



Judicial Council of California

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INVITATION TO COMMENT

SPR24-18

Title

Criminal Law and Family Law: Changes to Form MIL-100

Action Requested

Review and submit comments by May 3, 2024

Proposed Rules, Forms, Standards, or Statutes

Revise form MIL-100

Proposed Effective Date

January 1, 2025

Proposed by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair
Hon. Lisa Rodriguez, Vice-Chair

Contact

Sarah Fleischer-Ihn, 415-865-7702
sarah.fleischer-ihn@jud.ca.gov

Family and Juvenile Law Advisory
Committee

Hon. Stephanie E. Hulsey, Chair

Gabrielle D. Selden, 415-865-8085
gabrielle.selden@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee and Criminal Law Advisory Committee propose revising form MIL-100, effective January 1, 2025. The Family and Juvenile Law Advisory Committee proposes revising form MIL-100 to implement the requirements of Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). The proposed changes would allow the court to comply with section 211.5 when the form is filed in a family law case involving a person who has military, veteran, reserve, or active status. The Criminal Law Advisory Committee proposes additional revisions to form MIL-100 to clarify procedures under Penal Code section 858 when the form is filed in a criminal case, and to reference treatment options for pretrial diversion under Penal Code section 1001.80. The committees also propose updating and reformatting the information on the back of the form for improved readability.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Background

SB 1182 added section 211.5 to the Family Code to provide the following:

(a)(1) Commencing January 1, 2024, in proceedings under this code, a court shall provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs.

(2) The veteran may, at their discretion, provide the information about their veteran status on the Judicial Council military service form, file the form with the court, and serve it on the other parties to the action.

(b)(1) When a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs.

(2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.

(c) On or before January 1, 2024, the Judicial Council may amend or develop the rules and forms necessary to implement this section.

According to legislative analysis, the above procedures will provide veterans navigating a family law case with the same access to resources and care through the California Department of Veterans Affairs (CalVet) that are available to veterans who have a criminal case. These services can be invaluable to veterans who are dealing with post-traumatic stress disorder, traumatic brain injuries, or a service-linked mental health issue.¹ Further, the new procedures will increase cultural competency, consistency, and flexibility among family court professionals about the needs of veterans in family court.²

In criminal cases, a defendant may acknowledge active duty or veteran status to the court by filing form MIL-100.³ The form includes information about rights related to criminal defendants who have active duty or veteran status.

The Proposal

Notification of Military/Veteran/Reserve/Active Status (form MIL-100) is an optional form that the Judicial Council initially adopted, effective January 1, 2014,⁴ as recommended by the Collaborative Justice Courts Advisory Committee. Its purpose is to inform the court that a party is a current or former member of the armed services or reserves, so that courts may address legal

¹ Sen. Floor Analysis, to Sen. Bill 1182 (2021–2022 Reg. Sess.) Aug. 5, 2022, p. 5 (Link A).

² *Ibid.*

³ Pen. Code, § 858(d), (e).

⁴ The Judicial Council report regarding the adoption of form MIL-100 may be found at: <https://www.courts.ca.gov/documents/jc-20131025-itemA32.pdf>.

issues when military status is relevant, comply with sentencing requirements under the Penal Code, if relevant, and identify when outside resources are available to military and former military court users.⁵

The current form helps a veteran self-identify in any type of legal case and provides for situations in which another person completes the form. For this reason, item 3 in the current form requires that the person completing the form self-identify as either (1) “the person listed in 1,” (2) “an attorney in the above-entitled case,” or (3) “other (*specify*):[.]”

This form has been revised three times since its adoption to comply with changes in the law—most recently, effective January 1, 2021.⁶

To reflect each committee’s respective subject matter expertise, the Criminal Law Advisory Committee led the development of the proposed changes to the form that relate to criminal cases. The Family and Juvenile Law Advisory Committee led the development of the proposed changes to the form relating to family law cases under Family Code section 211.5.

This form would be revised to include the following:

- A revised item 3 for the person completing the form to specify the type of case (a criminal law, family law, or another type of case) and whether the person is filing on their own behalf or is the attorney of record for the person;
- For the criminal law section of item 3, changing the description for the attorney check box to “an attorney representing the person listed in 1 in the above-entitled action” and deleting the entry for “other (*specify*):” to align with Penal Code section 858;
- For the family law and other civil cases section of item 3, removing the “Other (*specify*):” checkboxes that currently allow a person other than the party or their attorney to complete and file the form on behalf of a veteran;
- A reformatted notice box at the bottom of the form to specify the requirements for sending the form to veteran agencies;
- A change in the notice box to more accurately indicate that the form is being “filed” instead of “submitted” in the criminal law or family law case;
- A reference to Family Code sections 211.5 in the footer and second page;
- A reference to pretrial diversion offering treatment as an alternative to trial, conviction, and incarceration under Penal Code section 1001.80; and

⁵ The Judicial Council report regarding revisions to form MIL-100, effective January 1, 2015, may be found at: <https://www.courts.ca.gov/documents/jc-20141212-itemA2.pdf>.

⁶ The Judicial Council report regarding revisions to form MIL-100, effective January 1, 2021, may be found at <https://jcc.legistar.com/View.ashx?M=F&ID=8771183&GUID=20C61B6B-54AB-434A-9EE2-41FADF6632AD>.

- Reorganizing and reformatting the information on page two to make the form easier to read.

Notice requirements under Family Code section 211.5

Under section 211.5(b), “[w]hen a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs. (2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.”

The committees propose that the notice box include a new check box titled “Family Law Case,” and that it be written in plain language the same as the criminal law notice rather than use the exact language of the statute. Because the legislative history of SB 1182 uses the term “Department of Veterans Affairs (CalVet),” the committees propose that the notice box include this same reference to “(CalVet).” The family law notice would read as follows:

If this form is filed in a family law case, the court will send a copy of the form to the California Department of Veterans Affairs (CalVet).

CalVet will, in a reasonable time, contact the person using the information provided in this form.

Requirements under Penal Code section 858

Penal Code section 858 contemplates that the defendant or defendant’s counsel, with the defendant’s consent, would file form MIL-100.⁷ Accordingly, the committees propose specifying in item 3 that in a criminal case, either the defendant or defendant’s counsel is filing the form.

In a criminal case, the court is required to send a copy of the form to the county veterans service officer to confirm the defendant’s military service. (Pen. Code, § 858(e).) However, the current form does not mention this confirmation requirement. To better communicate this requirement, the committees propose revising the form to state that the court will send a copy of the form to the county veteran’s service office “to confirm the person’s military status.”

In criminal cases, courts are required to send a copy of the form to the Department of Veterans Affairs. (Pen. Code, § 858(e).) The form includes a notice box about this requirement. As noted, the committees propose using the term “Department of Veterans Affairs (CalVet)” in the family law notice due to the legislative history of SB 1182. For consistency, the committees recommend adding a similar reference to CalVet to the criminal law notice.

⁷ “The court shall advise the defendant that the defendant should consult with counsel prior to submitting the form and that the defendant may, without penalty, decline to provide this information to the court.” (Pen. Code, § 858(d).) “If the defendant acknowledges active duty or veteran status and submits the Judicial Council military service form to the court, the defendant shall file the form with the court and serve the form on the prosecuting attorney and defense counsel.” (Pen. Code, § 858(e).)

Other changes

The committees propose reorganizing and reformatting page two of the form so that the content is easier to read. To this end, the “Noncriminal cases”⁸ and “Criminal cases” content would be reformatted in two side-by-side columns below an introductory paragraph and above a section that lists and describes the statutes noted in the form. In addition, a short sentence below the “Noncriminal” heading is proposed to define its meaning, and a brief description of Family Code section 211.5 would be listed in the lower third section of the page.

Alternatives Considered

Form proposal

The Family and Juvenile Law Advisory Committee considered not proposing changes to form MIL-100 because SB 1182 does not specifically mandate that the Judicial Council amend form MIL-100. However, the committee determined that revisions were needed to the notice box at the bottom of page one of the form because the language in the Family Code about the transmission of the form by the family court to the California Department of Veterans Affairs differs from the requirements in criminal cases.

Discussion about other persons completing the form on behalf of an active military service member, reserve member, or veteran

In proposing revisions to current item 3 of form MIL-100, the committees considered whether the entries for “3b. Family Law Case” and “3c. Other civil or juvenile cases” should include a check box for “Other (*specify*):” to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form.

The committees were concerned that this could be a sensitive issue for some active military service members, reserve members, or veterans. For example, some active members or veterans may not want another person to be able to file this form to disclose their status. The committees understand that legal authority supports excluding the checkbox for criminal cases; however, additional research would be needed before the committees can make a recommendation to the Judicial Council on this issue relating to family, other civil, and juvenile cases. To this end, the committees decided to circulate a form without the “Other (*specify*):” checkboxes and seek comment about the proposed revision.

Consultation with the Collaborative Justice Courts Advisory Committee

The committees consulted with the Collaborative Justice Courts Advisory Committee on the proposed amendments to form MIL-100, as that advisory committee originally proposed the form and amendments to the form over the years. The Collaborative Justice Courts Advisory Committee reviewed the proposed changes to the form. This collaboration produced a form that would comply with the relevant law and provide a better user experience by reorganizing and reformatting the instructions and information on the second page.

⁸ “Noncriminal cases” is used to describe civil cases, such as family law cases, and cases that are not considered civil cases, such as juvenile law cases.

Local resource list

The committees also considered whether to propose developing the list of local resources for mental health treatment that is described in Family Code section 211.5 but decided that the local veterans service office or the superior courts, not the Judicial Council, would be in the best position to create the local resources list that is described in the statutes.

Fiscal and Operational Impacts

The impact to the courts includes the cost to educate judicial officers and court staff about the changes in the law and procedures to implement the law. In addition, court clerks would be required to take additional steps to send copies of form MIL-100 to the California Department of Veterans Affairs (CalVet) in family law cases, and courts would be required to provide the parties with a list of local resources for mental health treatment.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- *For family courts:* Please state the reason for your response to the following: Regarding item 3b, should the check box for the attorney follow the current language stating “an attorney in the above-entitled case” or should it be changed to the language proposed for 3a in criminal cases: “an attorney representing the person listed in item 1 in the above-entitled case”?
- Should items 3b. and 3c. include a check box to allow a person other than an active military service member, reserve member, or veteran (or their attorney) to complete the form? (*If you are aware of a statute that supports your answer, please include it in your comments.*)
- 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 MIL-100, at pages 8–9
2. Link A: Senate Floor Analyses, August 5, 2022,
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB1182
3. Link B: current form MIL-100, <https://www.courts.ca.gov/documents/mil100.pdf>
4. Link C: Senate Bill 1182,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1182

PERSON COMPLETING THIS FORM: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: STATE BAR NUMBER (IF APPLICABLE):	FOR COURT USE ONLY DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL v. 3/08/24
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY/VETERAN/RESERVE/ACTIVE STATUS	CASE NUMBER:

1. This form is about (name): _____ who is a party in this case.

2. The person listed in item 1 is:
- a. A current member of the state or federal armed services or reserves.
 - b. A veteran of the state or federal armed services or reserves.
 Discharge date (specify if applicable): _____

3. This form can be filed in any case type.
 (Specify below the type of case in which the form is filed, and identify the person completing this form):

- a. Criminal law case.
 I am (check one): the person listed in item 1. an attorney representing the person listed in item 1 in the above entitled case.
- b. Family law case.
 I am (check one): the person listed in item 1. an attorney in the above entitled case.
- c. Other civil or juvenile law case (specify): _____
 I am (check one): the person listed in item 1. an attorney in the above entitled case.

4. I am providing this notification to the court based on information and belief.

Date: _____

(TYPE OR PRINT NAME OF PERSON FILING THIS FORM)
(SIGNATURE)

Notice	
<p style="text-align: center;">Criminal Law Case</p> <p>If this form is filed in a criminal law case, the court will send a copy of the form to the county veterans service officer to confirm the person's military status and the California Department of Veterans Affairs (CalVet).</p> <p>Local County Veterans Services Office Information (to be provided by local court):</p>	<p style="text-align: center;">Family Law Case</p> <p>If this form is filed in a family law case, the court will send a copy of the form to the California Department of Veterans Affairs (CalVet).</p> <p>The California Department of Veterans Affairs (CalVet) will, in a reasonable time, contact the person using the information provided in this form.</p>
For court use only	

No Filing Fee
 No filing fee or court costs are to be charged for this form.

YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law. Filling out form MIL-100 is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. The MIL-100 only needs to be filled out with the court one time per case.

NONCRIMINAL CASES

Noncriminal cases are cases filed in other courts, such as civil, family, or juvenile court.

If you are a party to a noncriminal case be sure to complete all the appropriate forms needed for your case. For example, filing this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Examples of required forms are:

- (1) *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010); and
- (2) *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

CRIMINAL CASES

If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law.

Some examples of benefits of a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restoration relief such as sealing your record, and diversion in misdemeanor cases.

If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.

Below is a brief description of possible rights and protections under the following California laws:

Family Code section 211.5

- Filing this form in a family law case may help you receive information from CalVet and learn about available mental health resources.

Penal Code section 1001.80

- Pretrial diversion program offering treatment instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program.

Penal Code section 1170.9

- Treatment instead of prison or jail time for certain crimes;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered.

Penal Code section 1170.91

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