



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

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Title	Agenda Item Type
Juvenile Law: Dependency Hearings— Continued Condensing of the Rules of Court	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708	January 1, 2019
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	August 28, 2018
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Kerry Doyle, 415-865-8791 kerry.doyle@jud.ca.gov

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### Executive Summary

The Family and Juvenile Law Advisory committee recommends amending five rules to delete some sections that unnecessarily repeat statutory language or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2019:

1. Amend rule 5.526 of the California Rules of Court to delete language that restates the text in Welfare and Institutions Code sections 338–341 and 661–664 and replace it with references to those sections;
2. Amend rule 5.678 of the California Rules of Court to delete language that restates text in section 319 and replace it with references to section 319;

3. Amend Rule 5.690 of the California Rules of Court to clarify that it is governed by section 16501.1 in its entirety;
4. Amend rule 5.695 of the California Rules of Court to add a reference to the newly enacted section 361(d); and
5. Amend rule 5.708 to clarify that it is governed by section 16501.1 in its entirety, and to improve grammar and clarity.

The text of the amended rules is attached at pages 6–13.

### **Relevant Previous Council Action**

The Judicial Council adopted rules 5.526, 5.690, and 5.695, effective January 1, 1991, as rule 1408, 1455, and 1456, respectively. Rule 5.678 was adopted effective January 1, 1998, as rule 1446. All of these rules were renumbered effective January 1, 2007. These rules have been amended numerous times, frequently to reflect amendments in the statutory text that they restate. Most notably, Rule 5.690 has been amended 5 times and Rule 5.695 has been amended 20 times.

### **Analysis/Rationale**

Many of the rules of court concerning juvenile dependency court hearings were adopted in the early 1990s, when access to statutory materials via electronic devices and online resources was far more limited than at present. To ensure that juvenile courts had comprehensive information about the requirements in these cases, the original drafters of the rules paraphrased or directly included extensive sections of the relevant underlying statutes in the rules. Since that time, the statutes have become longer and more complicated, and the rules have been repeatedly amended to include the amended statutory provisions. The rule amendments frequently lag the underlying statutory amendments by a year because of the time needed for the Judicial Council rule-making process. At the same time, the growth of online legal resources such as the California Legislative Information website allows any judicial officer or member of the public to access up-to-date statutory materials easily and at no cost. This major change in the information infrastructure for juvenile courts warranted a reexamination of the roles of the rules of court in these proceedings. Effective January 1, 2017, the Judicial Council amended 21 rules and repealed 3 to delete language that duplicated statute.

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal was spurred by recent legislation<sup>1</sup> that would, under the council's past practices, have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions. Instead, the

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<sup>1</sup> Assem. Bill 404 (Stone; Stats. 2017, ch. 732); Assem. Bill 1332 (Bloom; Stats. 2017, ch. 665); and Assem. Bill 1401 (Maienschein; Stats. 2017, ch. 262). ).

legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

**Rule 5.526. Citation to Appear; warrants of arrest; subpoenas**

The committee recommends amending this rule to replace the restatements of the text in sections 338–341 and 661–664 with references to those sections.<sup>2</sup> (Making this change obviates the need to amend this rule to incorporate the changes made by Assembly Bill 1401 [Maienschein].)

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

The committee recommends amending in rule 5.678:

- Subdivision (a), to delete the specific findings drawn from section 319(b) in support of detention and replace them with a reference to that section;
- Subdivision (b), to delete the factors the court must consider that are drawn from section 319(d) and replace them with a reference to that section;
- Subdivision (c)(3), to delete the findings and order that are drawn from section 319 (d)–(e) and replace them with a reference to those subsections;
- Subdivision (e), to delete the possible foster care placements that are drawn from the text of section 319(f) and replace them with a reference to that section (making these changes obviates the need to amend this rule to incorporate the changes made by Assembly Bill 404 [Stone]); and
- Many of the subdivision headings, to remove the references to section 600 et seq. because rule 5.760, not rule 5.678, governs detention hearings for cases petitioned under section 600.

**Rule 5.690. General conduct of disposition hearing**

Effective January 1, 2017, the council deleted most of the text of rule 5.690(c) concerning the case plan requirements (some of which were in the rule, but many of which were not) and instead specified that a case plan must be prepared and included with the court report as required in section 16501.1(g). The committee continues to recommend that a cross-reference to this statute remain in the rule. The committee now recommends, however, that the rule reference section 16501.1 in its entirety, and not merely subdivision (g). Section 16501.1 contains many important case plan requirements that require court oversight, such as the timelines by which case plans must be submitted to the court; a description of the type of home or institution in which the child is placed; the plan and timeline for transitioning the child to a less restrictive environment; and documentation that a preplacement assessment of the service needs of the child and family has been provided.

The committee further recommends that the cross-reference to section 16501.1 be moved to a paragraph of subdivision (c) governing all case plans.

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

**Rule 5.695. Findings and orders of the court—disposition**

Effective January 1, 2017, the council deleted specific required removal findings from rule 5.695(d) and replaced them with a reference to subdivision (c) of section 361, which provides these findings. The committee now recommends that the rule be amended to add a paragraph to rule 5.695(c), with a cross-reference to subdivision (d) of section 361, which was newly enacted as a result of Assembly Bill 1332 (Bloom).

**Rule 5.708. General Review Hearing Requirements**

Similar to rule 5.695, effective January 1, 2017, the council deleted much of the text of rule 5.708 and specified that a case plan must be prepared and included with the court report as required in section 16501.1(g). For the reasons discussed above regarding rule 5.695, the committee continues to recommend that a cross-reference to this statute remain in the rule. The committee now recommends, however, that the rule reference section 16501.1 in its entirety, and not merely subdivision (g).

The committee also recommends amendments to the rule that will improve grammar and increase clarity.

**Policy implications**

The committee recommends that the Judicial Council continue the process of condensing the rules of court governing dependency hearings. This proposal was spurred by recent legislation that would, under the council's past practices, have required three different proposals amending multiple rules of court to include minor statutory expansions of existing provisions. Instead, the legislative changes will be addressed by rule amendments that include statutory references rather than a paraphrase of the full statutory text.

This approach should decrease the frequency of rule amendments because the rules would remain current even when these code sections are amended again.

**Comments**

This proposal circulated for comment as part of the spring 2018 invitation-to-comment cycle, from April 9 to June 8, 2018, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals. Eight organizations provided comment: two agreed with the proposal, and four agreed with the proposal if modified; no commenters opposed the proposal and two commenters did not indicate a position. A chart with the full text of the comments received and the committee's responses is attached at pages 23–33.

The bulk of the comments received on the proposal suggested modifications to clarify the text of the amended rules and forms, correct statutory and rule references, and improve the style and

clarity of the rule text. The committee adopted nearly all of these suggested modifications to improve the accessibility and effectiveness of the rules proposed to be amended.

### **Alternatives considered**

Initially, the committee considered simply amending the existing rules of court to reflect the new statutory language but determined that it would be preferable in the long run to condense the rules by replacing unneeded text with code references to obviate the need for further amendments when these statutes are again amended.

### **Fiscal and Operational Impacts**

Because this proposal chiefly amends rules of court to make them more concise without changing the underlying statutory requirements, it should cost the courts little, and the main operational impact will be limited to ensuring that stakeholders understand that the amendments do not change the underlying requirements for these proceedings but simply delete provisions duplicative of statute.

One large court noted that some modifications to minute codes that are used to enter dependency hearing findings and orders would need to be made and that the court would need to contact the child welfare agency to ensure the agency is aware of the updates. Another large court commented that it, too, would have to change minute codes/findings, which would result in cost for staff to make the changes. A third large court commented that the implementation requirements would simply be to inform staff that the revisions are not substantive. The committee agrees with this commenter. Except for one new finding required by recent legislation, the required findings and orders are the same. The proposal deletes language duplicative of statute and replaces it with cross-references to the appropriate code sections.

### **Attachments and Links**

1. Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708, at pages 6–13
2. Chart of comments, at pages 14-24
3. Link A: Assembly Bill 404 (Stats. 2017, ch. 732),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB404](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB404)
4. Link B: Assembly Bill 1332 (Stats. 2017, ch. 665),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1332](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1332)
5. Link C: Assembly Bill 1401 (Stats. 2017, ch. 262),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1401](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1401)

Rules 5.526, 5.678, 5.690, 5.695, and 5.708 of the California Rules of Court are amended, effective January 1, 2019, to read:

**Rule 5.526. Citation to appear; warrants of arrest; subpoenas**

**(a) Citation to appear (§§ 338, 661)**

In addition to the notice required under rule 5.524, the court may issue a citation directing a parent or guardian to appear at a hearing as specified in section 338 or 661.

~~(1) The citation must state that the parent or guardian may be required to participate in a counseling program, and the citation may direct the child's present caregiver to bring the child to court.~~

~~(2) The citation must be personally served at least 24 hours before the time stated for the appearance.~~

**(b) Warrant of arrest (§§ 339, 662)**

The court may order a warrant of arrest to issue against the parent, guardian, or present custodian of the child ~~if~~ as specified in section 339 or 662.

~~(1) The citation cannot be served;~~

~~(2) The person served does not obey it; or~~

~~(3) The court finds that a citation will probably be ineffective.~~

**(c) Protective custody or warrant of arrest for child (§§ 340, 663)**

The court may order a protective custody warrant or a warrant of arrest for a child ~~if the court finds that~~ as specified in section 340 or 663.

~~(1) The conduct and behavior of the child may endanger the health, person, welfare, or property of the child or others; or~~

~~(2) The home environment of the child may endanger the health, person, welfare, or property of the child.~~

1 (d) Subpoenas (§§ 341, 664)

2  
3 On the court's own motion or at the request of the petitioner, child, parent,  
4 guardian, or present caregiver, the clerk must issue subpoenas ~~requiring attendance~~  
5 ~~and testimony of witnesses and the production of papers at a hearing. If a witness~~  
6 ~~appears in response to a subpoena, the court may order the payment of witness fees~~  
7 ~~as a county charge in the amount and manner prescribed by statute. as specified in~~  
8 ~~section 341 or 664.~~  
9

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

12  
13 (a) Findings in support of detention (§ 319; 42 U.S.C. § 672 § 600 et seq.)

14  
15 The court must order the child released from custody unless the court ~~finds that:~~  
16 makes findings as specified in section 319(b).  
17

18 ~~(1) A prima facie showing has been made that the child is described by section~~  
19 ~~300;~~  
20

21 ~~(2) Continuance in the home of the parent or guardian is contrary to the child's~~  
22 ~~welfare; and~~  
23

24 ~~(3) Any of the following grounds exist:~~  
25

26 ~~(A) There is a substantial danger to the physical health of the child or the~~  
27 ~~child is suffering severe emotional damage, and there are no reasonable~~  
28 ~~means to protect the child's physical or emotional health without~~  
29 ~~removing the child from the parent's or guardian's physical custody;~~  
30

31 ~~(B) The child is a dependent of the juvenile court who has left a placement;~~  
32

33 ~~(C) The parent, guardian, or responsible relative is likely to flee the~~  
34 ~~jurisdiction of the court with the child; or~~  
35

36 ~~(D) The child is unwilling to return home and the petitioner alleges that a~~  
37 ~~person residing in the home has physically or sexually abused the child.~~  
38

39 (b) Factors to consider

40  
41 In determining whether to release or detain the child under (a), the court must  
42 consider the ~~following:~~ factors in section 319(d).  
43

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

3  
4       ~~(2) Whether the child can be returned to the custody of his or her parent who is~~  
5       ~~enrolled in a certified substance abuse treatment facility that allows a~~  
6       ~~dependent child to reside with his or her parent.~~

7  
8       **(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C. § 672 ~~§ 600 et seq.~~)**  
9

10       (1) Whether the child is released or detained at the hearing, the court must  
11       determine whether reasonable efforts have been made to prevent or eliminate  
12       the need for removal and must make one of the following findings:

13  
14       (A) Reasonable efforts have been made; or

15  
16       (B) Reasonable efforts have not been made.

17  
18       (2) The court must also determine whether services are available that would  
19       prevent the need for further detention.  
20

21       ~~(2)(3)~~ The court must not order the child detained unless the court, after inquiry  
22       regarding available services, finds that there are no reasonable services that  
23       would prevent or eliminate the need to detain the child or that would permit  
24       the child to return home.

25  
26       ~~(3)(4)~~ If the court orders the child detained, the court must: proceed under section  
27       319(d)–(e).  
28

29       ~~(A) Determine if there are services that would permit the child to return~~  
30       ~~home pending the next hearing and state the factual bases for the~~  
31       ~~decision to detain the child;~~

32  
33       ~~(B) Specify why the initial removal was necessary; and~~

34  
35       ~~(C) If appropriate, order services to be provided as soon as possible to~~  
36       ~~reunify the child and the child's family.~~

37  
38       **(d) Orders of the court (§ 319, 42 U.S.C. § 672 ~~§ 600 et seq.~~)**  
39

40       If the court orders the child detained, the court must order that temporary care and  
41       custody of the child be vested with the county welfare department pending  
42       disposition or further order of the court, and must make the other findings and  
43       orders specified in section 319(e) and (f)(3).



1  
2 **(e) Detention alternatives (§ 319)**

3  
4 The court may order the child detained ~~in the approved home of a relative, an~~  
5 ~~emergency shelter, another suitable licensed home or facility, a place exempt from~~  
6 ~~licensure if specifically designated by the court, or the approved home of a~~  
7 ~~nonrelative extended family member as defined in section 362.7.~~ as specified in  
8 section 319(f).  
9

10 ~~(1) In determining the suitability of detention with a relative or a nonrelative~~  
11 ~~extended family member, the court must consider the recommendations of~~  
12 ~~the social worker based on the approval of the home of the relative or~~  
13 ~~nonrelative extended family member, including the results of checks of~~  
14 ~~criminal records and any prior reports of alleged child abuse.~~

15  
16 ~~(2) The court must order any parent and guardian present to disclose the names,~~  
17 ~~residences (if known), and any identifying information of any maternal or~~  
18 ~~paternal relatives of the child.~~  
19

20 **Rule 5.690. General conduct of disposition hearing**

21  
22 **(a) – (b) \* \* \***

23  
24 **(c) Case plan (§ 16501.1)**

25  
26 Whenever child welfare services are provided, the social worker must prepare a  
27 case plan.  
28

29 (1) A written case plan must be completed and filed with the court by the date of  
30 disposition or within 60 calendar days of initial removal or of the in-person  
31 response required under section 16501(f) if the child has not been removed  
32 from his or her home, whichever occurs first.  
33

34 (2) For a child of any age, The the court must consider the case plan and must  
35 find as follows:  
36

37 (A) The case plan meets the requirements of section 16501.1; or

38  
39 (B) The case plan does not meet the requirements of section 16501.1, in  
40 which case the court must order the agency to comply with the  
41 requirements of section 16501.1; and  
42

1           (A) ~~(C)~~     The social worker solicited and integrated into the case plan the  
2                   input of the child; the child's family; the child's identified Indian  
3                   tribe, including consultation with the child's tribe on whether tribal  
4                   customary adoption as defined in section 366.24 is an appropriate  
5                   permanent plan for the child if reunification is unsuccessful; and other  
6                   interested parties; or

7  
8           (B) ~~(D)~~     The social worker did not solicit and integrate into the case plan  
9                   the input of the child, the child's family, the child's identified Indian  
10                  tribe, and other interested parties. ~~If the court finds that the social~~  
11                  ~~worker did not solicit and integrate into the case plan the input of the~~  
12                  ~~child, the child's family, the child's identified Indian tribe, and other~~  
13                  ~~interested parties, in which case~~ the court must order that the social  
14                  worker solicit and integrate into the case plan the input of the child, the  
15                  child's family, the child's identified Indian tribe, and other interested  
16                  parties, unless the court finds that each of these participants was unable,  
17                  unavailable, or unwilling to participate.

18  
19       (3)   For a child 12 years of age or older and in a permanent placement, the court  
20       must consider the case plan and must also find as follows:

21  
22       (A)   The child was given the opportunity to review the case plan, sign it, and  
23       receive a copy; or

24  
25       (B)   The child was not given the opportunity to review the case plan, sign it,  
26       and receive a copy. ~~If the court makes such a finding, in which case~~ the  
27       court must order the agency to give the child the opportunity to review  
28       the case plan, sign it, and receive a copy.

29  
30       (C)   ~~Whether the case plan was developed in compliance with and meets the~~  
31       ~~requirements of section 16501.1(g). If the court finds that the~~  
32       ~~development of the case plan does not comply with section 16501.1(g)~~  
33       ~~the court must order the agency to comply with the requirements of~~  
34       ~~section 16501.1(g).~~

35  
36   **Rule 5.695. Findings and orders of the court—disposition**

37  
38   (a) – (b)   \* \* \*

39  
40   (c)   **Removal of custody—required findings (§ 361)**

41  
42       (1)   The court may not order a dependent removed from the physical custody of a  
43       parent or guardian with whom the child resided at the time the petition was

1 filed, unless the court makes one or more of the findings in subdivision (c) of  
2 section 361 by clear and convincing evidence.

3  
4 (2) The court may not order a dependent removed from the physical custody of a  
5 parent with whom the child did not reside at the time the petition was  
6 initiated unless the juvenile court makes both of the findings in subdivision  
7 (d) of section 361 by clear and convincing evidence.  
8

9 (d) – (i) \* \* \*

10  
11 **Rule 5.708. General review hearing requirements**  
12

13 (a) – (d) \* \* \*

14  
15 (e) **Case plan (§§ 16001.9, 16501.1)**  
16

17 ~~The court must consider the case plan submitted for the hearing and must~~  
18 ~~determine:~~

19  
20 The court must consider the case plan submitted for the hearing and must ~~determine~~  
21 find as follows:  
22

23 (1) The case plan meets the requirements of section 16501.1; or  
24

25 (2) The case plan does not meet the requirements of section 16501.1, in which  
26 case the court must order the agency to comply with the requirements of  
27 section 16501.1; and  
28

29 (1) (3) ~~Whether~~ The child was actively involved, as age- and developmentally  
30 appropriate, in the development of the case plan and plan for permanent  
31 placement; or  
32

33 (4) The child was not actively involved, as age- and developmentally  
34 appropriate, in the development of the case plan and plan for permanent  
35 placement. If the court finds the child was not appropriately involved, in  
36 which case the court must order the agency to actively involve the child in  
37 the development of the case plan and plan for permanent placement, unless  
38 the court finds the child is unable, unavailable, or unwilling to participate;  
39 and  
40

41 (2) (5) ~~Whether~~ Each parent or legal guardian was actively involved in the  
42 development of the case plan and plan for permanent placement; or  
43

1       (6) Each parent or legal guardian was not actively involved in the development  
2 of the case plan and plan for permanent placement, If the court finds that any  
3 parent or guardian was not actively involved, in which case the court must  
4 order the agency to actively involve that parent or legal guardian in the  
5 development of the case plan and plan for permanent placement, unless the  
6 court finds that the parent or legal guardian is unable, unavailable, or  
7 unwilling to participate-; and

8  
9       ~~(3)~~(7) In the case of an Indian child, ~~whether~~ the agency consulted with the Indian  
10 child's tribe, as defined in rule 5.502, and the tribe was actively involved in  
11 the development of the case plan and plan for permanent placement,  
12 including consideration of tribal customary adoption as an appropriate  
13 permanent plan for the child if reunification is unsuccessful-; or

14  
15       (8) The agency did not consult with the Indian child's tribe, as defined in rule  
16 5.502, and the tribe was not actively involved in the development of the case  
17 plan and plan for permanent placement, including consideration of tribal  
18 customary adoption as an appropriate permanent plan for the child if  
19 reunification is unsuccessful ~~If the court finds that the agency did not consult~~  
20 ~~the Indian child's tribe, in which case~~ the court must order the agency to do  
21 so, unless the court finds that the tribe is unable, unavailable, or unwilling to  
22 participate-; and

23  
24       ~~(4)~~(9) For a child 12 years of age or older in a permanent placement, ~~whether~~ the  
25 child was given the opportunity to review the case plan, sign it, and receive a  
26 copy-; or

27  
28       (10) The child was not given the opportunity to review the case plan, sign it, and  
29 receive a copy, If the court finds that the child was not given this opportunity  
30 in which case the court must order the agency to give the child the  
31 opportunity to review the case plan, sign it, and receive a copy.

32  
33       ~~(5) Whether the case plan was developed in compliance with and meets the~~  
34 ~~requirements of section 16501.1(g). If the court finds that the development of~~  
35 ~~the case plan does not comply with section 16501.1(g), the court must order~~  
36 ~~the agency to comply with the requirements of section 16501.1(g).~~

37  
38       (f) – (i)       \* \* \*

1  
2  
3  
4  
5  
6  
7  
8

**(j) Appeal of order setting section 366.26 hearing**

An appeal of any order setting a hearing under section 366.26 is subject to the limitation stated in subdivision (I) of section 366.26 and must follow the procedures in rules 8.400–8.416.

## SPR18-27

### Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708 )

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Lawyers Association Executive Committee of the Family Law Section By: Saul Bercovitch Director of Governmental Affairs	A	The Executive Committee of the Family Law Section of the California Lawyers Association agrees with this proposal, but has one the comment. The repeal of rule 5.526 may inadvertently remove a rule designed to support Welfare and Institutions Code sections 661-664. AB 1401 did not change those code sections in any way, and there is no mention in the proposal that those sections (Welfare and Institutions Code sections 661-664) likewise are not clarified by rule 5.526.	Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections.
2.	Orange County Bar Association By: Nikki P. Miliband President	AM	<p>The proposal appropriately addresses the stated purpose to condense the rules of court and prevent the need to frequently amend the rules to conform to the changing statutes.</p> <p>The statutory language in Rule 5.678(c)(3) should remain as it guides the court's orders and the obligations of a social services agency that ultimately flow from those orders.</p> <p>Additional statutory language does not need to be deleted.</p>	<p>No response required.</p> <p>The committee has amended the rule to maintain 5.678(c)(3) but has replaced the language repetitive of statute with a reference to section 319(d).</p> <p>No response required.</p>
3.	San Diego County Counsel By: Caitlin Rae Deputy	AM	<p>Rule 5.690 section (c) case plan 16501.1, (2) (A)-(D) is confusing. It should be reorganized to clearly state A or B and C or D.</p> <p>Rule 5.708 section (e) case plan is confusing. It should be reorganized to clearly state 1 or 2 and 3 or 4 and 5 or 6 and 7 or 8 and 9 or 10. The way it is written and outlined is too difficult to understand.</p>	The committee will ask the editor of this proposal to pay particular attention to any way these rules could be in more of a list format, while maintaining the requirement that the court order the agency to comply with the code sections.

## SPR18-27

### Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (Amend Cal. Rules of Court, rules 5.526, 5.678, 5.690, 5.695, and 5.708 )

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	Commenter	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County	AM	<p><b>Suggested Modifications:</b> Instead of formally repealing Rule 5.526 and outright deleting subsection (c)(3) of Rule 5.678, replace them with a cross reference to their corresponding WIC section(s). Replace Rule 5.526 with cross references to WIC 338-341, and replace subsection (c)(3) with a cross reference to WIC 319(e).</p> <p><b>Request for Specific Comments:</b> Does the proposal appropriately address the stated purpose? <i>Yes. It reduces the lag time in updating rules to statutory amendments, while also allowing for a uniform statement of the Welfare and Institutions Code sections. The affected Rules of Court state their proposition differently than corresponding WIC sections; one uniform statement of the law is easier for practitioners.</i></p> <p>Are there statutory provisions that were deleted that should remain? <i>See suggested modifications above.</i></p> <p>Are there additional statutory provisions that should be deleted? <i>No.</i></p>	<p>Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections. The content of rule 5.678(c)(3) remains.</p> <p>No response required.</p> <p>See committee response above.</p> <p>No response required.</p>
5.	Superior Court of Orange County Juvenile and Family Court Divisions	NI	<p>Does this proposal appropriately address the stated purpose? <i>Yes</i></p> <p>Are there statutory provisions that were deleted that should remain?</p>	<p>No response required.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<i>No</i>  Are there additional statutory provisions that should be deleted? <i>No</i>	No response required.  No response required.
6.	Superior Court of Riverside County By: Susan D. Ryan Chief Deputy of Legal Services	A	Does the proposal appropriately address the stated purpose? <i>Yes.</i>  Are there any statutory provisions that were deleted that should remain? <i>No.</i>  Are there any additional statutory provisions that should be deleted? <i>None that we are aware of.</i>  Would the proposal provide cost savings? <i>No.</i>  What would the implementation requirements be for courts? <i>Some modifications to minute codes that are used to enter dependency findings. Contact Child Protective Services to make certain they are aware of these updates.</i>  Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes.</i>	No response required.  No response required.  No response required.  No response required.  No response required.



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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			How well would this proposal work for courts of different sizes? <i>The proposal should work well for courts of any size.</i>	No response required.
7.	Superior Court of San Bernardino County	NI	Does the proposal appropriately address the stated purpose? <i>Yes</i>  Are there statutory provisions that were deleted that should remain? <i>No</i>  Are there additional statutory provisions that should be deleted? <i>No</i>  The court would need to change minute codes/findings and orders to reflect the changes in the case management system and this would be a cost issue in regards to the staff hours for making the changes. This implementation period should be at least 6 months or longer.	No response required.   No response required.   No response required.  The required findings and orders are the same. The proposal deletes language duplicative of statute and replaces it with cross references to the appropriate code sections.
8.	Superior Court of San Diego County By: Mike Roddy Executive Officer	AM	Does the proposal appropriately address the stated purpose? <i>Yes.</i>  Are there statutory provisions that were deleted that should remain? <i>No.</i>  Are there additional statutory provisions that should be deleted? <i>See comments below.</i>	No response required.   No response required.   See response below.

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		<p>Would the proposal provide cost savings? <i>Probably negligible savings.</i></p> <p>What would the implementation requirements be for courts? <i>Inform staff that revisions are not substantive.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Yes.</i></p> <p>How well would this proposal work in courts of different sizes? <i>Should not be a problem.</i></p> <p><u>General Comments:</u></p> <p style="text-align: center;"><b><u>Rule 5.526</u></b></p> <p>Agree with repeal.</p> <p style="text-align: center;"><b><u>Rule 5.678</u></b></p> <p>Subd. (c) heading: “§ 600 et seq.” is stricken out but not replaced with anything. It should be replaced with “§ 670 et seq.”</p> <p style="text-align: center;">(c) Findings of the court—reasonable efforts (§ 319; 42 U.S.C. <del>§ 600 et seq.</del> <b>§ 670 et seq.</b>)</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>Rather than repeal the rule, the committee has amended rule 5.526 to delete language that is duplicative of statute and replace it with cross references to the appropriate code sections.</p> <p>This rule applies to cases under section 300 et. seq, not delinquency cases under section 600 et. seq.</p>

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		<p><b>Subd. (c):</b> Query – If the restatement of § 319(d)(1) (reasonable efforts finding) is to be left in the rule, shouldn't the other finding required by § 319(d)(1) (available services) be in this part of the rule as well? The phrase “after inquiry regarding available services,” currently in subd. (c)(2), may not be sufficient to ensure that the court makes a finding on the record as to available services. A suggested change is below.</p> <p>(1) Whether the child is released or detained at the hearing, the court must determine whether reasonable efforts have been made to prevent or eliminate the need for removal and must make one of the following findings:</p> <p>(A) Reasonable efforts have been made; or</p> <p>(B) Reasonable efforts have not been made.</p> <p><u>(2) The court also must determine whether there are available services that would prevent the need for further detention.</u></p> <p><u>(2)(3)</u> The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent or eliminate</p>	<p>The committee has amended the rule to require a finding whether there are available services that would prevent the need for removal.</p>

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			<p>the need to detain the child or that would permit the child to return home.</p> <p><b>Subd. (d) heading:</b> “§ 600 et seq.” is stricken out but not replaced with anything. It should be replaced with “§ 670 et seq.” Also suggest making “Order” plural.</p> <p><b>(d) Orders of the court (§ 319, 42 U.S.C. <del>§ 600 et seq.</del> § 670 et seq.)</b></p> <p><b>Subd. (d):</b> As it currently reads, subd. (d) does not include all that is required from the court by § 319(e) – i.e., state factual basis, state reason for initial removal, reference evidence relied upon, order services, order parent to disclose relatives’ information.</p> <p>If the court orders the child detained, the court must <del>order that temporary care and custody of the child be vested with the county welfare department pending disposition or further order of the court make the findings and orders specified in section 319(e) and (f)(3).</del></p> <p><b><u>Rule 5.690</u></b></p> <p><b>Subd. (c)(2):</b> Insert comma.</p> <p>For a child of any age, the court must consider the case plan and must find as follows:</p>	<p>This rule applies to cases under section 300 et. seq, not delinquency cases under section 600 et. seq.</p> <p>The committee has amended the rule to contain a reference to section 319(e) and (f)(3). The committee is not deleting from the rule the language regarding temporary care and custody, as that order is necessary to secure title IV-E funding.</p> <p>The committee has amended the rule to improve grammar and readability.</p>

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			<p><b>Subd. (c)(3):</b> Query – Are not these findings subsumed under the findings described in subd. (c)(2)(A) &amp; (B)? That is, meeting the requirements of § 16501.1 includes giving a child 12 or older and in a permanent placement the opportunity to review the case plan, sign it, and receive a copy. On the other hand, if subd. (c)(3) is kept in the rule because of the age limitation, then should not the rule also specify the findings required by § 16501.1, subd. (g)(12)(A) [NMD], subd. (g)(15)(C) [16 or older and in APPLA], subd. (g)(16)(A)(i) [14 or 15], subd. (g)(16)(A)(ii) [16 or older or NMD], subd. (g)(16)(B) [almost 18], subd. (g)(16)(C) [14 or older], subd. (g)(17) &amp; (18) [14 or older or NMD], subd. (g)(20) &amp; (21) [10 or older or NMD], subd. (g)(22) [16 or older or NMD], subd. (j) [10 or older, in placement 6 months or longer]?</p> <p style="text-align: center;"><b><u>Rule 5.695</u></b></p> <p><b>Subd. (c)(2):</b> WIC § 361(d) requires both of the two findings set forth therein, not just one or the other.<sup>1</sup></p> <p>(2) The court may not order a dependent removed from the physical custody of a</p>	<p>Given the importance of providing the child a copy of his or her case plan, the committee is leaving this requirement in the rule.</p> <p>The committee has amended the rule to require that both findings need to be made as required under section 361(d).</p>

<sup>1</sup> WIC § 361(d) reads: “A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, **and** there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody.” (Emphases added.)

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			<p>parent with whom the child did not reside at the time the petition was initiated unless the juvenile court makes <del>one</del> <b>both</b> of the findings in subdivision (d) of section 361 by clear and convincing evidence.</p> <p><b>Subd. (g)(5)(A):</b> Change subdivision citation.</p> <p>Order that the social worker provide a copy of the child’s birth certificate to the caregiver consistent with sections 16010.4<del>(e)(d)</del>(5) and 16010.5(b)–(c); and</p> <p><b>Subd. (g)(5)(A) – Alternative suggestion:</b> Delete subdivision references. (See, e.g., WIC § 361.5(j).)</p> <p>Order that the social worker provide a copy of the child’s birth certificate to the caregiver consistent with sections 16010.4<del>(e)(5)</del> and 16010.5<del>(b)–(c)</del>; and</p> <p><b><u>Rule 5.708</u></b></p> <p><b>Subd. (e)(3) &amp; (4):</b> Query – Are not these findings subsumed under the findings described in subd. (e)(1) &amp; (2)? That is, meeting the requirements of § 16501.1 includes actively involving a child in the development of the case plan and plan for permanent placement as age-</p>	<p>In the spirit of the proposal, the committee has changed the citation without use of subdivisions. This should prevent this rule from needing to be amended again should the code sections be amended and subdivisions re-lettered.</p> <p>Given the importance of actively involving children and parents in the development of the case plan, the committee is leaving these requirements in the rule.</p>

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			<p>and developmentally appropriate. (WIC § 16501.1(g)(1).)</p> <p><b>Subd. (e)(5) &amp; (6):</b> Query – Are these findings actually required by statute? WIC § 16501.1(g)(12)(A) reads, in pertinent part, “<i>Whenever possible</i>, parents and legal guardians shall participate in the development of the case plan.” (Emphasis added.) Furthermore, assuming the findings are required, are not they subsumed under the findings described in subd. (e)(1) &amp; (2)?</p> <p><b>Subd. (e)(6):</b> Insert “or legal guardian.”</p> <p>Each parent or legal guardian was not actively involved in the development of the case plan and plan for permanent placement. If the court finds that any parent or legal guardian was not actively involved, the court must order the agency to actively involve that parent or legal guardian in the development of the case plan and plan for permanent placement, unless the court finds that the parent <b>or legal guardian</b> is unable, unavailable, or unwilling to participate.; and</p> <p><b>Subd. (e)(9) &amp; (10):</b> See query, <i>ante</i>, for subd. (c)(3) of Rule 5.695.</p> <p><b>Subd. (j):</b> Revise as indicated.</p>	<p>The committee has amended the rule to include legal guardians.</p> <p>See response above.</p>

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			An appeal of any order setting a hearing under section 366.26 <b>is subject to the limitation set forth in subdivision (I) of section 366.26 and</b> must follow the procedures in rules 8.400–8.416.	The committee has amended the rule to include a reference to subdivision <i>I</i> of section 366.26.