

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-49

Title	Action Requested
Juvenile Law Disclosure of Information Forms	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms JV-226 and JV-227 Amend form JV -574	January 1, 2012
Proposed by	Contact
Family and Juvenile Law Advisory Committee Hon. Kimberly Nystrom-Geist and Hon. Dean Stout, Co-chairs	Sidney S. Hollar, Attorney, sidney.hollar@jud.ca.gov , 415-865-8974

Summary

This proposal contains three information sharing forms: two new standardized consent forms for the release of information about a child who is in foster care and one amended order after judicial hearing form for release of information pursuant to Welfare and Institutions Code section 827. The *Consent to Release Education Information* form would allow the parent, legal guardian, educational representative appointed by the juvenile court, or certain eligible students to consent to the release of education records by a school to a child welfare agency. The *Authorization to Release Health and Mental Health Information* form would allow release of information from a health care professional to a child welfare agency when signed by the parent, legal guardian or child, in certain circumstances. Creation of these forms furthers the recommendations of the Blue Ribbon Commission on Children in Foster Care and the California Child Welfare Council¹ to create methods to overcome barriers to information sharing about children in foster care. The proposed amended *Order After Judicial Review* (form JV-574)

¹ The California Child Welfare Council is a statutorily created advisory body co-chaired by the Chief Justice of the California Supreme Court or her designee and the Secretary of Health and Human Services, that considers recommendations to improve child and youth outcomes through increased collaboration and coordination among the programs, services and processes administered by the multiple agencies and courts that serve children and youth in California's child welfare system (Welfare and Institutions code section 16540).

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

contains a technical change and would provide a way for the court to distinguish between granting and denying a request for sharing information in juvenile case files.

Discussion

The juvenile court is responsible for oversight of all children in foster care. To make proper orders and rulings concerning a child, a judge must be informed about relevant education, health, and mental health information.

The impetus for exploration of ways to improve information sharing originated with a recommendation made by the Blue Ribbon Commission on Children in Foster Care Council that “the Judicial Council support the courts and all partners in the child welfare system in eliminating barriers to the exchange of essential information and data about the children and families they serve.” Subsequently, the Child Welfare Council endorsed a recommendation from its Committee on Data Linkage and Information Sharing to “articulate a policy supporting sharing and linking data related to children in the child welfare services system.” Over the past year, the Administrative Office of the Courts, in partnership with the Blue Ribbon Commission on Children and the Data Sharing Committee of the Child Welfare Council held several meetings with county counsel and child welfare directors regarding information sharing and confidentiality issues for children in foster care. Stakeholders expressed the need for possible state and federal legislative changes, as well as promulgation of regulations. In addition, stakeholders consistently advocated for the creation of a standardized consent form for health and mental health information and one for education information for use by public and private providers statewide.

Children in foster care frequently experience an interruption or delay in their education because education decisions made for them may be based on incomplete information. For example, when children in foster care change schools, the child welfare agency and the new school often do not have timely access to their educational records, which contain essential information about academic performance, educational history, progress, and special needs. Similarly, children in foster care often have their health care interrupted or delayed because their health care information is not available to child welfare agencies or the juvenile courts. As a result, health care decisions made for children in foster care are frequently based on incomplete information.

Creation of a standard statewide consent form for the release of education information includes information required by the Family Educational Rights and Privacy Act of 1979 (FERPA) and would facilitate this exchange. Likewise, the standardized health and mental health form includes information required by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), the California Confidential Medical Information Act (CMIA) and the California Lanterman-Petris-Short Act (LPS).

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Education, health, and mental health information must be shared when a parent, legal guardian, educational representative or eligible student (for education) and parent, legal guardian, or child, in certain circumstances (for health and mental health), authorizes the release of information. Oftentimes, a written authorization to release records provides the easiest and simplest way for the child welfare agency to obtain these records.

The *Authorization to Release Health and Mental Health Information* form includes a list of information which can be signed by the parent or legal guardian and separate specific situations which may only be signed by the child.

Form JV-574 *Order after Judicial Review* inadvertently omitted an option to grant or deny a request for release of information from a juvenile case file pursuant to Welfare and Institutions Code section 827. The amended form provides a box to check when the court grants the request and a separate box to check when the court denies the request.

Specific Comments Requested

In addition to inviting comment on all aspects of the proposal, the committee requests specific feedback on the following issue:

The committee drafted one form which covers what the adult may authorize and what the child may authorize in order to educate all parties as to the legal requirements of disclosure by whom. The committee seeks comment on whether this form should remain as is or be split into two parts: one which the parent or legal guardian may authorize release and a separate form which covers what the child may authorize release.

The proposed forms are attached at pages 4–8.

Authorization to Release Health and Mental Health Information

Fill in court name and street address:

Superior Court of California, County of

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Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Clerk fills in case number when form is filed:

Case Number:

The purpose of this form is to authorize the release of health and/or mental health records of the child to child welfare agency in order to ensure that the child receives appropriate and effective services. It also allows the agency to fulfill its case management responsibilities; for treatment, health-care operation, billing and payment; and to inform the court of the child's medical and/or mental health needs. This form complies with the Health Insurance Portability and Accountability Act (HIPAA), Confidentiality of Medical Information Act (CMIA), and Lanterman-Petris-Short (LPS) Act.

- 1 I am the
 - Parent
 - Legal guardian
 - Child, and I am eligible to consent (see items 4 and 5 below.)

- 2 I give the following agencies and individuals permission to release health information about me the child:

- 3 I am the parent or legal guardian and I authorize release of the following information (check all that apply):
 - I understand that I may refuse to sign this form. I understand that my child cannot be denied treatment just because I choose not to sign.
 - Diagnoses Immunizations X-ray reports
 - Medical history Lab reports Medications
 - Psychosocial evaluation _____
 - None

- 4 Only a child who is between 12 and 18 years old may authorize release of the following information. I am the child and I authorize the following information to be disclosed (check all that apply):
 - I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.
 - HIV information, including test results Sexually transmitted disease records
 - Mental health diagnosis Infections, contagious, or communicable disease records if law or regulation require the disease or condition to be reported to the local health officer
 - Outpatient mental health treatment or counseling records None

- 5 Only the child, regardless of his or her age, may authorize release of the following information. I am the child and I authorize the following information to be disclosed (check all that apply):
 - I understand that I have a right to talk with my attorney before I decide whether or not to sign this form. I understand that I may refuse to sign this form. I understand that I cannot be denied treatment just because I choose not to sign.
 - Pregnancy records Sexual assault treatment records
 - Reproductive health records None



Case Number:

Child's name: _____

6 I give permission to release my the child's health information specified by the checked boxes in items 3, 4, and 5 to and discuss them with _____ (name of child welfare agency).

7 I understand that the child welfare agency may share or be required to share my my child's health-care information with certain persons or agencies for purposes of treatment, health-care operations, billing and payment, or as otherwise required by law, without having to ask my permission.

I understand that I may revoke this authorization by writing to: _____ (name and address of person to whom revocation should be directed). Once _____ (name of person to whom revocation should be directed) receives my written request, this authorization will be revoked, but only to the extent that the authorization has not already been relied upon to release health information.

I understand that if disclosure of this health information is to someone who is not legally required to keep it confidential, it may be redisclosed and no longer be protected.

- 8 I request a copy of this form. I am the child and understand that I do not have to give this form to my parent or legal guardian.
- I do not want a copy of this form.
- I request a copy of the records to be released.

9 Deadline for expiration of form: _____

Date:

(TYPE OR PRINT NAME OF PARENT/LEGAL GUARDIAN)

(SIGNATURE)

(TYPE OR PRINT NAME OF CHILD)

(SIGNATURE)

Notice: The health-care provider may refuse to release the records if he or she determines that access to the child's records would have a detrimental effect on the provider's professional relationship with the child or the child's physical safety or psychological well-being.

Fill in court name and street address:

Superior Court of California, County of

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Fill in child's name and date of birth:

Child's Name:

Date of Birth:

Clerk fills in case number when form is filed:

Case Number:

The purpose of this form is to consent to the release of education records of child in foster care to the child welfare agency in order to ensure that the child receives appropriate and effective services. It is also to allow the agency to fulfill case management responsibilities, to assist with the transfer or enrollment of the child; and to inform the court of his or her educational needs.

- ① I am
 - The child's parent (my right to make education decisions about my child has not been terminated or limited by the court)
 - The child's legal guardian (my right to make education decisions about the child has not been terminated or limited by the court)
 - The child's educational representative appointed by the juvenile court
 - An eligible student (student 18 years or older who attends a postsecondary institution)

② Under the Family Educational Rights and Privacy Act of 1974 (FERPA) and California state law, I authorize any school, district, or individual or entity maintaining the child's records, to release records to, and discuss them with, _____ (name of child welfare agency). These records include, but are not limited to, attendance, academic, individualized education program (IEP), medical, social, psychological, discipline, developmental, speech/language, and achievement test.

③ I request a copy of the records to be released.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE)

Clerk stamps date here when form is filed.

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Judicial Council

1 Name of petitioner: _____

The court finds and orders:

2 After a review of the juvenile case file and review of any filed objections and a noticed hearing the court denies the request. Disclosure is not in the best interest of the child.

3 After a review of the juvenile case file and review of any filed objections and a noticed hearing the court grants the request. The applicant has shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate needs of the applicant. The court has balanced these needs with the child's best interest. The court finds that the needs for disclosure outweighs the policy considerations favoring confidentiality of juvenile records.

a. The following records may be disclosed:

b. The procedure for providing access is:

c. See attached.

4 The child is deceased and the request is granted.

a. The court has read and considered the following:

b. There is a presumption under Welfare and Institutions Code section 827(a)(2)(B) in favor of the release of the documents unless a statutory reason for confidentiality is shown to exist. The court has balanced only the interests of the child who is the subject of the juvenile case file and the interests of other children who may be named in the file with _____ .

Fill in court name and street address:
Superior Court of California, County of

Fill in child's name and date of birth:
Child's Name:
Date of Birth:

Fill in case number:
Case Number:

Case Number: _____

Your name: _____

c. The following records may be disclosed:

d. The procedure for providing access is:

e. Any information that relates to another child or could identify another child, except for information about the deceased, must be redacted.

f. See attached.

5 The child is deceased and the request is denied. The court finds by a preponderance of the evidence that disclosure of the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the request.

Additional orders:

6 Applicant may not give the information to anyone who is not specified in section 827 of the Welfare and Institutions Code.

7 Disclosure subject to protective order (*list orders*): _____

8 Release of records listed in item 3a only.

9 Release of records with redaction.

10 Other:

11 See attached.

Date: _____

▶ _____
Judge (or Judicial Officer)

Item SPR11-49 Response Form

Title: **Juvenile Law: Disclosure of Information Forms** (approve forms JV-226 and JV-227; revise form JV -574)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.