JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

Title
Juvenile Law: Substance Abuse Treatment Facilities and Placement

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708

Recommended by
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Date of Report
August 7, 2015

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending three rules to conform to recently enacted provisions of Welfare and Institutions Code sections 319, 366.21, 366.22, and 366.25 that change the factors a court must consider when determining whether to release or detain a child.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council effective January 1, 2016, amend:

1. Rule 5.674 to eliminate the requirement that all detention findings and orders be made on the record;

2. Rule 5.676 to require additional information in the social worker's report to the court;

3. Rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child;

4. Rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings.

The text of the amended rules is attached at pages 6–8.

Previous Council Action

Effective January 1, 1998, the Judicial Council adopted rules 5.674, 5.676, and 5.678 as rules 1444, 1445, and 1446, respectively. Rule 5.678 was amended effective January 1, 1999, to expand the definition of "relative" as required by statutory changes. All three rules were amended, effective July 1, 2002, to make technical changes and further amended and renumbered, effective January 1, 2007.

The council adopted rule 5.708, effective January 1, 2010. It was amended three times: twice, effective July 1, 2010, to contain the correct cross-reference to a rule that was renumbered and, to ensure that tribal customary adoption is considered a permanent plan as required by statutory changes; and once, effective January 1, 2015, to clarify that subdivision (n) applies to any parent who has relinquished the child for adoption, regardless of that parent's legal status.

Rationale for Recommendation

Senate Bill 977 (Liu; Stats. 2014, ch. 219) amended section 319 of the Welfare and Institutions Code[1] to specify that the fact that a parent is enrolled in a substance abuse treatment facility that allows a dependent child to reside with his or her parent is not, for that reason alone, prima facie evidence of detriment or substantial danger. Additionally, SB 977 requires the court to consider at detention, dispositional, and status review hearings whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility.

Amend rule 5.674 to eliminate the requirement that all detention findings and orders must be made on the record

Although not required by recent legislation, the committee recommends amending rule 5.674 to eliminate the requirement that *all* detention findings and orders be made on the record and instead narrow those findings and orders that must be made on the record to only those required under section 319 and the two title IV-E findings and one title IV-E order that are reviewed at a federal audit:

- Continuance in the home is contrary to the child's welfare;
- Reasonable efforts were made to prevent removal; and
- Temporary placement and care are vested with the agency.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Eliminating all nonstatutory requirements to make the findings and orders on the record will significantly reduce those findings and orders that must be stated on the record, thereby freeing up much-needed court time and making detention hearings shorter or more thorough and meaningful.

Requiring that the two title IV-E findings and one title IV-E order that are reviewed at a federal audit be made on the record will help ensure that federal funding is available for children placed in foster care. The above findings and order are critical to federal funding.[2] Without including them on the record, clerical errors, which occur often with the court's findings and orders, could result in erroneous or missing information in the case file. Since at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made,[3] it is important that the transcript contain the above findings and orders to ensure that the case will not be in error at a federal audit. The committee therefore recommends that the rule require that the two title IV-E findings and the one title IV-E order reviewed at a federal audit be stated on the record.

Amend rule 5.676 to require additional information in the social worker's report to the court

To ensure that the court has the information needed to make the findings required by the recent statutory change to section 319, the committee recommends amending rule 5.676 to require that the social worker's report to the court include information and a recommendation regarding whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, and to include nonrelative extended family members in the list of possible placement options, as is required under current law.

Amend rule 5.678 to add a factor that the court must consider when determining whether to release or detain a child

To conform to the recent statutory change to section 319, the committee recommends amending rule 5.678 to require that when determining whether to release or detain a child, the court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

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[2] If the two findings above (bullets one and two) are not timely made, the child is *never* eligible for title IV-E funding. If the order above (bullet three) is not made, no funding can be claimed until it is made. (See 45 C.F.R. §§ 1356.21(b)–(c), 1356.71(d)(1) (2014).)

[3] See 45 C.F.R. § 1356.21(d)(1) (2014).

Amend rule 5.708 to add a factor that the court must consider when determining whether to return a child at all status review hearings

To conform to recent statutory changes to sections 366.21, 366.22, and 366.25, the committee recommends amending rule 5.708 to require the court to consider—at all status review hearings, when determining whether return of a child to the parent or legal guardian would create a substantial risk of detriment to the child—whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for comment as part of the spring 2015 invitation to comment cycle, from April 17 to June 17, 2015, posted to the California Courts website and send to the standard electronic mailing list for family and juvenile law proposals. Included on the list were appellate court presiding justices and administrators; trial court presiding judges, executive officers, judges, court administrators, and clerks; attorneys; family law facilitators and self-help center staff; social workers; probation officers; CASA program directors; and other juvenile and family law professionals. Seven individuals or organizations provided comment; four agreed with the proposal, two agreed if modified, and one disagreed with the proposal. A chart with the full text of the comments received and the committee's responses is attached at pages 9–15.

The committee sought specific comment on whether rule 5.674 should require that the two title IV-E findings and one title IV-E order reviewed at a federal audit be stated on the record. Three commentators expressed concern that eliminating the requirement that the findings and order reviewed at a federal audit must be made on the record could jeopardize federal foster care funding. The committee determined that the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only documentation other than a court order that will be accepted to verify that the required determinations have been made.

The one commentator that disagreed with the proposal was a public interest law firm that works on behalf of children in the child welfare and juvenile justice systems in California and across the country. The firm disagreed with the recommended removal from rule 5.674 of the requirement that the court state the findings and orders on the record. It commented that the requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Another commentator, however—the California Judges Association—commented: "We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile." The committee agrees with the latter comment and concluded that the removal of the requirement would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674, which governs dependency

detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

Alternatives Considered

The committee considered not requiring the findings and order reviewed at a federal title IV-E audit to be made on the record; however, the committee determined that the findings and order should be included in the rule as required to be made on the record for the reasons given in the Rationale for Recommendation.

The committee also considered revising *Findings and Orders After Detention Hearing* (form JV-410) to include a conditional release order that the child is released to the parent only while the parent remains at the substance abuse treatment facility. Practices around conditional releases, however, vary throughout the state, and in jurisdictions that use them, there are multiple conditional release situations, none of which are currently included on the form. The committee decided to leave the form as is, allowing courts that order conditions of release to continue to do so by filling in item 19, "Other findings and orders," on form JV-410.

Implementation Requirements, Costs, and Operational Impacts

This proposal is unlikely to impose any costs on the court. The proposal does not recommend changes to existing Judicial Council forms and does not create any new court hearings or processes. Removing the requirement in rule 5.674 to eliminate the requirement that *all* findings and orders be made on the record at detention hearings will likely reduce the length of those hearings and free up time for courts and court staff.

Attachments and Links

1. Cal. Rules of Court, rules 5.674, 5.676, 5.678, and 5.708, at pages 6–8
2. Chart of comments, at pages 9–15
3. Senate Bill 977, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB977&search_keywords=

Rules 5.674, 5.676, 5.678, and 5.708 of the California Rules of Court would be amended, effective January 1, 2016, 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 any reports submitted by the social worker and any relevant evidence submitted by any party or counsel. All detention findings and orders must ~~be made on the record and~~ appear in the written orders of the court.

(2) The findings and orders that must be made on the record are:

(A) Continuance in the home is contrary to the child's welfare;

(B) Temporary placement and care are vested with the social services agency;

(C) Reasonable efforts have been made to prevent removal; and

(D) The findings and orders required to be made on the record under section 319.

(c)–(d) * * *

Rule 5.676. Requirements for detention

(a) * * *

(b) 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:

(1) * * *

(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.

~~(3)~~ (4) * * *

~~(4)~~ (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 ~~or~~ and about any relative or nonrelative extended family member as defined under section 362.7 with whom the child may be detained.

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

(a) * * *

(b) Factors to consider

In determining whether to release or detain the child under (a), the court must consider the following:

(1) Whether the child can be returned home if the court orders services to be provided, including services under section 306; and

(2) Whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

(c)–(e) * * *

Rule 5.708. General review hearing requirements

(a)–(c) * * *

(d) Return of child—detriment finding (§§ 366.21, 366.22, 366.25)

(1) * * *

(2) The court must consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.

~~(2)~~(3)* * *

~~(3)~~(4)* * *

~~(4)~~(5)* * *

~~(5)~~(6)* * *

(e)–(o) * * *

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

	Commentator	Position	Comment	Committee Response
1.	The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) The Law Offices of David M. Lederman David M. Lederman The State Bar of California Saul Bercovitch	AM	The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) supports this proposal, so long as the proposal to revise Rule 5.674 limiting findings and orders at the detention hearing to those required under Welfares and Institutions Code section 319 would not jeopardize federal title IV-E funding.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made.
2.	California Judges Association President Joan P. Weber Sacramento, CA	A	The proposal would amend four rules to conform to recent statutory changes to the factors a juvenile dependency court must consider when determining whether to release or detain a child. Amendments to various sections of WIC, effective Jan. 1, 2015, now require that at detention, disposition and review hearings, the agency address and the court consider, whether at each of these hearings a child can be released to a parent who is enrolled in a qualified inpatient program. Juvenile and Family Law Advisory Committee recommends proposed changes to the CRC to appropriately address these amendments and I see no issues or inconsistencies. The committee also recommended revising rule 5.674 to eliminate the requirement that all	No response required. No response required. The committee has amended the rule to include the required title IV-E findings and orders to the

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	Commentator	Position	Comment	Committee Response
			detention findings and orders be made on the record, and instead narrow those findings and orders that must be made on the record to only those required under section 319 while retaining the requirement for the three title IV-E findings and orders that are reviewed at a federal audit also be made on the record. According to the Committee, eliminating all non-statutory requirements on findings and orders on the record will free up much needed court time and making detention hearings shorter or more thorough and meaningful. We support the proposal. Anything that will streamline the process to give the courts and especially court staff more time to devote to substantive issues is worthwhile.	list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. No response required.
3.	Dependency Advocacy Center Hilary Kushins San Jose CA	A	No comment	No response required.
4.	County of San Diego Leesa Rosenberg	AM	That the proposal that not all detention findings and orders be stated on the record be opposed. This proposal is problematic as a failure of the court to make these findings and not have a record of the findings could result in problems with federal audits and impact funding levels.	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made.

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5.	Youth Law Center Tyler Whittenberg Staff Attorney San Francisco CA	N	The Youth Law Center appreciates the opportunity to comment on SPR15-25, a series of proposed revisions to California Rules of Court 5.674, 5.676, 5.678, and 5.708. The Youth Law Center is a San Francisco-based, public interest law firm that works on behalf of children in the juvenile justice and child welfare systems in California and throughout the country. For over three decades, our attorneys have worked to improve the juvenile court process and ensure that courts are making decisions in the best interest of children. We submit the following comments in support of the proposed revisions to rules 5.676, 5.678, and 5.708; and in opposition to the proposed revision to rule 5.674. Support for Proposed Revision to Rules 5.676, 5.678 and 5.708 We agree with the proposed changes to rules 5.676, 5.678 and 5.708. They are consistent with the recent statutory changes to Sections 319, 366.21, 366.22, and 366.25 of the Welfare and Institutions Code that establish reporting, recommendation and consideration requirements for determining whether a child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent.	No response required. No response required.

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	Commentator	Position	Comment	Committee Response
			Opposition to Proposed Revision to Rule 5.674 We oppose the proposed revision to rule 5.674. Rule 5.674 (b) requires the court to read, consider and reference all relevant evidence presented by the parties and reports provided by the social worker and mandates that all detention findings and orders are made on the record and appear in written court orders. The proposed revision to rule 5.674 would limit the findings and orders that must be made on the record to those required under Section 319 of the Welfare and Institutions Code. The Committee suggests that eliminating all nonstatutory requirements will free up court time and make detention hearings "shorter or more thorough and meaningful." In our experience, requirements that the court consider and rule on specific factors help to assure that the intention of the underlying law will be carried out. Even if some courts view the existing requirements as a mere formality, our court rules should not support bypassing the legislative intent that underlies the statutory requirements. By relieving the court of the duty to at least state the findings in court, the proposed revision to rule 5.674 would not achieve the stated goal of making detention hearings more thorough and meaningful. Conversely, the revision would encourage detention hearings that are less meaningful by insulating arbitrary or inaccurate findings and orders and undermining the intent of the law	The committee concluded that the removal of the requirement that all detention findings and orders be made orally on the record would free up much-needed court time and make detention hearings shorter or more thorough and meaningful. Additionally, the committee notes that the requirement that the findings and orders be made on the record is only in rule 5.674 which governs dependency detention hearings; the requirement is not contained in any other rule governing any of the other dependency and delinquency hearing types.

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			that certain issues be given specific attention and consideration. The proposed revision will also make detention hearings less meaningful for parents and youth who may not get the benefit of at least hearing the recitation of the findings or having the findings discussed in open court. For example, limiting the educational rights of a parent and the appointment of an Educational Rights Holder (ERH) requires careful consideration as it has significant impact on the child and the child-parent relationship. The Order Designating Educational Rights Holder (form JV-535) merely states "Having considered the evidence and made the findings required by law, THE COURT ORDERS that…" If some courts treat the "unavailable, unable, or unwilling" finding as a mere formality, and we remove the requirements for findings, young people and their parents may not receive the full benefit of laws intended to permit removal of education decision-making authority only when the parent is unable and unwilling to carry out those responsibilities. Moreover, without the requirement that these findings be made on the record, the parent may not be able to meaningfully challenge the court order and its underlying rationale. The proposed revision also potentially risks losing title IV-E foster care funding. During a federal title IV-E audit, only documented court findings and orders are accepted to verify that	The committee has amended the rule to include the required title IV-E findings and orders to the list of those which must be made orally at the hearing. The committee determined the findings

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			the required findings and orders have been made. 45 C.F.R. § 1356.21 (d)(1). However, court orders often contain clerical errors and are frequently misplaced. Thus, the revision would eliminate the ability of the State to rely on transcripts of proceedings to verify that the requisite findings were made and avoid fiscal penalties for non-compliance with the requirements of title IV-E. Courts have a responsibility to act in the best interests of youth in their care. The minor convenience afforded courts by the revision is far outweighed by the interest in protecting children from arbitrary findings and orders and ensuring they receive the financial support necessary to thrive. For the reasons stated above, we oppose the proposed revision of rule 5.674 and believe that all detention hearing findings and orders should be made on the record. Thank you for your consideration. We are grateful for the work that has already gone into the proposed revisions, and hope that further consideration will result in rejection of the proposed revision to rule 5.674. Please let us know if we can clarify any of the comments or otherwise be of assistance in the rulemaking process.	and order should be included in the rule as required to be made on the record because the findings and order are critical to federal funding; there are often clerical errors with the documentation of the court's findings and orders; and at a federal title IV-E audit, a transcript of the court proceedings is the only other documentation that will be accepted to verify that the required determinations have been made. See response above. No response required.
6.	Superior Court of California, County of San Diego Mike Roddy Executive Officer	A	No comment	No response required.

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	Commentator	Position	Comment	Committee Response
7.	Orange County Bar Association Ashleigh Aitken President	A	No Comment	No response required.