

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR18-26**

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Title	Action Requested
Juvenile Law: School Notification of Delinquency Court Adjudication	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend form JV-690	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Daniel Richardson, 415-865-7619 Daniel.richardson@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes revising Judicial Council form JV-690 to provide clarity and conformity with Welfare and Institutions Code section 827(b) on what information is disseminated to a school when a child has committed certain criminal offenses.<sup>1</sup> The current form contains inaccuracies in the listed offenses and has been reported as confusing in terms of whether only the offenses on the form can be communicated to the school. The proposed changes reflect closely the language of section 827(b) and give the court the option to indicate the specific code section of the offense that was adjudicated. In addition, it is proposed that the form be revised to include more specific information for the school on how the form may be disseminated, to enhance confidentiality and help avoid situations in which the form is disseminated incorrectly. Finally, the committee recommends removing offenses from the form that are no longer eligible as felonies or misdemeanors.

### **Background**

The Judicial Council adopted *School Notification of Court Adjudication* (form JV-690) for optional use in 2011 as part of a proposal to adopt and amend numerous forms to include findings that are required by law but were not on forms, improve the usability of the existing forms, and reflect new legal requirements. The optional form was created to meet the

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<sup>1</sup> All further code references are to the Welfare and Institutions Code unless otherwise indicated.

*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 These proposals are circulated for comment purposes only.*

requirements in section 827(b) to notify a child’s school district if the child is found to have committed an enumerated offense. The form included check boxes for many of the more common qualifying offenses and contained a short admonition about the proper dissemination and handling of the confidential information.

### **The Proposal**

The proposal is being made because of errors and a lack of clarity in form JV-690 related to some of the criminal code sections listed on the form. The Judicial Council’s Center for Families, Children & the Courts (CFCC) staff were contacted by a clerk of a superior court who raised several issues with the form. She noted that the form does not clearly state whether the court is required to inform the school of only the specific code sections that are listed on the form, or if other offenses should be included as well. She also pointed out an error in the form in that it lists some criminal offenses that no longer exist in the Penal Code.

The proposed amendments to the form fall under the following three areas:

1. Clarifying how the form should convey information about the child’s criminal offense to the school;
2. Adding instructions on dissemination; and
3. Removing offenses that are infractions.

### **Offense disclosure**

The list of offenses on the form and their accompanying code sections present some complications and inaccuracies that suggest the form should be amended. For instance, Penal Code sections 12020 and 120101 are listed on the form but no longer exist in the Penal Code. The form also lists “Unlawful Sexual Intercourse (Pen. Code §261.5),” which does not fall under the offense category in section 827(b) of “a sex offense listed in section 290 of the Penal Code.”

The form’s listed offenses are also not an exhaustive list of offenses that could be included under the list of offenses in section 827(b).<sup>2</sup> For example, on the form, “Gambling (Pen. Code, § 337a)” does not capture all the offenses that could be considered an offense described as “gambling.”<sup>3</sup> “Graffiti on government property (Pen. Code, § 640.5)” is the only listed offense available for vandalism but doesn’t describe all types of vandalism. As pointed out by the superior court clerk, this inaccuracy creates confusion over what information should be included on the form when it is sent to a school district. Hence, the committee proposes removing the specific code sections as currently listed on the form.

The committee then considered the following three options in terms of how the form would convey information on a child’s offense: (1) include the generic offense as listed in subdivision

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<sup>2</sup> Hereafter “subdivision (b)”.

<sup>3</sup> See Penal Code chapter 10, Gaming [§§ 330–337z].

(b) without the option of including the code section of the offense; (2) include the generic offense and provide a blank space for the code section of the offense; or (3) include the generic offense and indicate that including the code section of the offense is optional. The committee elected to proceed with the third option.

Subdivision (b) is a limited exception to the overriding purpose of section 827 of protecting the confidentiality of the juvenile court case files. The protections of section 827 apply not only to the documents in the case file, but also to the information contained therein.<sup>4</sup> A school must be informed if a child has been found by a court of competent jurisdiction to have committed any felony or misdemeanor involving the offenses listed in subdivision (b). Section 827(b)(2)(A) reads in pertinent part:

Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case.

(Welf. & Inst. Code, § 827(b)(2)(A).)

The language related to the disclosure to the school leaves open to interpretation how much information about the child's offense should be communicated to the school.<sup>5</sup> One interpretation is that the specific code section of the offense should or could be communicated to the school. Although the statute doesn't specifically say this, it is reasonable to believe that notice that a child has "committed any felony or any misdemeanor involving..." and "[w]ritten notice shall include only the offense found to have been committed" could be read to require the code section. Another interpretation is that the plain language indicates only that the school should be notified of an offense involving the generic crimes as listed in subdivision (b).

The committee weighed several factors when determining how the form should convey the information related to the child's criminal offense, including the legislative history of subdivision (b), the context of subdivision (b) to the rest of section 827, and the law's increased emphasis on the sealing of records and avoiding of collateral consequences for juvenile offenders. The committee felt that given the context of section 827 and recent developments in the law related to the sealing of records,<sup>6</sup> the disclosure should as closely as possible preserve

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<sup>4</sup> *T.N.G. v. Superior Court* (1971), 4 Cal.3d 767, 780.

<sup>5</sup> After researching the matter, CFCC staff are unaware of any published case law interpreting section 827(b)(2)(A).

<sup>6</sup> In 2013, the Legislature took action to ensure that all juveniles who come before the court or a probation officer receive information about the process required to request sealing of records, and to require the adoption of a Judicial

confidentiality of the case file and ensure that juvenile offenders can graduate from probation with a clean slate while also providing the school with critical information to ensure safety at the school.

Option three (indicating that providing the code section of the offense is optional) allows the court to communicate the offense but does not require it to do so, which allows the court to consider the unique circumstances of the case when determining whether the specific offense should be communicated to the school. The committee also believes that the language of subdivision (b) does not prohibit the disclosure of the specific criminal offense, but also does not specifically require it. Therefore, giving the court the option of disclosing the code section does not appear to run afoul of the statutory language.

### **Instructions on dissemination**

The committee also elected to expand the admonition on the dissemination and use of the form, expanding the form from one page to two. When a school district receives the form, section 827(b) and (d) gives detailed instructions on its dissemination. Without seeking out the language of section 827, the school district may not know the rules on dissemination, resulting in a greater risk that the form will be disseminated beyond what section 827 permits.

The committee therefore proposes that the second page of the form be used to incorporate the specific directives on the form's dissemination and use found in section 827(b) and (d). The language has been partially revised as plain language to promote readability. The instructions include specific information on the purpose of the form, how the form is to be disseminated within the school district, how the form may be used, penalties for not following the rules of the form's confidentiality, instructions for when the child is no longer enrolled in the school district, and the child's and the child's family's right to verify the required destruction of the form. Providing these advisements will help to ensure that the rules around the dissemination of the form are followed.

### **Infractions**

Due to changes in the law, some offenses listed in subdivision (b) can no longer be considered misdemeanors or felonies, such as offenses related to curfew and tobacco possession. These offenses are however still listed in section 827(b) as potential felonies or misdemeanors that are to be disclosed to the child's school. Leaving these offenses on the form increases the likelihood that courts will communicate infractions related to curfew or tobacco to the school. The committee therefore proposes that curfew be removed from the form so that infractions related to

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Council form that can be used to petition the court for sealing under section 781. (Assem. Bill 1006 [Yamada]; Stats. 2013, ch. 269.) In 2014, the Legislature went a step further by enacting section 786, requiring courts to seal records without requiring a petition for any child 14 or older who was not a serious or violent 707(b) offender and who satisfactorily completed probation. (Sen. Bill 1038 [Leno]; Stats. 2014, ch. 249.) And new legislation in 2017 modifies the lifetime ban on sealing a juvenile offense record involving a specified serious or violent offense by allowing section 707 violent offenders over 14 years of age to petition the court to seal the record, with certain exceptions. (Sen. Bill 312 [Skinner]; Stats. 2017, ch. 679.)

curfew are not communicated to the school unnecessarily. The committee elected to specify that for offenses related to tobacco products, the form reference “Distribution of Tobacco Products.” Possession by a minor is no longer a misdemeanor or felony after the Stop Tobacco Access to Kids Enforcement Act (SB 7) was signed into law in 2016,<sup>7</sup> but distribution of a tobacco is still misdemeanor under Penal Code section 308. If these offenses again become felonies or misdemeanors, the form can be amended to include them.

### **Alternatives Considered**

The committee considered leaving the form in its current format. Given the inaccuracies in the form and the need to frame the disclosure to more closely align with subdivision (b), the committee elected to proceed with the proposed amendments.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee does not anticipate that this proposal will result in costs to the courts other than printing costs. The form is proposed to be expanded from one page to two pages to accommodate the extra admonitions that the committee believes are important for the proper dissemination of the form. Printing the form may now require two pages; however, courts can print on both sides of a single piece of paper, which is anticipated to be common.

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<sup>7</sup> Sen. Bill 7 [Hernandez]; Stats. 2016, ch. 8.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- In terms of the disclosure of the offense committed by the child, should the form indicate that providing the code section of the offense is optional (as proposed), or should the form not give the option of including the code section or require that the code section be inserted?
- Are there any suggestions to improve the readability and content of the admonitions on the proposed second page?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### Attachments and Links 1.

Form JV-690, at pages 7–8

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**

MAILING ADDRESS:  
 CITY AND ZIP CODE:  
 BRANCH NAME:

**SCHOOL NOTIFICATION OF COURT ADJUDICATION  
 (Welfare & Institutions Code Section 827(b))**

**TO SUPERINTENDENT:**  
 SCHOOL DISTRICT:  
 MAILING ADDRESS:  
 CITY, STATE, ZIP CODE:

1. Under Welfare & Institutions Code section 827(b), you are hereby notified that

a. CHILD'S NAME:

b. CHILD'S DATE OF BIRTH:

is enrolled in your school and was found by a court of competent jurisdiction to have committed a felony or misdemeanor involving

- |   |   |
|---|---|
| (1) <input type="checkbox"/> Gambling (code section optional):            | (6) <input type="checkbox"/> A sex offense listed in section 290 of the Penal Code (code section optional): |
| (2) <input type="checkbox"/> Alcohol (code section optional):             | (7) <input type="checkbox"/> Assault or battery (code section optional):                                    |
| (3) <input type="checkbox"/> Drugs (code section optional):               | (8) <input type="checkbox"/> Larceny (code section optional):   |
| (4) <input type="checkbox"/> Graffiti (code section optional):            | (9) <input type="checkbox"/> Vandalism (code section optional):   |
| (5) <input type="checkbox"/> Carrying of weapons (code section optional): | (10) <input type="checkbox"/> Distribution of Tobacco Products (code section optional):                     |

2. THE COURT-ORDERED DISPOSITION of the child's case is

- |  |  |
|--|--|
| a. <input type="checkbox"/> Wardship probation                           | c. <input type="checkbox"/> Non-wardship probation |
| b. <input type="checkbox"/> Department of Juvenile Facilities Commitment | d. <input type="checkbox"/> Other:                 |

Date: \_\_\_\_\_  
 \_\_\_\_\_  
 CLERK OF THE SUPERIOR COURT

For more information, contact the probation officer for the child.

**WARNING: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A MISDEMEANOR**

Any information received from this court is to be kept in a separate confidential file at the school of attendance. This record must be destroyed upon the child's graduating from high school, reaching the age of 18, or being released from court jurisdiction, whichever occurs first.

## FURTHER INSTRUCTIONS ON DISSEMINATION

### **(1) What is the purpose of this form?**

Welfare and Institutions Code section 827(b) requires that when a child is found to have committed a felony or misdemeanor for certain offenses, the court must send this form to inform the school of the underlying offense and the outcome of the case. The form is intended to encourage communication between the courts, law enforcement, and schools to ensure rehabilitation of the child and to promote public safety.

Juvenile court proceedings and information related to the case are confidential, and disclosure of this form is governed by the rules of confidentiality found in Welfare and Institutions Code section 827. Information related to a child's juvenile case is strictly confidential; the disclosure on this form is a limited exception. It is to be provided only to select individuals in the child's school district. An intentional violation of these rules is a misdemeanor.

### **(2) How is the form to be disseminated?**

Welfare and Institutions Code section 827(b) provides specific instructions for the school on how the form should be disseminated when it is sent by the court:

- The court will send this form to the district superintendent of the child's school district.
- The district superintendent must expeditiously transmit it to the principal at the school of attendance.
- The principal must then expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the child. In addition, the principal must disseminate the information to any teachers or administrators directly supervising or reporting on the behavior or progress of the child, if the principal believes they need the information to work with the child in an appropriate fashion and to promote school safety.

### **(3) How is the form to be used?**

Any information received from the court by a teacher, counselor, or administrator must be received in confidence for the limited purpose of rehabilitating the child and protecting students and staff.

A teacher, counselor, or administrator who receives the information in the form must not disclose the information or disseminate the form unless it is communication with the child, his or her parents or guardians, law enforcement personnel, or the juvenile probation officer and is necessary to effectuate the child's rehabilitation or to protect students and staff.

### **(4) Are there penalties if the form or the information on the form is unlawfully disseminated?**

Yes, an intentional violation of the confidentiality provisions of Welfare and Institutions Code section 827(b) is a misdemeanor punishable by a fine not to exceed \$500.

### **(5) What if the child is no longer at my school?**

If a child is removed from public school because of the court's finding described in this form, the superintendent must maintain the information in a confidential file and must defer transmitting the form received from the court until the child is returned to public school. If the child is returned to a school district other than the one from which the child came, the parole or probation officer having jurisdiction over the child must notify the superintendent of the last district of attendance, who must transmit the notice received from the court to the superintendent of the new district of attendance.

### **(6) The child and his or her family have the right to verify that the form was destroyed.**

The form is required to be destroyed when the child graduates from high school, reaches the age of 18, or is released from court jurisdiction, whichever occurs first. At any time after the form is required to be destroyed, the child or his or her parent or guardian has the right to make a written request to the principal of the school to review the child's school records to verify that the form has been destroyed. After this requested review, the principal or his or her designee must respond in writing to the written request and either confirm or deny that the form has been destroyed, or explain why destruction has not yet occurred.