



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 16–17, 2015

Title	Effective Date
Military Service: Notification of Military Status	July 1, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
Revise form MIL-100	February 26, 2015
Recommended by	Contact
Collaborative Justice Courts Advisory Committee	Adrienne Toomey, Attorney
Hon. Richard Vlavianos, Chair	415-865-7977 Adrienne.Toomey@jud.ca.gov
Agenda Item Type	Carrie Zoller, Supervising Attorney
Action Required	415-865-8829 Carrie.Zoller@jud.ca.gov

Executive Summary

The Collaborative Justice Courts Advisory Committee recommends that the Judicial Council revise the optional *Notification of Military Status* (form MIL-100) to ensure the language is consistent throughout the form and that all relevant statutory provisions are referenced. The form was previously revised effective January 1, 2015, in response to legislative changes that became effective on that same date. The short time available for that revision did not allow for a period of public comment prior to the council's action in approving the revisions. The January 1, 2015, version of the form has since been circulated for public comment and is submitted for further revision.

Recommendation

The Collaborative Justice Courts Advisory Committee recommends that the Judicial Council, effective July 1, 2015, revise the optional *Notification of Military Status* (form MIL-100) as follows:

1. Add reference to Penal Code section 858 to the right footer of page 1.
2. Add “possibly” following “Rights include” under “California Penal Code 1001.80: Diversion in misdemeanor cases” on page 2 to achieve consistency with preceding language describing Penal Code 1170.9.
3. Add “Eligible for diversion and court orders diversion” under the “Requirements include” section under “California Penal Code 1001.80: Diversion in misdemeanor cases” on page 2 to achieve consistency with preceding language describing Penal Code section 1170.9.
4. Combine the language from two currently distinct bullet points stating “Waiver of the right to speedy trial” and “Consent to diversion” under the “Requirements include” section under “California Penal Code 1001.80: Diversion in misdemeanor cases” on page 2 into one bullet point to read “Waiver of the right to speedy trial and consent to diversion.”

Previous Council Action

The Judicial Council adopted form MIL-100 effective January 1, 2014, at the recommendation of the Collaborative Justice Courts Advisory Committee. The committee recommended adoption of the form to facilitate courts’ ability to address legal issues implicated by a party’s military service status and to comply with alternative criminal sentencing considerations for current and former military service members under Penal Code section 1170.9.

At the recommendation of the Collaborative Justice Courts Advisory Committee, the Judicial Council adopted revisions to the optional *Notification of Military Status* (form MIL-100), effective January 1, 2015. These revisions responded to recent legislation directing courts to (1) inform criminal defendants at arraignment that there are provisions of law designed for former or current military service members who have been charged with a crime and (2) that the defendant may request a copy of the Judicial Council military form explaining those rights. The legislation directed the Judicial Council to revise the form accordingly.

To ensure the revised form was available to courts when the legislative changes took effect, January 1, 2015, the committee sought and received Judicial Council approval of the proposed revisions prior to circulating the proposed revisions for public comment. The revised form was circulated for public comment from December 12, 2014 to January 23, 2015, and recommends additional revision to the form to be effective July 1, 2015.

Rationale for Recommendation

The committee recommends specified changes to the form to ensure the language is consistent throughout the form and that all relevant statutory provisions are referenced. The recommended changes are based on the committee's own review and are not based on comments received.

Comments, Alternatives Considered, and Policy Implications

The form as revised effective January 1, 2015, was circulated during the winter public comment cycle. The committee received six comments: five agreed with the proposal, including the Superior Courts of Los Angeles, Sacramento, and Marin Counties and the State Bar of California, and one agreed with the proposal if modified. Some commentators in agreement with the proposal nonetheless suggested further revision to the form (Superior Courts of Sacramento and Los Angeles Counties). A chart with all comments received is attached.

Alternatives considered

The committee considered the following alternatives:

- ***Including a space on form for the county veterans services officer to indicate confirmation of military status and return form to court:*** The recent legislative amendments to Penal Code section 858 direct that when a criminal defendant acknowledges his or her military status and submits the optional *Notification of Military Status* form to the court, the court must transmit a copy of the form to the county veterans service officer for confirmation of the defendant's military service and must also transmit a copy of the form to the Department of Veterans Affairs. Two commentators suggested including a separate space on the form for the county veterans services officer to include a response back to the court regarding military status. The committee declined to recommend this suggested revision, recognizing that there may be various county-specific practices for communicating veteran status information from the veterans services officer to the court and that courts should be able to determine the best procedure for their court.
- ***Including space for party's social security number and date of birth:*** A commentator suggested including a space to include the party's social security number and date of birth on the form. The committee declined to recommend these suggested revisions, recognizing that including this information on otherwise public court documents would implicate privacy concerns that could not only discourage parties with military status from submitting the form, but also implicate burdensome redaction procedures (see Cal. Rules of Ct., rule 1.20(b)) and other court processes. Moreover, courts will only transmit these forms to veterans services officers for service confirmation in criminal cases where the defendant acknowledges their veteran status and submits the form to the court. Committee members with experience with Veterans Court programs indicated that

veterans services officers do not require a complete social security number to confirm a veteran's status, and that in those limited cases where the veterans services officer is unable to confirm veteran status based on the information already on the form, the court, party, and the party's defense counsel can provide additional information to the veterans services officer on a case-by-case basis and in a manner that works best in each county and court.

Implementation Requirements, Costs, and Operational Impacts

Although courts may experience operational impacts resulting from new legislative arraignment admonition requirements, the present proposal to make the specified language changes to the form will not cause additional operational costs.

Attachments

1. Form MIL-100, at pages 5–6
2. Comment Chart, at pages 7–9

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY DRAFT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CASE NAME: _____	
NOTIFICATION OF MILITARY STATUS	CASE NUMBER: _____

Consult your attorney before submitting this form. You may decline to submit this form to the court without penalty.

I (*name*): _____ declare as follows:

1. I am a party in a superior court case.
2. I am currently a member of the state or federal armed services or reserves. My entry date is: _____, and I
 - a. am on active duty service.
 - b. have been called or ordered into active duty service.
 - c. am not on active duty service.
 - d. other (*please explain*): _____
3. I used to serve in the state or federal armed services or reserves. I was discharged on (*date*): _____
4. I understand that if I submit this form to the court as a defendant in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.
5. I am filing this form on behalf of _____, a party to the above entitled case, whom I am informed and believe is a member veteran of the state or federal armed services. I am the attorney other (*specify*): _____ of this party. My contact information is provided at the top of this form follows: Name: _____ Address: _____ Telephone number: _____

Date: _____

_____ (TYPE OR PRINT NAME) _____ SIGNATURE

Local County Veterans Services Office Information (to be provided by local court):	
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NOTICE

Certain provisions of California law apply to current and former members of the U.S. Military who have been charged with a crime when certain conditions are met. Please see the back of this form for more information. To submit this form as a party in a criminal case you must file it with the court and serve it on the prosecuting attorney and defense counsel. Filing of this notification form does not substitute for filing of other forms or petitions that are required by your court case. If you are requesting consideration or restorative relief under Penal Code section 1170.9, this form alone will not meet the requirement that you assert to the court that the crime you were charged with was a result of a condition caused by your military service. If you are filing for relief from financial obligation during military service, a notification of military deployment and request to modify a support order, or other relief under the Service Members' Civil Relief Act (50 App. U.S.C. §§ 501-597(b)), you must complete the appropriate forms, and completion of this form is not required. Please see form MIL-010 (*Notice of Petition and Petition for Relief From Financial Obligations During Military Service*) and form FL-398 (*Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*).

**YOU SHOULD CONSULT WITH YOUR ATTORNEY ABOUT THE FOLLOWING INFORMATION
AND BEFORE SUBMITTING THIS FORM.**

If you are a current or former member of any branch of the U.S. Military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of your military service and charged with a crime, you may be entitled to certain rights under some California laws. Below are brief explanations of some of those laws. You should consult with your attorney to discuss how these and/or other laws may apply to you.

You are not required to have an honorable discharge, to have combat service, or to be accepted into a Veterans Court to be eligible for the rights described in the following statutes.

California Penal Code 1170.9: Consideration for alternative sentencing and restorative relief.

Rights include possibly:

- Receiving treatment instead of prison or jail time for certain crimes
- Having a greater chance of receiving probation
- Having conditions of probation deemed satisfied early, other than any victim restitution ordered, and probation terminated early
- Having some felonies reduced to misdemeanors
- Having the court restore rights, dismiss penalties, and/or set aside conviction for certain crimes

Requirements include:

- For consideration for alternative sentencing:
 - Convicted of certain criminal offenses (some crimes do not qualify)
 - Eligible for probation and court orders probation
- For restorative relief following order of probation:
 - In substantial compliance with conditions of probation
 - A successful participant in and demonstration of significant benefits from treatment and services
 - No danger to the health and safety of others

California Penal Code 1001.80: Diversion in misdemeanor cases.

Rights include possibly:

- *Pretrial* diversion program instead of trial and potential conviction and incarceration
- Dismissal of eligible criminal charges following satisfactory performance in program
- Arrest is deemed to have “never occurred” for most purposes following successful completion of program

Requirements include:

- Application to misdemeanors only, *not* felonies
- Eligible for diversion and court orders diversion
- Waiver of right to speedy trial and consent to diversion
- Satisfactory performance in program

California Penal Code 1170.91: Mitigating factor in felony sentencing.

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

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Notification of Military Status

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

	Commentator	Position	Comment	Committee Response
1.	Kim Turner, CEO on behalf of the Superior Court of Marin County	A	I strongly support this proposal, as there is great confusion and misinformation about how to best serve veterans. Any information that can assist them in understanding their post-judgment options will be very helpful.	No response required.
2.	Ashleigh E. Aitken, President commenting on behalf of Orange County Bar Association	A		
3.	Mike Roddy, Executive Officer commenting on behalf of the Superior Court of San Diego County	AM	If a MIL-100 is filed, the court is required to send a copy of the form to the county veterans service officer for confirmation of the defendant's military service. (PC 858(e).) San Diego would like to have a separate section under the "Notice" for the county veterans service officer to fill out and sign to confirm or deny the defendant's military status (and then they could return that form to the court).	The committee declines the suggestion as unnecessary, recognizing that there may be various county-specific practices for communicating veteran status information from the veterans services officer to the court and that courts should be able to determine the best procedure for the individual court.
4.	Superior Court of Los Angeles County	A	<p>Paragraph 2: Add a subparagraph: am a member Ready Reserve. (*Inactive National Guard, Individual Ready Reserve and Selected Reserve)</p> <p>The present *form assumes the military service member served on active duty currently or in the past. There are thousands of active reservists and members of the National Guard who were never mobilized or deployed on active duty. This distinction is important because members of the Ready Reserve may still be eligible for some health benefits for substance abuse and mental health through the Veteran's Administration.</p>	The committee declines the suggestion as unnecessary. The committee believes that the information called for in question 2 on page 1 of the form captures reserve service information.

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	Commentator	Position	Comment	Committee Response
5.	The State Bar of California Sharon Nhim on behalf of Maria C. Livingston, Chair, Standing Committee on the Delivery of Legal Services	A	SCDLS supports the proposed changes to MIL-100. The added language in the Notice box on page 1 informing current and former military personnel about their statutory rights in criminal cases, as well as in certain civil and family law cases, helps ensure that the party is informed of essential information, and will be especially helpful if the party is a low- or moderate-income self-represented litigant.	No response required.
6.	Brenda Brower, Criminal Division Analyst commenting on behalf of the Superior Court of Sacramento County	A	<p>[Questions from Invitation to Comment are in italics]</p> <p><i>Do the recent revisions to the form appropriately address the stated purpose?</i> Yes</p> <p><i>Are any additional revisions recommended?</i> Yes</p> <ul style="list-style-type: none"> • Add field for Date of Birth • Add field for Social Security Number • Add section for Dept. of Veteran’s Affairs <ul style="list-style-type: none"> ○ Per our contacts at the Public Defender’s Office, they County VA Services Office and the Department of Veteran’s Affairs cannot verify status without this information. • Add section on second page for response back to court from County VA Services Office and Veteran’s Affairs. <p><i>The advisory committee also seeks comments from courts on the following cost and implementation matters: Would the proposal provide cost savings? If so</i></p>	<p><i>Including space for party’s social security number and date of birth:</i> The committee declines to recommend the suggested revisions. Including this information on otherwise public court documents would implicate privacy concerns that could not only discourage parties with military status from submitting the form, but also implicate burdensome redaction procedures (see Cal. Rules of Ct., rule 1.20(b)) and other court processes. Moreover, courts will only transmit these forms to veterans services officers for service confirmation in criminal cases where the defendant him or herself acknowledges their veteran status and submits the form to the court. In those limited cases where the veterans services officer is unable to confirm veteran status based on the information already on the form, the court, party, and the party’s defense counsel can provide additional information to the veterans services on a case-by-case basis.</p> <p><i>Including a space on form for the county veterans services officer to indicate confirmation of military status and return form to court:</i></p>

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	Commentator	Position	Comment	Committee Response
			<p><i>please quantify.</i></p> <p>No, in fact costs may increase as additional monitoring of court cases will be required for those that may qualify for services.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Affected staff are Judges, Courtroom Clerks, and other Support Staff. We are already in the process of updating procedures for court staff and advisement scripts for Judges. Approximately four to eight hours of training and procedure / script updating.</p> <p>No additional docket codes for our case management system are planned at this time. This may change in the future based on volume. however hard copy files will need to be flagged and marked differently to identify those that qualify for veteran services.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>Courts with a larger population of veterans may have a greater number of filings and a larger workload association with monitoring of diversion programs.</p>	Please see committee response in row 3 above.