes, it is suggested that item 3b read “an atty representing the person listed in item 1 in the above-entitled matter.”</p>	<p>The committees appreciate the comment.</p> <p>No response required.</p> <p>The committees recommend that item 3b be revised, as suggested by the commenter.</p>
6.	Superior Court of Orange County by Family Law and Juvenile Divisions	N/I	<p>Yes, the proposal appropriately addresses the stated purpose.</p> <p><i>For family courts: Please state the reason for your response to the following: Regarding item 3b, should the check box for the attorney follow the current language stating “an attorney in the above-entitled case” or should it be changed to the language proposed for 3a in criminal cases: “an attorney representing the person listed in item 1 in the above-entitled case”?</i></p> <p>Proposed language should align with 3a for criminal cases to avoid confusion. “An attorney” suggests any attorney may file the MIL-100 form, posing confidentiality risks. It’s best for the party or their attorney of record to file due to confidentiality and attorney-client privilege concerns. “An attorney representing the person” is ethically bound to their client's</p>	<p>The committees appreciate the comments.</p> <p>The committee recommends that item 3b be revised, as suggested by the commenter.</p>

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			<p>interests but “an attorney” lacks specificity, risking privacy violations.</p> <p><i>Should items 3b. and 3c. include a check box to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form? (If you are aware of a statute that supports your answer, please include it in your comments.)</i></p> <p>Incorporating a checkbox for third parties to fill out and submit this form could prove beneficial. In cases involving juveniles, for example, various parties may need to submit the form. However, the form should not include an option for someone else to submit the form in family law cases.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>No, the proposal does not appear to provide any cost savings.</p> <p><i>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?</i></p> <p>Implementation would require revising procedures and providing communication to judicial officers and staff.</p>	<p>The committees appreciate this comment, but has concluded, based on statutory provisions, to only add an option for a person legally authorized to act on behalf of a party to file the form in civil and family law matters (see, e.g., 50 U.S.C. 3902(a)(2) [a legal representative of a servicemember in noncriminal matters includes an individual possessing a power of attorney]).</p> <p>The committees appreciate this comment.</p> <p>The committees appreciate this comment.</p>

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			<p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, three months would provide sufficient time for implementation in Orange County.</p> <p><i>How well would this proposal work in courts of different sizes?</i> Our court is a large court, and this could work for Orange County.</p>	<p>The committees appreciate this comment.</p>
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	<p><i>Q: Does the proposal appropriately address the state purpose?</i> A: Yes.</p> <p><i>Q: For family courts: Please state the reason for your response to the following: Regarding item 3b, should the check box for the attorney follow the current language stating “an attorney in the above-entitled case” or should it be changed to the language proposed for 3a in criminal cases: “an attorney representing the person listed in item 1 in the above-entitled case”?</i> A: It should be changed to the language in 3a since the form only includes the address of the person completing the form. Presumably CalVet would use that address to contact the military member/veteran. If the form is submitted by an attorney other than the one representing the military member/veteran, they may not have the individual’s current address.</p>	<p>The committees appreciate the comment.</p> <p>The committee recommends that item 3b be revised, as suggested by the commenter.</p>

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			<p><i>Q: Should items 3b. and 3c. include a check box to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form? (If you are aware of a statute that supports your answer, please include it in your comments.)</i> A: No.</p> <p><i>Q: Would the proposal provide cost savings? If so, please quantify.</i> A: No.</p> <p><i>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?</i> A: Implementation will require training staff and updating internal procedures.</p> <p><i>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> A: Yes, provided the final versions of the forms are provided to the court at that time. This will ensure the court is able to provide training to staff and update its internal procedures.</p>	<p>As described in more detail in response to prior comments, the committees recommend that item 3b and 3c be revised to allow a person legally authorized to act on behalf of the party to file the form.</p> <p>The committees appreciate the comment.</p> <p>The committees appreciate the comments.</p> <p>The committees appreciate this comment.</p>

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			<p><i>Q: How well would this proposal work in courts of different sizes?</i> <i>A: This proposal should work well, regardless of the size of the court.</i></p> <p>General Comments Should an item 5 be added to include the contact information for the veteran since the form may be completed by someone other than the veteran?</p>	<p>The committees appreciate this comment.</p> <p>The committees appreciate the commenter’s question, but the committees’ recommendations contemplate that no one other than the party, their counsel, or someone with legal authority to act on behalf of the party in family and civil cases will file the form, so the form’s header requiring the party or attorney’s contact information is sufficient.</p>
8.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)	AM	<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS also notes the following:</p> <p>Staff will need to be trained to mail the form to CalVet when one is filed (assuming only in Family Law and Criminal, as there does not seem to be such a requirement for other case types?) Training should be minimal, (probably an email to staff in the affected department will suffice). Procedures will need to be updated to include the extra step, which would be minimal. As far as keeping the list of resources- a court will need to determine who will prepare and maintain a list of resources. Preparing and maintaining a list of resources will not be costly but it could be timely, especially with creating the initial list. Docket codes may also be</p>	<p>The committees appreciate the comments.</p> <p>No response required.</p>

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			<p>needed in CMS to indicate the form was mailed to CalVet on the case types that require mailing.</p> <p><u>Responses to the committee’s specific questions:</u></p> <ol style="list-style-type: none"> 1. 3b should be changed to the language proposed for 3a in criminal cases for consistency and if the language stays as currently proposed, the attorney for the other side could potentially file this form with the court when the veteran may not want it filed. 2. As to items 3b and 3c, if the decision is to permit a person other than the veteran to complete and file MIL-100 there should be a place on the form to provide the address of the veteran, so the court can provide a list of resources as required. 3. The proposal will not provide a cost savings. An additional form will need to be filed and the court will be required to mail or deliver it to CalVet. 4. As stated above, Staff will need to be trained to mail the form (minimal training.) Courts will need to determine who will prepare and maintain a list of resources, (potentially Self-Help.) CMS systems may need to be updated. 5. 3 months is sufficient time for implementation. 6. Larger courts will be impacted because there will be more filings. Smaller court may have a difficult time providing a list of 	<p>The committee recommends that item 3b be revised, as suggested by the commenter.</p> <p>The committees’ recommendations contemplate that no one other than the party, their counsel, or someone with legal authority to act on behalf of the party in family and civil cases will file the form.</p> <p>The committees appreciate the comment.</p>

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			<p>resources, if there are not any available resources available in the area.</p> <p><u>Suggested Modifications</u> The colon is confusing in the Notice box under Criminal Law Cases, “Local County Veterans Services Office Information (to be provided by local court):”. Propose the language in the parenthesis be changed to “address to be provided by court.”</p> <p>It would be helpful if the forms included a section for court staff to indicate that the form was mailed to the Department of Veteran Affairs “CalVet” and the date of mailing, so a declaration of mailing and separate entry would not need to be done by staff. Propose the forms have a space for the clerk to indicate notice was sent on (date)</p>	<p>The committees recommend revising the language to read “contact information to be provided by the local court.”</p> <p>The committees recommend revising the forms as suggested by adding a section for court staff to indicate when the form was sent to CalVet, the county veterans service office, and/or the U.S. Department of Veterans Affairs.</p>